

CALIFORNIA COASTAL COMMISSION

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Commission Action:



Th20a

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NUMBER: 5-07-327-R

APPLICANT: Richard J. Livoni Second Family Limited Partnership

AGENTS: Sherman L. Stacey, Gaines & Stacey

PROJECT LOCATION: 3335 Ocean Boulevard, Corona del Mar, Newport Beach (Orange County)

PROJECT DESCRIPTION: Remove existing unpermitted retaining walls and beach access stairway from bluff face, regrade lower bluff to natural contours, add to residence a new caisson-supported deck with enclosed bathroom and spa equipment room on upper bluff face, extend an existing bluff face deck, and construct new at grade pathway from new deck to beach. Grading will consist of 163 cubic yards of cut, 10 cubic yards of fill, and 153 cubic yards of export to a location outside of the Coastal Zone. Landscaping is also proposed.

COMMISSION ACTION: On August 7, 2008 the Commission took a single vote adopting a two-part resolution, **approving** the removal of the existing unpermitted bluff face stairway and walls, regrading the lower bluff to natural contours, landscaping, and construction of a new deck that would be in alignment with surrounding approved deck; and **denying** the proposed new private pathway from the new deck, down the bluff face to the beach.

SUMMARY OF STAFF RECOMMENDATION

On August 7, 2008 following a public hearing on the matter, the Commission approved in part and denied in part Coastal Development Permit Application 5-07-327 for improvements to a coastal bluff lot including the approval of the removal of unpermitted retaining walls and beach access stairway from the bluff face, regrading the lower bluff to natural contours, landscaping, and construction of a new deck that would be in alignment with surrounding approved deck; and denying the proposed new private pathway from the new deck, down the bluff face, to the beach. The Commission imposed eleven Special Conditions necessary to ensure the preservation of scenic resources of the area, minimize landform alteration, prevent adverse

impacts to public use of the beach, avoid development in hazardous prone locations and ensure that approved development is consistent with the pattern of predominant development in the surrounding area. The proposed pathway from the approved deck to the toe of the bluff was denied.

On September 8, 2008, the applicant submitted to the Commission's South Coast District office a letter requesting that the Commission reconsider its decision to deny Coastal Development Permit Application 5-07-327 (Exhibits #2 and 2A). The applicant asserts that there were errors in fact and law that have the potential of altering the Commission's initial decision.

Section 30627(b)(4) of the Coastal Act states that the Commission has the discretion to grant or deny a request for reconsideration of a coastal development permit application. After review of the request Commission staff concludes that there is no new relevant evidence that could not have been presented at the August 7, 2008 public hearing and that there were no errors in law that have the potential of altering the Commission's initial decision. However, after review of the reconsideration request, the staff report for the August 7, 2008 action and the hearing tape, staff recommends that the Commission **GRANT** the applicant's request for reconsideration because the applicant has raised substantial factual questions with respect to whether the proposed pathway conforms with the community character of the area for purposes of carrying out Section 30251 of the Coastal Act. **See Page Three for the motion to adopt the staff recommendation.**

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-07-042-[Butterfield]; Coastal Development Permit No. 5-04-214-[Battram]; Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]; Coastal Development Permit No. 5-05-328-[Palermo]; Coastal Development Permit No. 5-01-112-[Ensign]; Coastal Development Permit No. 5-02-203 [Tabak]; Coastal Development Permit No. 5-03-100 [Halfacre].

PROCEDURAL NOTE:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of the application, or of any term or condition of a coastal development permit which has been granted. [Title 14 Cal. Code of Regulations Section 13109.2.] The regulations also state (*id.* at § 13109.4) that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states, *inter alia*:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.

[Cal. Pub. Res. Code § 30627(b)(3)]

Section 30627(b)(4) of the Coastal Act states that the Commission “shall have the discretion to grant or deny requests for reconsideration.”

The applicant submitted a request for reconsideration of the Commission’s August 7, 2008 decision on Monday, September 8, 2008, stating the alleged grounds within the thirty-day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration, the permit application will be scheduled for a future public hearing, at which the Commission will consider it as a new application. [Title 14, Cal. Code of Regs., Section 13109.5(c).]

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following motion and resolution to **GRANT** the reconsideration request for Coastal Development Permit Application 5-07-327:

MOTION: *“I move that the Commission **grant** reconsideration of Coastal Development Permit Application 5-07-327.”*

Staff recommends a **YES** vote on the motion. Passage of this motion will result in grant of reconsideration and adoption of the following resolution and findings. If reconsideration is granted, the matter is processed as a new permit application. The motion passes only by affirmative vote of a majority of Commissioners present.

I. RESOLUTION TO GRANT RECONSIDERATION:

The Commission hereby grants the request for reconsideration of the Commission’s decision on coastal development permit no. 5-07-327 on the grounds that the applicant has raised substantial questions regarding whether an error of fact has occurred that has the potential of altering the initial decision.

II. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The application consists of an extension (390 square feet) of an existing bluff face deck and construction of a new deck (800 square feet) with an enclosed bathroom and spa equipment room on the bluff face in association with an existing single-family residence (See Exhibits 2-6 of the original staff report, Exhibit #1). In addition, existing unpermitted site walls and beach access stairway located on the bluff-face will be removed. The portion of the bluff face below the proposed deck will be regraded to match the existing

slope and a new at grade pathway from the proposed deck, down the bluff face, to the beach is proposed. No structural improvements are proposed with the new at grade pathway. Grading will consist of 163 cubic yards of cut, 10 cubic yards of fill, and 153 cubic yards of export to a location outside of the Coastal Zone. Landscaping is also proposed. A caisson foundation system is proposed to support the expanded and new decks.

The proposed project is located at 3335 Ocean Boulevard in Corona del Mar, City of Newport Beach, County of Orange. The lot size is 8,053 square feet, and the City of Newport Beach Land Use Plan (LUP) designates the site as low density residential and the proposed project adheres to this designation. The subject property, immediately inland of Corona del Mar State Beach, contains a single-family residence on the upper bluff face portion of the bluff face lot, and the bluff face descends down to the sandy beach. The rectangular shaped bluff face property fronts approximately 70-feet on the Ocean Boulevard right-of-way and extends southwesterly approximately 120 to 124-feet to the rear property boundary located along Corona del Mar State Beach. The lot consists of the middle and lower portions of a generally natural sea bluff and a portion of the beach. The overall height of the bluff slope is approximately 80-feet, while maximum relief across the property is approximately 64-feet. The slope ratio is variable, between 1:1 and 2:1. To the north of the site, at the top of the bluff, is Ocean Boulevard. To the west (up-coast) is existing residential development. To the east (down-coast) are existing single-family homes, and further beyond is a natural vegetated bluff, a bluff park known as Inspiration Point and a public access way from Inspiration Point to the public beach (Corona del Mar State Beach). To the south of the bluff, at the toe of the slope, is privately owned (by the applicant) sandy beach area immediately fronting a normally 200-foot wide sandy public beach. The pattern of development along Ocean Boulevard primarily consists of structural development sited at the upper portion of the bluff face with minimal disturbance of the mid and lower bluff face and the sandy beach.

B. Applicant's Grounds for the Reconsideration Request (Exhibits #2 and 2A)

The applicant asserts the following:

1. On June 6, 2005 the Commission denied the Bredesen case, 5-04-324, for the construction of a path down a bluff and retaining walls and a patio at the bottom of the bluff at a single family residence at 437 Paseo de la Playa in Torrance. In its denial action the Commission made similar findings to those recommended by staff in the present Livoni case. Superior Court Judge Dzintra Janavs issued a Writ of Mandate and adopted a Statement of Decision finding that the Commission abused its discretion in denying the permit in the Bredesen case. The applicant asserts that the Bredesen and Livoni cases share similar physical site characteristics and the Commission first sought to deny Bredesen on substantially the same grounds as Livoni. The applicant asserts that the Superior Court rejected those grounds, thus the Livoni findings and action constitute errors of fact and law.

2. Denial of the Livoni pathway based on Chapter Three policy 30240(b) is an error of fact because substantial evidence does not support the Commission's finding that the presence of the pathway on the lower bluff would create an impression among the public that nearby public beach areas are private. The Commission also committed errors of law because the Commission did not expressly find that the path would "significantly" degrade the nearby public beach and because the Commission made findings regarding the existence of unadjudicated rights of public access to the sandy beach area owned by Livoni.
3. The Commission made errors in fact and law by construing Coastal Act section 30251 as prohibiting all alterations of natural landforms rather simply requiring minimization of natural landform alterations and by finding that the proposed pathway would be visually incompatible with the character of the surrounding area.
4. The Commission committed errors of fact and law when it found that the Livoni pathway was inconsistent with the Newport Beach Land Use Plan, in particular the policy requiring development on Ocean Boulevard to be consistent with the predominant line of existing development.

C. Analysis of the Reconsideration Request

As stated on **Page Two** of this report, an applicant may request reconsideration based on the following grounds: a) there is relevant new evidence which, in the exercise of reasonable due diligence, could not have been presented at the hearing on the matter, or b) an error of fact or law has occurred that has the potential of altering the Commission's initial decision. [Cal. Pub. Res. Code § 30627(b)(3)]. The Commission's decision whether to grant or deny reconsideration is discretionary. [Cal. Pub. Res. Code § 30627(b)(4)].

The following analysis addresses separately each of the grounds asserted as a basis for reconsideration, as set forth in the previous section and the applicant's letter dated September 8, 2008 (Exhibit #2).

Ground One

On June 6, 2005 the Commission denied the Bredesen case, 5-04-324, for the construction of a path down a bluff and retaining walls and a patio at the bottom of the bluff at a single family residence at 437 Paseo de la Playa in Torrance. In its denial action the Commission made similar findings to those recommended by staff in the present Livoni case. Superior Court Judge Dzintra Janavs issued a Writ of Mandate and adopted a Statement of Decision finding that the Commission abused its discretion in denying the permit in the Bredesen case. The applicant asserts that the Bredesen and Livoni cases share similar physical site characteristics and the Commission first sought to

deny Bredesen on substantially the same grounds as Livoni. The applicant asserts that the Superior Court rejected those grounds, thus the Livoni findings and action constitute errors of fact and law.

As the applicant points out, the Superior Court decision in the Bredesen case was made on September 4, 2007, prior to the August 7, 2008 Commission decision on the Livoni coastal development permit for which he is seeking reconsideration (Exhibit 2A). Mr. Stacey, the agent of record for the Livoni application appeared as the counsel for the Petitioners Chris Bredesen and Ginger Bredesen and was therefore certainly aware of the Bredesen decision at the time of the Commission action on the Livoni application. Therefore, the 2007 Superior Court decision in the Bredesen matter does not constitute new evidence that could not have been presented at the August 7, 2008 public hearing.

More importantly, the circumstances surrounding the Bredesen case are not similar to the Livoni circumstances or facts. Because the Bredesen decision turned on a very fact-specific evaluation of the community character of the immediate vicinity of the Bredesen property and of the history of Commission actions in that area, the Superior Court decision is not relevant to the Livoni matter. So even if the Bredesen Decision constituted new information that could not have been presented at the Livoni public hearing, which it does not, the facts of the two cases are not similar. In the Bredesen case the proposed retaining walls, patio, storage locker and fire pit (to be converted to a planter) located at the toe of the bluff are not visible from the adjacent public beach because there is an existing chain link fence with a fabric screen at the toe of the bluff. In Bredesen, the court upheld the Commission's denial of an elevated structure that would be visible and that the court found to be incompatible with the pattern of development in the vicinity. In the Livoni case, there is no fence or other development screening public views and the coastal bluff face and the proposed pathway would be visible from public areas such as the adjacent Corona del Mar State Beach and from the elevated Inspiration Point downcoast of the project site.

Therefore the Commission concludes that Ground One does not provide any relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter nor does it establish an error of fact or law that could have altered the Commission's initial decision.

Ground Two

Denial of the Livoni pathway based on Chapter Three policy 30240(b) is an error of fact because substantial evidence does not support the Commission's finding that the presence of the pathway on the lower bluff would create an impression among the public that nearby public beach areas are private. The Commission also committed errors of law because the Commission did not expressly find that the path would "significantly"

degrade the nearby public beach and because the Commission made findings regarding the existence of unadjudicated rights of public access to the sandy beach area owned by Livoni.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The applicant asserts that the Commission's findings regarding Section 30240(b) are inadequate as a matter of law because the Commission did not expressly find that the proposed pathway would "significantly" degrade the nearby public beach. Although the Commission's findings in one place on page 32 uses the term "degrade", the applicant fails to point out that the immediately preceding sentence correctly states the Coastal Act standard, "significantly degrade" when paraphrasing Section 30240(b).

The first complete paragraph of page 32 of the Livoni staff report states:

Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would **significantly degrade** those areas. The presence of the proposed private beach access pathway would **degrade** the publicly owned beach area adjacent to it. Thus, the proposed private beach access pathway is inconsistent with Section 30240(b) of the Coastal Act and must be denied. [emphasis added]

The applicant also fails to acknowledge the findings on page 20 where Section 30240(b) and the term "significantly degrade" is used to explain why the proposed deck can be approved and the pathway cannot. Therefore, the use of "degrade" in the above one instance as opposed to "significantly degrade" does not change the standard used by the Commission or establish an error of law that could have altered the Commission's initial decision.

Livoni also argues that the Commission committed legal error by denying the pathway on the basis of potential, but unadjudicated rights of public access over the portion of the beach owned by Livoni. This argument is based on a misreading of the Commission's findings. The Commission did not base its decision on the potential existence of public rights of access over the Livoni property.

Finally, Livoni argues that no substantial evidence supports the Commission's findings regarding the potential for the pathway to create the perception that nearby public beach is private. From a review of the Commission's initial hearing regarding this project, it appears that commissioners were primarily concerned about whether the pathway would be compatible with the visual character of the lower bluff. Therefore, even if Livoni were correct regarding the lack of evidentiary support for concerns about the privatizing effects of the pathway, it does not appear that this ground would by itself be sufficient to alter the Commission's initial decision.

Ground Three

The Commission made errors in fact and law by construing Coastal Act section 30251 as prohibiting all alterations of natural landforms rather simply requiring minimization of natural landform alterations and by finding that the proposed pathway would be visually incompatible with the character of the surrounding area.

Coastal Act Section 30251 states:

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

The applicant states that the Commission misinterprets this statute by prohibiting all landform alteration, not just minimizing alteration as required. This is incorrect. The Commission found the proposed deck, as conditioned, consistent with Section 30251 and the proposed pathway below the deck to the toe of the beach inconsistent with 30251. When referring to the proposed deck, the findings state that development must "**minimize the alteration of existing landforms**" (page 18); and that as conditioned the deck would not "**significantly alter the natural land form**" (page 19). When the Commission referred to the proposed pathway that would extend from the deck down to the toe of the beach, it found: "However, the applicant's proposal to construct a new beach access pathway down the bluff face would result in **significant landform alteration** of the mid and lower bluff. . ." (page 33); and in the cumulative impacts findings, "Approval of the proposed private beach access pathway would set a precedent . . . that would **significantly alter the natural land form . . .**" (page 33-34) [emphasis added]. The Commission therefore did not interpret Section 30251 as prohibiting all alterations of natural landforms rather than requiring minimization of landform alterations.

Livoni does raise a substantial factual issue with regard to the visual compatibility of the proposed pathway with the surrounding area. There are six properties other than the Livoni property that are immediately inland of Corona del Mar State Beach. The Commission has approved pathways or stairs down the face of the bluff on two of the other properties: 3431 Ocean Blvd. (Tabak, CDP No. 5-02-203) and 3415 Ocean Blvd. (Ensign, CDP No. 5-01-112). Two other properties (3401 Ocean Blvd. and 3329 Ocean Blvd.) have stairways that pre-date the Coastal Act. The Commission approved some minor improvements to one of those pre-Coastal Act stairways (Butterfield, CDP No. 5-07-042). One property, 3317 Ocean Blvd., has an unpermitted stairway constructed after passage of Proposition 20. The Commission has prohibited any improvements to that stairway (Palermo, CDP No. 5-05-328). On the remaining property, 3425 Ocean Blvd., there is no stairway or path down the bluff face. The Commission instead approved an upper-bluff connection to the neighboring Tabak stairway (Halfacre, CDP No. 5-03-100). On the Livoni property itself, a stair or pathway apparently did exist prior to the Coastal Act, but prior owners of the property subsequently built different stairways down the bluff without obtaining coastal development permits.

The Commission has undertaken significant efforts to remove unpermitted beach-level and lower-bluff development along Corona del Mar. The history and pattern of development with respect to pathways down the bluff, however, presents a more complicated picture. The applicant has therefore raised a substantial question regarding the visual compatibility of the proposed pathway with the surrounding area. This significant factual issue warrants granting reconsideration. When the Commission re-hears the permit, it would consider this history de novo.

Ground Four

The Commission committed errors of fact and law when it found that the Livoni pathway was inconsistent with the Newport Beach Land Use Plan, in particular the policy requiring development on Ocean Boulevard to be consistent with the predominant line of existing development.

The applicable policies of the certified Newport Beach Land Use Plan state:

Natural Landform Protection, Policy 4.4.3-8,

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Natural Landform Protection, Policy 4.4.3-9

Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Coast Drive in Corona Del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

Natural Landform Protection, Policy 4.4.3-17 states,

Identify and remove all unauthorized structures, including protective devices, fences, and stairways, which encroach into coastal bluffs.

The applicant asserts the findings misconstrue Policies 4.4.3-8 and 4.4.3-9 of the certified Newport Beach Land Use Plan (LUP). These policies deal with landform alteration of coastal bluffs. The applicant believes that these policies should be used to approve the private stairway, citing existing stairways on surrounding properties. The Commission found that the proposed private stairway is not consistent with this policy (Policy 4.4.3-8) because it extends beyond the predominant line of existing development. As stated above, the pattern and history of paths and stairways on the neighboring properties is a complicated question. The applicant has therefore raised a substantial factual question about whether the proposed stairway is consistent with the predominant pattern of development. This significant factual issue warrants granting reconsideration.

D. CONCLUSION

The applicant has raised substantial questions about the factual basis for the Commission's findings regarding the visual compatibility of the proposed pathway with the surrounding area and its conformity with the existing pattern of development. Therefore staff recommends the Commission grant reconsideration of the application.

CALIFORNIA COASTAL COMMISSION

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Hearing Date: August 6-8, 2008
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-07-327

APPLICANT: Richard J. Livoni Second Family Limited Partnership

AGENT: Brion Jeannette & Associates

PROJECT LOCATION: 3335 Ocean Boulevard, Corona del Mar
(Orange County)

PROJECT DESCRIPTION: Remove existing unpermitted retaining walls and beach access stairway from bluff face, regrade lower bluff to natural contours, add to residence a new caisson-supported deck with enclosed bathroom and spa equipment room on upper bluff face, extend an existing bluff face deck, and construct new at grade pathway from new deck to beach. Grading will consist of 163 cubic yards of cut, 10 cubic yards of fill, and 153 cubic yards of export to a location outside of the Coastal Zone. Landscaping is also proposed.

SUMMARY OF STAFF RECOMMENDATION:

The subject site is located between the first public road and the sea in Corona del Mar (Newport Beach) and is immediately inland of Corona del Mar State Beach, which is a public beach. The application seeks removal of existing development and construction of new development on a coastal bluff face within a lot currently developed with a single family residence. The primary issues before the Commission are the appropriateness of approving the project given the importance of preserving scenic resources and minimizing landform alteration, preventing adverse impacts to public use of the beach and avoiding development in hazard prone locations. Commission staff believe part of the development can be approved because that development is consistent with other development approved by the Commission in the surrounding area. However, part of the proposed project, a private pathway down the bluff face to the beach, is not being proposed consistent with other such pathways that have been approved by the Commission in the vicinity of the site. In this case, the stairway proposed for removal is unpermitted, and a new stairway on the bluff face is not consistent with the certified Land Use Plan or Chapter 3 policies.

Staff recommends that the Commission take one vote adopting a two-part resolution, which would **APPROVE** removal of the existing unpermitted bluff face stairway and walls, regrading the lower bluff to natural contours, landscaping, and construction of a new deck that would be in alignment with surrounding approved decks; and **DENY** the proposed new private pathway from the new deck, down the bluff face, to the beach.

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The pattern of development along this segment of Ocean Boulevard consists of primary structures (i.e. houses) that are sited upon the upper bluff face, while the mid and lower bluff face remains largely undisturbed and vegetated. With some exceptions, the overall appearance of the bluff in this area is natural and undeveloped. The exceptions include 1) lots that have pre-coastal, Commission-approved, or unpermitted stairways traversing the bluff face, and 2) lots that have unpermitted development at the toe of the bluff (including projects that are currently subject to a Commission cease and desist order or are under investigation by the Commission's Enforcement staff). In addition, the toe of the bluff is immediately inland of Corona del Mar State Beach, which is a public beach. The project site is consequently highly visible from the public beach.

As currently submitted, part of the proposed project consists of the extension of an existing bluff deck and construction of a new bluff deck, which would encroach at most approximately 23-foot seaward from the existing accessory development located on-site. No habitable area is proposed with the project. However, since the proposed deck would conform to the predominant line of development, it would not affect public views of the vegetated lower bluff face from the adjacent public beach or other public vantage points, such as Inspiration Point, which is a public park and viewing area located on the bluff overlooking Corona del Mar State Beach and the Pacific Ocean. As proposed, the new deck is located at approximately the 35-foot contour to the south and the approximately 39-foot contour to the north, which is landward of other accessory/deck improvements along this segment of Ocean Boulevard.

In addition, approval of this project -without the proposed bluff face pathway- would be consistent with prior Commission action taken in this area. For instance, in recent proposals at the Tabak site (CDP No. 5-02-203-[Tabak]), which is downcoast of the project site, living space additions were landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. In addition, the Palermo (CDP No. 5-05-328-[Palermo]) and Halfacre project (CDP No. 5-03-100-[Halfacre]), also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements.

The proposed project also consists of removal of an existing unpermitted beach access stairway (previously determined to be an unpermitted stairway) and site walls located on the bluff and regrading of the bluff to match the existing slope and landscaping.¹ These aspects of the project would be consistent with policies found within the Coastal Act and certified Land Use Plan since, visually, the character of the area would be maintained and compatible with the character of the surrounding area.

Though portions of the proposed project as discussed above would be consistent with the predominant line of development and consistent with the prior actions taken in this area, the proposed development does include as a component, the construction of a new private beach access pathway from the new deck down the bluff face to the beach, which is inconsistent with Sections 30251 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. This portion of the project also raises issues under Sections 30210, 30211 and 30240(b) of the Coastal Act. Approval of the new pathway would authorize development cascading down the bluff face and onto the beach and would authorize a significant --approximately 47-foot-- encroachment seaward beyond the predominant line of development.

¹ On March 19, 2004, the Commission found, through its approval of Cease and Desist Order No. CCC-04-CD-01, that the beach access stairway currently existing on the subject property (among several other items of development) was unpermitted development. See pages 4-5, and 16-17 for a more detailed discussion of the Cease and Desist Order.

This proposal for a bluff face pathway is not comparable with a prior proposal for bluff face pathway that the Commission did approve. That other pathway is located at 3415 Ocean Boulevard, two lots downcoast of the subject site. That proposal, contained in application no. 5-01-112-[Ensign], included an irrevocable offer to dedicate (OTD) an easement for public lateral access over the sandy beach seaward of the toe of the bluff. This proposal contains no such offer to dedicate an easement. There are other private stairways that descend from the homes on the upper bluff face to the sandy beach on nearby lots, however, those stairways appear to be pre-Coastal Act (e.g. those at 3329 (McNamee) & 3401 Ocean Blvd. (Butterfield)) or are unpermitted (e.g. 3317 Ocean Blvd. (Palermo)). The only Commission-approved pathway that descends from a residence down the bluff face to the sandy beach along this segment of Ocean Boulevard is located at 3415 Ocean Boulevard - which also included the above-described OTD an easement.

Commission staff notes that there has been an increase in efforts to add amenities to existing single-family residences on the bluff or beach along this segment of Ocean Boulevard over the last several years. Denial of this project would be consistent with prior actions by the Commission where the Commission has prohibited significant encroachments upon the mid and lower bluff face and sandy beach. The Commission has denied proposals that included development upon the lower bluff face and sandy beach both up-coast and down-coast of this site (e.g., CDP No. 5-01-199-[Butterfield], CDP No. 5-04-339-[Palermo] and CDP No. 5-04-282-[McNamee]).

At the December 2001 Commission Hearing, the Commission denied in part Coastal Development Permit No. 5-01-199-[Butterfield] a request for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff. The Commission found that the proposed sand pit cut-out would not minimize alteration of natural landforms, was not visually compatible with the character of surrounding development and would adversely affect the scenic and visual qualities of the subject area. That applicant ultimately applied for a coastal permit -and has since removed- the stone blocks that comprised the sand pit cut out. The development proposed to be removed in the subject application includes structures that are larger and more visually prominent than those elements of the Butterfield project that the Commission denied and have since been removed.

In addition, at the May 2005 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-04-339-[Palermo] which included, among other elements, construction of a new 623 square foot pool house, pool, spa and patio area, retaining walls, landscape planters, and an outdoor barbeque area on the sandy beach and lower bluff face. The significant impacts to scenic resources and natural landforms resulted in denial of the project.

Also, in a more recent Commission action taken at the July 2005 hearing for the McNamee site (CDP No. 5-04-482-[McNamee]), the Commission denied a similar type of proposal. Coastal Development Permit Application No. 5-04-482-[McNamee] requested the after-the-fact approval of existing storage lockers; built-in barbeque and cabinets; counter with sink and cabinets; shower at stair base; thatched shade palapa with four posts; two concrete tables and benches—all located on a sandy beach and, on the bluff face, a shed with refrigerator storage and toilet and floral garden improvements. Like the Palermo and Butterfield proposals, the significant impacts to scenic resources and natural landforms of the McNamee project resulted in its denial. The significant visual impact arguments made in the Commission's denial of the Palermo, Butterfield

and McNamee applications are equally applicable in the subject application as the type and impacts of the proposed development is similar.

In summary, staff is recommending **APPROVAL** of the proposed project subject to **ELEVEN (11) SPECIAL CONDITIONS** requiring: **1)** an assumption of risk; **2)** submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place; **3)** no future shoreline protective devices; **4)** future development; **5)** evidence of conformance with geotechnical recommendations; **6)** submittal of final drainage and run-off control plans; **7)** submittal of final spa protection plans; **8)** submittal of final landscape plans; **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report; **10)** condition compliance; and **11)** inspection.

Staff recommends that the Commission **DENY** the construction of a new private beach access pathway down the bluff to the beach.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

STAFF NOTE – SITE HISTORY AND ENFORCEMENT ACTION

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). On May 8, 1985, the Commission issued Administrative Coastal Development Permit No. 5-85-218-[Schloessman] for additions to and remodeling of the original single-family residence on the subject property, including construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs. Although the property owners had a right under the Coastal Act, as noted in the 1985 CDP, to “maintenance and painting of the private beach stairs” in their original location, the demolition and reconstruction of the stairs in a different configuration and location on the bluff face (which was not authorized by that permit) resulted in significant new impacts to the bluff slope and constitutes new development.

The existing stairway from the residence to the beach was constructed without benefit of a coastal development permit and –as was established in the findings for Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram] which are incorporated herein by reference- is unpermitted development. Mr. Battram was the property owner at that time. The property is now under new ownership.

The Commission approved Consent Agreement and Cease and Desist Order CCC-04-CD-01 at its March 2004 hearing and found that development, including the unpermitted grading and landform alteration of a coastal bluff and beach, and the unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets. Through the Consent Order the property owner agreed to: 1) remove the unpermitted chain link fence, storage shed (with sink and toilet), storage cabinets and concrete patio located on the lower bluff face

and sandy beach, 2) Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development, 3) revegetate the bluff face with native chapparal plant species, and 4) apply for a coastal development permit application to retain the unpermitted stairway and retaining walls and grading (no assurances of approval were made). Furthermore, the Consent Order states that if the Commission denies a CDP application for the after-the-fact retention of unpermitted development on the subject property, the applicant shall remove the remaining unpermitted development on the subject property. The applicant was advised that his permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act, and through the signing of the Consent Order, the applicant acknowledged that the Commission may deny the application.

Thus as allowed by Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram], Mr. Battram submitted an application (Coastal Development Permit No. 5-04-214-[Battram]) for after-the-fact approval for the existing stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. In addition, the applicant also proposed landscaping, painting of a portion of the stairway a color to help blend into the background, removing the ice plant at the bottom of the lot and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. Staff recommended denial of this application since the proposed development was inconsistent with Sections 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The project also raised issues under Sections 30210 and 30240(b) of the Coastal Act. The project was scheduled for the October 2005 Commission Hearing, but the applicant then withdrew his application. Since then Mr. Battram has sold the property. Mr. Livoni is now the new owner. The currently proposed project (Coastal Development Permit No. 5-07-327-[Livoni]) does not request after-the-fact approval for the existing unpermitted development found on site. Instead, the current applicant has submitted an entirely new project.

LOCAL APPROVALS RECEIVED: Approval in Concept (#0854-2007) from the City of Newport Beach Planning Department dated August 16, 2007.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-07-042-[Butterfield]; Coastal Development Permit No. 5-04-214-[Battram]; Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]; Coastal Development Permit No. 5-05-328-[Palermo]; Coastal Development Permit No. 5-01-112-[Ensign]; *Geotechnical Investigation (Job No. 4325-1)* prepared by Kenneth G. Osborne & Associates dated June 21, 1985; *Coastal hazard & Wave-Runup Study, 3335 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. dated September 2007; Letter to Brion Jeannette Associates from Commission staff dated October 19, 2007; and *Geotechnical Foundation Investigation for Proposed Deck and Pool/Spa, 3335 Ocean Boulevard, Corona Del Mar (Project No. 71758-00/Report No. 07-61469)* prepared by Geofirm dated December 18, 2007.

EXHIBITS

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1. Vicinity Map
2. Site Plans
3. Floor Plans
4. Elevation Plans
5. Foundation Plan
6. Aerial Photo of the Project Site and Surrounding Pattern of Development
7. Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present

A. Motion

"I move that the Commission adopt the staff recommendation to approve in part and deny in part Coastal Development Permit No. 5-07-327, by adopting the two part resolution set forth in the staff report."

B. Resolution

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **APPROVES**, as conditioned, a coastal development permit for the portion of the proposed development regarding the extension of an existing bluff deck; construction of a new bluff deck; removal of an existing beach access stairway and site walls located on the bluff; regrading of the bluff to match the existing slope and landscaping, and adopts the findings set forth below on grounds that the development as amended and subject to conditions will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** the portion of the proposed application for coastal development permit for construction of a new beach access pathway that descends the bluff face from the proposed deck to the beach, and adopts the findings set forth below, on the grounds that the development would not conform with the policies of Chapter 3 of the Coastal Act and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of this portion of the application would not comply with the California Environmental Quality Act because there are feasible mitigation measures or

alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITONS

1. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY

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

2. FINAL PROJECT PLANS

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans (i.e. site plan, floor plans, elevations, cross-sections, grading, foundation, etc.) revised to be consistent with the conditions of this permit. As proposed in the preliminary plans, these final project plans shall show that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway

seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping (consistent with Special Condition 8), no development seaward of the line identified above shall take place.

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

3. NO FUTURE SHORELINE PROTECTIVE DEVICE

- A. By acceptance of this Permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-07-327 including, but not limited to, the extended deck, new deck, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, bluff and slope instability, landslides, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the extended deck, and new deck, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. FUTURE DEVELOPMENT

This permit is only for the development described in Coastal Development Permit No. 5-07-327. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-07-327. Accordingly, any future improvements to the development authorized by this permit, including but not limited to improvements to the extended deck, and new deck and any future improvements, and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-327 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Geotechnical Foundation Investigation for Proposed Deck and Pool/Spa, 3335 Ocean Boulevard, Corona Del Mar (Project No. 71758-00/Report No. 07-61469)* prepared by Geofirm dated December 18, 2007. If conformance with the geotechnical recommendations requires use of any foundation elements (e.g. caissons) seaward of maximum 60-foot linear distance measured from the Ocean Boulevard property line for the new bluff deck or any stabilization, soil compaction or other grading (other than the proposed and described grading in the project description), an amendment to this permit of a new permit shall be required in order to implement such recommendations. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the above report.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

6. FINAL DRAINAGE AND RUN-OFF CONTROL PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of drainage and run-off control plans that substantially conform with the preliminary plans submitted by the applicant and conform with the requirements identified herein. The drainage and run-off control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the decks and all areas landward of the decks, shall be collected on site for discharge to Ocean Boulevard. In addition, sewage from the new proposed bathroom located on the new proposed deck will be directed to an existing sewer lateral that leads under the bluff into an existing City sewer line at the bottom of the bluff. The connection point to that existing sewer lateral shall conform with the requirements identified in Special Condition No. 2.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- C. The applicant shall maintain the functionality of the approved drainage and run-off control plan to assure that water is collected and discharged to the street without percolating into the ground.

7. FINAL SPA PROTECTION PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of spa protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed spa. The spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a spa leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the spa which is separate from the water meter for the house to allow for the monitoring of water usage for the spa, and 2) use of materials and spa design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the spa that conveys any water leakage to an appropriate drainage outlet. The applicant shall comply with the final spa plan approved by the Executive Director.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

8. FINAL LANDSCAPE PLAN

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of landscaping plans prepared by an appropriately licensed professional which demonstrates the following:
 - (1) The plans shall demonstrate that:
 - (a) Goals and Performance Standards. Section A of the Plan shall present the following goals of the landscaping activities.
 - 1) Landscaping of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of landscaping activities;

- 2) Eradication of non-native vegetation within the areas subject to landscaping and those areas that are identified as being subject to disturbance as a result of the restoration and landscaping activities. No invasive plants are permitted for landscaping;
- 3) Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the landscaping of the impacted areas. The Plan will not be successful until the landscaped areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal;
- 4). Section A of the Plan shall also include specific ecological performance standards that relate logically to the landscaping goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species); and
- 5) Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent vegetated areas vegetated undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture.

If the comparison between the landscaping area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

- (b) Landscaping Methodology. Section B of the Plan shall describe the methods to be used to landscape the impacted areas. Section B shall be prepared in accordance with the following directions:
- 1) The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances than those areas subject to landscaping activities, the areas of the site and surrounding areas currently vegetated shall not be disturbed by activities related to the Plan;
 - 2) Specify that the landscaping of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation; and
 - 3) Describe the methods for landscaping of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using local native drought resistant plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the landscaped area. Invasive plants are not permitted for the landscaped of the site.
- (c) Monitoring and Maintenance. Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
- 1) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration professional, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional landscaping activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of landscaping at the site; and
 - 2) At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive

Director. If this report indicates that the landscaping project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP or amendment to CDP 5-07-327.

- (d) Appendix A shall include a description of the education, training and experience of the qualified restoration professional who shall prepare the Plan. A qualified restoration professional for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or landscaping of coastal bluff habitats.
 - (e) Interim erosion control plans shall be included in the Plan. Interim erosion control measures shall be prepared by a qualified restoration professional and shall include the following:
 - 1) The following temporary erosion control measures shall be used: hay bales, wattles, silt fences. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
 - 2) Interim erosion control measures shall include, at a minimum, the following components:
 - a) A narrative describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control;
 - b) A detailed site plan showing the location of all temporary erosion control measures; and
 - c) A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term landscape and monitoring plan.
- B.** The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

9. DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the

landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

10. CONDITION COMPLIANCE

WITHIN 30 DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall complete the following actions, in compliance with the plans approved by this permit.

- (1) Remove the unpermitted stairway, retaining walls and all other unpermitted development from the bluff face.
- (2) Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development.
- (3) Landscape the bluff face as described in Special Condition No. 8
- (4) Submit to the Executive Director a report documenting the landscaping of the bluff face. The report shall include photographs that clearly show all portions of the bluff face on the subject property.

11. INSPECTION

The permittee shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the requirements of the permit, subject to twenty-four hours advance notice.

IV. FINDINGS AND DECLARATIONS²:

The Commission hereby finds and declares as follows:

A. PROJECT LOCATION, DESCRIPTION, LOCAL GOVERNMENT APPROVAL AND PRIOR COMMISSION ACTION

1. Project Location

The proposed project is located at 3335 Ocean Boulevard in Corona del Mar, City of Newport Beach, County of Orange (Exhibits #1 and 6). The lot size is 8,053 square feet, and the City of Newport Beach Land Use Plan (LUP) designates the site as low density residential and the proposed project adheres to this designation. The subject property, immediately inland of Corona del Mar State Beach, contains a single-family residence on the upper bluff face portion of the bluff face lot, and the bluff face descends down to the sandy beach. The rectangular shaped bluff face property fronts approximately 70-feet on the Ocean Boulevard right-of-way and extends southwesterly approximately 120 to 124-feet to the rear property boundary located along Corona del Mar State Beach. The lot consists of the middle and lower portions of a generally natural sea bluff and a portion of the beach. The overall height of the bluff slope is approximately 80-feet, while maximum relief across the property is approximately 64-feet. The slope ratio is variable, between 1:1 and 2:1. To the north of the site, at the top of the bluff, is Ocean Boulevard. To the west (up-coast) is existing residential development. To the east (down-coast) are existing single-family homes, and further beyond is a natural vegetated bluff, a bluff park known as Inspiration Point and a public access way from Inspiration Point to the public beach (Corona del Mar State Beach). To the south of the bluff, at the toe of the slope, is a privately owned (by the applicant) sandy beach immediately fronting a normally 200-foot wide sandy public beach. The pattern of development along Ocean Boulevard primarily consists of structural development sited at the upper portion of the bluff face with minimal disturbance of the mid and lower bluff face and the sandy beach.

2. Project Description

The application consists of an extension (390 square feet) of an existing bluff face deck and construction of a new deck (800 square feet) with an enclosed bathroom and spa equipment room on the bluff face in association with an existing single-family residence (Exhibits #2-6) In addition, existing unpermitted site walls and beach access stairway located on the bluff-face will be removed. The portion of the bluff face below the proposed deck will be regraded to match the existing slope and a new at grade pathway from the proposed deck, down the bluff face, to the beach is proposed (Exhibits #2-6). No structural improvements are proposed with the new at grade pathway. Grading will consist of 163 cubic yards of cut, 10 cubic yards of fill, and 153 cubic yards of export to a location outside of the Coastal Zone. Landscaping is also proposed. A caisson foundation system is proposed to support the expanded and new decks.

The proposed project would also remove the remaining unpermitted development (i.e. stairway, retaining walls, etc.) on site as discussed below.

² These findings also hereby incorporate by reference the introductory sections of the May 28, 2008 staff report ("Staff Report: Regular Calendar") in which these findings appear, which sections are entitled "Summary of Staff Recommendation" and "Staff Note."

3. Prior Commission Action at the Subject Site

Administrative Coastal Development Permit No. 5-85-218-[Schloessman]

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). On May 8, 1985, the Commission issued Administrative Coastal Development Permit No. 5-85-218 for additions to and remodeling of the original single-family residence on the subject property, including construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs.

Aerial photographs of the subject property indicate that a stairway existed on the down coast (eastern) portion of the subject property in 1972 and 1978. However, additional aerial photographs of the subject property indicate that the stairway present in 1972 and 1978 was in fact demolished and removed from the subject property, and a new stairway was constructed in a different location as of 1987. The 1985 Administrative Coastal Development Permit contained no provisions for demolition and construction of a new stairway in a different location on the property. The new stairway was constructed without benefit of a coastal development permit and –as was established in the findings for Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram] which are incorporated herein by reference- is unpermitted new development.

None of the other development on the subject property, including unpermitted development (stairway down the bluff face, retaining walls located on the upper and lower bluff face and sandy beach, concrete patio, chain link fence, storage shed (with sink and toilet) and storage cabinets located on the lower bluff face and sandy beach), was listed as part of the proposed project description in the application submitted for Administrative Coastal Development Permit No. 5-85-218, shown on the proposed or approved plans, or authorized by the Commission pursuant to its issuance of that permit.

Commission staff has obtained a copy of a site plan from the City of Newport Beach in reference to CDP No. 5-85-218. Those plans show and state that a portion of the stairway located on the upper bluff was to be new and a section was to attach to the existing stairway located on the lower bluff. In addition, the existing lower bluff portion of the stairway was to receive maintenance repairs and new paint. CDP No. 5-85-218 is referenced on the site plan; however, no stamp or sign off from Commission staff is included on the plans, and the plans on record with the City are inconsistent with the plans submitted as part of the application for CDP No. 5-85-218. CDP No. 5-85-218 only authorized construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs. The Commission never permitted construction of a new stairway.

Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]

The Commission approved Consent Agreement and Cease and Desist Order CCC-04-CD-01 at its March 2004 hearing and found that development, including the unpermitted grading and landform alteration of a coastal bluff and beach, and the unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets (Exhibit #8). Through the Consent Order the property owner agreed to: 1) remove the unpermitted chain link fence, storage shed (with sink and toilet), storage cabinets and concrete patio located on the

lower bluff face and sandy beach, 2) Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development, 3) revegetate the bluff face with native chaparral plant species, and 4) apply for a coastal development permit application to retain the unpermitted stairway and retaining walls and grading (no assurances of approval were made). Furthermore, the Consent Order states that if the Commission denies a CDP application for the after-the-fact retention of unpermitted development on the subject property, the applicant shall remove the remaining unpermitted development on the subject property. The applicant was advised that his permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act, and through the signing of the Consent Order, the applicant acknowledged that the Commission may deny the application.

Coastal Development Permit Application No. 5-04-214-[Battram]

As allowed by Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram], Mr. Battram submitted an application (Coastal Development Permit No. 5-04-214-[Battram]) for after-the-fact approval for the stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. In addition, the applicant also proposed landscaping, painting of a portion of the stairway a color to help blend into the background, removing the ice plant at the bottom of the lot and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. Staff recommended denial of this application since the proposed development was inconsistent with Sections 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The project also raised issues under Sections 30210 and 30240(b) of the Coastal Act. The project was scheduled for the October 2005 Commission Hearing, but the applicant then withdraw his application. Since then Mr. Battram has sold the property. Mr. Livoni is now the new owner. The proposed project that is the subject of this coastal development permit application (Coastal Development Permit No. 5-07-327-[Livoni]) does not request after-the-fact approval for the existing unpermitted development found on site. Instead, the current applicant has submitted an entirely new project. Many of the improvements (i.e. fence, shed, etc.) required by the Consent Agreement to be removed have already been removed. The only unpermitted development that remains on the subject property and has not been removed are the stairway and associated development (i.e. retaining walls, etc.) of a path to the beach. The proposed project includes the removal of the remaining unpermitted development.

4. Prior Commission Action in Subject Area

See Appendix "A"

B. APPROVAL FINDINGS AND DECLARATIONS

1. Scenic Resources

Section 30251 of the Coastal Act states, in relevant part:

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

Section 30251 of the Coastal Act states that scenic and visual qualities of coastal areas shall be protected. The proposed project is located upon a coastal bluff face and sandy beach immediately inland of Corona del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural (Exhibit #6). Although several lots have pre-coastal, Commission-approved, or unpermitted stairways traversing the bluff face and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, and this is especially true if one does not consider the unpermitted development. Development at this site, if approved, must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area, minimize the alteration of existing landforms, and limit the seaward encroachment of development. The applicant is seeking development consisting of removal of existing unpermitted retaining walls and beach access stairway from the bluff face, regrading of the lower bluff to natural contours, adding a new caisson-supported deck with enclosed bathroom and spa equipment room on upper bluff face, extension of an existing bluff face deck, and construction of a new at grade pathway from new deck to beach (this new pathway is being denied due to its adverse impacts and is more thoroughly discussed in the denial section of this staff report). The extension of an existing bluff deck and construction of a new bluff deck would encroach at most approximately 23-feet seaward from the existing accessory development located on-site. No habitable area is proposed with the project. These decks would conform to the predominant line of development in the area and would thus not affect public views of the vegetated mid and lower bluff face from the adjacent public beach or other public vantage points, such as Inspiration Point. In addition, approval of the project (without the proposed bluff face pathway) would be consistent with prior action taken in this area (i.e. CDP No. 5-02-203-[Tabak], CDP No. 5-05-328-[Palermo] and CDP No. 5-03-100-[Halfacre]). Additionally, the proposed project will also regrade the existing bluff to match the existing slope and also landscape the bluff to make it appear natural. Thus, that component of the project would assist in making it additionally more consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural.

a. Scenic View, Landform Alteration and Community Character

(1) Scenic Views

The proposed extension of an existing bluff deck and construction of a new bluff deck, will be located along the mid bluff and the removal of an existing beach access stairway (previously determined to be an unpermitted stairway) and site walls (i.e. garden/retaining walls) located on the bluff and regrading of the bluff to match the existing slope and landscaping will take place along the lower bluff face and the sandy beach. The bluff face and sandy beach are natural landforms visible from public vantage points such as the beach (Corona del Mar State Beach) and Inspiration Point and any alteration of this landform would adversely affect the scenic views of the coastline when viewed from these sites. These new decks would conform to the pattern of development found in the area. In addition, approval of this project would be consistent with prior action taken in this area (i.e.

CDP No. 5-02-203-[Tabak], CDP No. 5-05-328-[Palermo] and CDP No. 5-03-100-[Halfacre]. These developments only allowed accessory improvements limited to a predominant line of development established at approximately the 33-foot elevation contour. The new decks would conform to this line as well. Additionally, the regrading and landscaping of the lower bluff to match the existing slope will result in the bluff appearing natural and undeveloped, similar to the surrounding development. However, the proposed project also includes construction of a new private beach access pathway that would descend from the proposed new deck, down the bluff face, to the beach. This would be inconsistent with the pattern of development in this area and is being denied as part of the proposed project and will be discussed later in the staff report in the denial findings. Thus, in order to make sure that this proposed new private pathway is not part of the approved portions of the project, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place. Limiting the development to a maximum of 60-foot linear distance measured from the Ocean Boulevard property line, will result in development landward of the 33-foot contour line. Thus, as conditioned, the proposed development would be consistent with the pattern of development in the area and the recent Commission approvals along this section of Ocean Boulevard.

(2) Landform Alteration

As discussed earlier, the proposed project includes regrading of the existing bluff to match the existing slope and also landscaping the bluff to bring it back to its natural appearance. Doing so would make the lower bluff face consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural.

(3) Cumulative Impacts

As conditioned, approval of the proposed project would not set a precedent for the construction of new development along the beach and the mid and lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward. Therefore, the Commission can approve the proposed project.

CONCLUSION

As conditioned, the proposed project is sited and designed to protect scenic and visual qualities of coastal areas. The Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place. Approval of

the proposed project, as conditioned, would preserve existing scenic resources and would be consistent with preserving the existing community character where structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. Furthermore, the development (without the private bluff face pathway to the beach) would be consistent with the pattern of development recently approved by the Commission (i.e. CDP No. 5-02-203-[Tabak], CDP No. 5-05-328-[Palermo] and CDP No. 5-03-100-[Halfacre]). Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

2. Public Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 Development not to interfere with access

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30240 (b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Public access is available on the sandy public beach (Corona del Mar State Beach) that is located directly seaward of the toe of the bluff. Development at this site must be sited and designed to be compatible with Sections 30210, 30211 and 30240(b) of the Coastal Act. Section 30210 of the Coastal Act states that maximum access and recreational opportunities shall be provided for the public. Section 30211 states that development shall not interfere with the public's right of access to the sea. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to recreational coastal resources. As proposed, the project consists of a new private beach pathway leading from the new bluff deck, down the bluff to the beach below. This new private pathway would adversely impact public access since the pathway would only serve the owners and occupants of the lot, the pathway would establish a presence that would effectively privatize the beach, and would degrade the adjacent publicly owned beach. These points will be discussed further in the denial section of this staff report. However, as conditioned to limit the new bluff deck to extend a maximum 60-foot linear distance measured from the Ocean Boulevard property line and that no development seaward of that line is allowed including a new private pathway seaward of this line, except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping; the development

will be kept far off the beach and at the same elevation on the bluff face as other nearby development approved by the Commission. Thus, the development would not adversely impact public use of the beach.

CONCLUSION

As conditioned, the proposed project is sited and designed to protect public recreation areas. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30210, 30211 and 30240(b) of the Coastal Act.

3. Hazards

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

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to humans that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase run-off, use of water-dependent vegetation, and breaks in water or sewage lines.

a. Site Specific Bluff Information

To address site-specific geotechnical issues with the proposed development the applicant has submitted the following investigation: *Geotechnical Foundation Investigation for Proposed Deck and Pool/Spa, 3335 Ocean Boulevard, Corona Del Mar (Project No. 71758-00/Report No. 07-61469)* prepared by Geofirm dated December 18, 2007. The investigations state that the site is underlain locally at the surface and at depth by bedrock strata of the Monterey Formation which is overlain by marine terrace deposits along the upper bluff and by a slopewash which mantles the middle and lower bluff. Furthermore, the investigation also states: *"The bedrock materials backing the bluff are anticipated to remain grossly stable following construction of the caisson foundation system. The slopewash mantling the lower bluff face, below elevation 45 +/- feet, is considered potentially unstable, and may not be relied upon for foundation support."* With construction of a caisson foundation system for the proposed new deck with an enclosed bathroom and spa equipment room, the investigation concludes that these proposed improvements are considered feasible and safe from a geotechnical viewpoint provided

the recommendations of the report are followed. However, the applicant's geologist has also concluded that the area below the location of the caisson foundation system and where the proposed pathway would have been located were it approved will still be subject to surficial slope instability.

The Commission finds that in order to be consistent with Section 30253 of the Coastal Act, development must be sited such that it will be located in an area with a minimum factor of safety against sliding of greater than 1.5 throughout its useful economic life, assumed to be 75 years; however, this is not the case here. Currently, the site is not considered to be stable given that standard, but construction of the caisson foundation system is anticipated to make the portion of the development located above the caissons, where the proposed new bluff deck will be located, grossly stable and consistent with these standards. The caisson foundation system would not be for the proposed beach access pathway along the bluff. As stated in the geotechnical investigation, the lower bluff face where the proposed private pathway would have been located is considered to be "potentially unstable".

As stated previously, the proposed caisson foundation system is anticipated to make the area where the proposed new bluff deck will be located, grossly stable, but will not have an affect on the lower bluff face where the proposed private pathway will be located. However, since the Commission is denying the proposed private pathway (see denial findings), the Commission is imposing **SPECIAL CONDITION NO.2**, which requires submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place.

The Commission's staff geologist has reviewed the project and agrees with the investigations' conclusions. The slope will be subject to surficial instabilities, but the geotechnical report makes recommendations that should assure safety of the development located landward of the proposed caissons. The project can be built, but only with the support of a significant engineering effort.

b. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

The applicants have since submitted a *Coastal hazard & Wave-Runup Study, 3335 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. dated September 2007. Ultimately, this study concludes: "*In conclusion, coastal hazards will not significantly impact this property over the life of the proposed improvements. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations*

necessary for wave or wave runup protection. No shore protection is proposed or should be necessary in the next 75 years. The improvements minimize risks from flooding."

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes. For example, the study states that there is no general overall shoreline retreat in the area due to the sheltering effect of the Newport Harbor jetty and rocky headlands. As long as this jetty and rocky headlands are present the study concludes that the beach should be fairly stable. However, if something were to happen that would cause damage to the jetty and rocky headlands, then shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

c. Conclusions and Special Conditions

Section 30253 of the Coastal Act states that new development shall minimize the impacts of the proposed development on bluff erosion and instability, and prevent the necessity for bluff protective structures. William Kockelman, U.S. Geological Survey, wrote an article entitled "Some Techniques for Reducing Landslide Hazards" that discusses several ways to minimize landslide hazards such as bluff erosion and instability, including:

- A. Require a permit prior to scraping, excavating, filling, or cutting any lands.
- B. Prohibit, minimize, or carefully regulate the excavating, cutting and filling activities in landslide areas.
- C. Provide for the proper design, construction, and periodic inspection and maintenance of weeps, drains, and drainage ways, including culverts, ditches, gutters, and diversions.
- D. Regulate the disruption of vegetation and drainage patterns.
- E. Provide for proper engineering design, placement, and drainage of fills, including periodic inspection and maintenance.

Kockelman also discusses the option of disclosure of hazards to potential buyers by the recordation of hazards in public documents. The recordation of hazards via the assumption of risk is one means the Commission utilizes to inform existing and future buyers of property of the potential threat from soil erosion and slope failure (landslide) hazards. Several of these recommendations are routinely required by local government, including requiring permits for grading, minimizing grading, and requirements for proper engineering design.

The Commission has imposed many of these same recommendations, including requiring the consulting geologist to review foundation and drainage plans in order to confirm that the project conforms to the policies of the Coastal Act. The findings in this staff report regarding the general causes of bluff erosion and the specific findings from the geotechnical investigation confirm that the coastal bluff at this location is eroding and that measures to minimize bluff erosion are necessary. The following Special Conditions will

mitigate the impacts of the proposed development on bluff erosion and instability, and will prohibit future bluff protective structures, as required by Section 30253 of the Coastal Act.

(1) Assumption of Risk

Coastal bluffs in southern California are recently emergent landforms in a tectonically active environment. Any development on an eroding coastal bluff involves some risk to development.

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings in section "a" above, including site-specific geologic information, support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, although, as conditioned, the project will sufficiently reduce the risks to make it approvable, the applicant must be aware of the remaining risks and must assume responsibility for the project should he decide to proceed. Accordingly, an assumption of risk condition has been attached via **SPECIAL CONDITION NO. 1**.

By this means, and by the recordation of this condition against the title to the property pursuant to **SPECIAL CONDITION NO. 9** (discussed more later), the applicant and future buyers are notified that the proposed development is located in an area that is potentially subject to bluff erosion that can damage the applicant's property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the Coastal Development Permit.

(2) Final Project Plans

The proposed project consists of the removal of existing unpermitted retaining walls and beach access stairway from the bluff face, regrading of the lower bluff below the proposed deck to natural contours, addition to the residence consisting of a new caisson-supported deck with enclosed bathroom and spa equipment room on the upper bluff face, and extending an existing bluff face deck. In addition, the project includes constructing a new at grade pathway from the new deck to beach. Staff is recommending that the Commission approve the removal of unpermitted development, the extension of an existing bluff deck; construction of a new bluff deck; and regrading of the bluff to match the existing slope and landscaping. However, staff is recommending denial (to be discussed later in the staff report) of the construction of a new beach access pathway along the bluff, as it would have adverse impacts on the naturally appearing landform and the cumulative adverse impact of such projects on visual resources would be significant. Plans will need to be revised accordingly. To accomplish this, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of final revised project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face below the proposed deck to natural contours, and landscaping, no development seaward of the line identified above shall take place. Limiting the proposed development to this line serves to prevent the placement of development

upon the lower bluff face and beach, which are areas that are more prone to coastal hazards.

(3) Shoreline Protective Devices

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach and a revetment at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those, which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

No shoreline protection device is proposed. However, because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site would be stable if development is undertaken consistent with their recommendations and that no shoreline protection devices will be needed. If not for the information provided by the applicants that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, as stated previously, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicants to, their information, which states that the site is safe for development without the need for protective devices. If the Commission were forced, in the future, to approve a shoreline protection device to protect the structures being approved now, it would mean that the project approved now is not consistent with Section 30253's prohibition on new development requiring shoreline protective devices. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3** which states that no shoreline protective devices shall be permitted to protect the proposed development and that the applicants waive, on behalf of themselves and all successors and assigns on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

(4) Future Development

The development is located within an existing developed area and, as conditioned, is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicant could construct future improvements to the single-family house, including, but not limited to, improvements to the extended deck permitted through this permit, that could have

negative impacts on coastal resources, and could do so without first acquiring a coastal development permit, due to exemption for improvements to existing single-family residences in Coastal Act Section 30610 (a). Unpermitted improvements could lead to negative geologic impacts such as slope instability. In order to prevent the current authorization from allowing such future negative effects, it is necessary to ensure that any future development -- including the development of amenities that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 4**, a future improvements special condition. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

(5) Conformance with Geologic Recommendations

The geotechnical consultant has found that development is feasible provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in regards to the design and construction of the project. The geotechnical recommendations address things such as foundations and run-off on site. In order to assure that risks of development are minimized, as per Section 30253, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicants to submit final revised plans that have been revised to conform to the geotechnical recommendations and have been reviewed and certified by an appropriately licensed professional that such plans do conform to the geotechnical recommendations. If conformance with the geotechnical recommendations requires use of any foundation elements (e.g. caissons) seaward of maximum 60-foot linear distance measured from the Ocean Boulevard property line for the new bluff deck or any stabilization, soil compaction or other grading (other than the proposed and described grading in the project description), an amendment to this permit of a new permit shall be required in order to implement such recommendations.

(6) Drainage and Run-Off Control and Landscaping

The applicants previously submitted a drainage and run-off control plan and it shows that drainage on site will be directed up the bluff to the street (Ocean Boulevard) with piping. Therefore, adverse impacts caused by possible infiltration of the bluff are avoided. In addition, sewage from the new proposed bathroom located on the new proposed deck will be directed to an existing sewer lateral that leads under the bluff into an existing City sewer line at the bottom of the bluff. However, revisions to project plans will need to be made to conform to all the conditions imposed through this action. Thus, updated drainage and run-off control plans have been submitted. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 6**, which requires that the applicants shall prepare prior to issuance of this permit a final drainage and run-off control plan that substantially conform with the preliminary plan and demonstrate compliance with the requirements identified in the condition.

The proposed project consists of a new spa on the bluff face. If water from the proposed spa is not properly controlled there is a potential for bluff failure due to the infiltration of water into the bluff. For this reason, the potential for infiltration

into the bluff should be minimized. This can be achieved by various methods, including having the spa double lined and installing a spa leak detection system to prevent the infiltration of water into the bluff due to any possible pool or spa problems. The applicants have provided a plan and a narrative stating that they propose a double lined shell and a matte drain system. However, these are preliminary plans which will need to be finalized. Therefore, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires the applicants to submit final plans for the spa that conform with leak detection and control requirements.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The applicant has submitted preliminary landscape plans. However, project plans will need to be revised to eliminate development that is not being approved by the Commission, as well as to conform to the requirements of the conditions. Thus, revised final landscape plans will need to be submitted. Any proposed vegetated landscaped areas located on site should only consist of native drought tolerant plants, which are non-invasive. Native plant species are required (as opposed to non-native, non-invasive species) in this case because the site is a coastal bluff and must be planted with species appropriate to that habitat type. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Existing landscaping that does not comply with the requirements identified above must be removed.

Due to the potential impacts to the bluff from infiltration of water into the bluff, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires that the applicant shall prepare prior to issuance of this permit a final revised landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a final landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the landscaping of the impacted area; and 2) submittal of temporary erosion control measures, among other requirements identified in the condition.

(7) Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **SPECIAL CONDITION NO. 9** requiring that the property owners record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

(8) Condition Compliance and Inspection

To ensure that special conditions are complied with, the Commission imposes **SPECIAL CONDITION NO. 10** requiring condition compliance within 30 days of issuance of the coastal development permit.

To additionally ensure that the special conditions are complied with, the Commission imposes **SPECIAL CONDITION NO. 11** allowing inspection by Commission staff subject to twenty-four notice.

CONCLUSION

The Commission has required **ELEVEN (11) SPECIAL CONDITIONS**, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These special conditions include: **1)** assumption of risk; **2)** submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place; **3)** no future shoreline protective device; **4)** additional approvals for any future development; **5)** evidence of conformance with geotechnical recommendations; **6)** submittal of final drainage and run-off control plans; **7)** submittal of final spa protection plans ; **8)** submittal of final landscaping plan; **9)** a deed restriction against the property, referencing all of the special conditions contained in this staff report; **10)** condition compliance; and **11)** inspection. Only as conditioned to comply with the provisions of these special conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

4. Local Coastal Program (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Scenic and Visual Resources, Policy 4.4.1-1 states,

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Scenic and Visual Resources, Policy 4.4.1-3 states,

Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

Natural Landform Protection, Policy 4.4.3-8 states,

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Natural Landform Protection, Policy 4.4.3-9 states,

Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Coast Drive in Corona Del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

Natural Landform Protection, Policy 4.4.3-12 H. states,

Employ site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible, such as:

H. requiring any altered slopes to blend into the natural contours of the site

Natural Landform Protection, Policy 4.4.3-15 states,

Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.

Natural Landform Protection, Policy 4.4.3-17 states,

Identify and remove all unauthorized structures, including protective devices, fences, and stairways, which encroach into coastal bluffs.

Public Access and Recreation, Policy 3.1.2-1 states,

Protect, and where feasible, expand and enhance public access to and along coastal bluffs.

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

5. California Environmental Quality Act (CEQA)

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

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard and scenic resource protection policies of Chapter 3 of the Coastal Act. Mitigation measures include Special Conditions requiring conformance with geotechnical recommendations and spa leak detection.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any remaining significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

C. DENIAL FINDINGS AND DECLARATIONS

1. Public Recreation

Section 30210 of the Coastal Act states:

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

Section 30211 Development not to interfere with access

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30240 (b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed bluff face stairway is located upon a privately owned lot developed with a single family residence that is located between the sea and the first public road paralleling the sea. The subject lot is mostly bluff face; however, there is sandy beach area within the boundaries of the subject lot at the toe of the bluff. The sandy area is about 13-feet deep (between the toe of the bluff and the seaward property line) and extends the entire width of the lot (64-feet). This privately owned sandy beach area is adjacent to and contiguous with the sandy beaches that are part of Corona del Mar State Beach, a public recreation area.

Public access from Ocean Boulevard, through the subject lot, to the sandy beach does not currently exist. Any stairs or pathway on the lot would only serve the owners/occupants of the lot and their visitors. However, there is public access available to Corona del Mar State Beach via the main entrance to the State Beach, located north of the subject site, and Inspiration Point, to the south. Thus, the subject beaches are very popular, heavily used recreation areas. As stated in Section 30210 of the Coastal Act and the California Constitution, the public has a right to maximum access and recreational use of shoreline areas, such as Corona del Mar State Beach. Development that interferes with such access would be inconsistent with Section 30210.

There is no physical demarcation which defines the boundary between the privately owned sandy beach on the subject lot and the public sandy beach located seaward of it. Due to the large population of beach users, demand for sandy beach areas is high. Since there is no demarcation, the privately owned sandy beach is likely used by the public in the same fashion it uses the publicly owned beach area. Thus, there may be a right of access acquired through use of the privately owned sandy beach area on the lot; although there has been no judicial determination regarding the presence of such rights. Interference with public access rights acquired through use would be inconsistent with Section 30211 of the Coastal Act.

Since sandy beach areas are in high demand, it is critical to ensure that private development adjacent to the sandy beach areas does not establish a presence that would effectively privatize public beach areas. There is a tendency for individuals visiting public spaces to take visual cues from adjacent private development and to stay away from those areas because the development conveys the idea that such areas are or may be privately owned. In effect, the presence of the development establishes a privacy zone that tends to thwart members of the public from using the sandy beach adjacent to that development, even if that sandy beach is public. There is a high potential for development on the subject site to have this effect due to the small distance between the private pathway that is proposed on the bluff face and the publicly owned beach. That tendency may be exacerbated here where the boundary between private and public areas is not well defined. This forces the public to move more seaward, away from the toe of the bluff, to enjoy the beach and thus has an adverse impact on public use of the beach. Overcrowding and overuse of beach areas would result. In addition, a particular concern is during the winter when

the width of the beach narrows. The narrowing of the beach would force the public to use the more inland portions of the beach that are adjacent to the toe of the bluff. The perception of privatization created in this area would dissuade the public from using the beach adjacent to the toe of the bluff, which would crowd the public into an even narrower band of sandy beach, resulting in adverse impacts upon public use of the beach.

Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. The presence of the proposed private beach access pathway would degrade the publicly owned beach area adjacent to it. Thus, the proposed private beach access pathway is inconsistent with Section 30240(b) of the Coastal Act and must be denied.

2. Scenic Resources

Section 30251 of the Coastal Act states, in relevant part:

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

Section 30251 of the Coastal Act states that scenic and visual qualities of coastal areas shall be protected. The proposed private beach access pathway is located upon a coastal bluff face and sandy beach immediately inland of Corona del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural (Exhibit #6). Although several lots have stairways traversing the bluff face, and some have unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, and this is especially true if one does not consider the unpermitted development.

a. Scenic Views, Landform Alteration and Cumulative Impacts

(1) Scenic Views

The proposed beach access pathway is located along the mid and lower bluff face and the sandy beach. The bluff face and sandy beach are natural landforms visible from public vantage points such as the beach (Corona del Mar State Beach) and Inspiration Point and any alteration of this landform would adversely affect the scenic views of the coastline when viewed from these sites. This proposed development on the mid and lower bluff face and sandy beach results in considerable adverse impacts to views from the sandy beach. The views from Inspiration Point of the natural vegetated bluff and the beach at the project site will be marred by the proposed bluff face pathway. In addition, the new pathway causes a significant encroachment seaward of other approved development on the lot and exceeds the predominant line of development in the community. The

pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural. Although several lots have stairways traversing the bluff face, and some have unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. The edge of the proposed new bluff deck that is being proposed and can be approved with this application would encroach approximately 23-feet seaward from the existing accessory development located on-site; however, that encroachment moves the line of development seaward to the predominant line of development in the area. However, the proposed beach access pathway would extend even further seaward, approximately 47-feet beyond this predominant line. The seaward most end of the proposed pathway would be at the 13-foot contour. Thus, the pathway encroaches past the predominant line of development and will adversely impact scenic views.

(2) Landform Alteration

As discussed earlier in these findings regarding approval-in-part of the development, the proposed project includes regrading of the existing bluff to match the existing slope and also landscaping the bluff to bring it back to its natural appearance. Doing so would make the undeveloped portion of the lower bluff face consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural. However, the applicant's proposal to construct a new beach access pathway down the bluff face would result in significant landform alteration of the mid and lower bluff and sandy beach and thus would adversely affect public views of the bluff from the adjacent public vantage points such as the beach (Corona del Mar State Beach) and from elevated vantages such as Inspiration Point, and is inconsistent with the pattern of development in the subject area. The newly regraded bluff that would be consistent with the character of the surrounding area would be adversely impacted and result in an altered bluff, which would perpetuate the existing condition of the site that presently contains unpermitted bluff face modifications.

(3) Cumulative Impacts

The proposed project is located along a coastal bluff and sandy beach immediately inland of Corona del Mar State Beach, a public beach. The site is highly visible from public vantage points such as the sandy public beach and from elevated vantages such as Inspiration Point. The overall appearance of the bluff in this area is natural and undeveloped. The applicant is seeking approval of a beach access pathway located along the mid and lower bluff face and the sandy beach. Approval of the proposed private beach access pathway would set a precedent for the construction of new development along the beach and the mid and lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward. Therefore, the Commission cannot approve the proposed private beach access pathway.

CONCLUSION

The Commission finds that the proposed private beach access pathway results in the alteration of natural landforms, does not preserve scenic views, and is not visually compatible with the character of the surrounding area. Consequently, the proposed private beach access pathway increases adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed private beach access pathway is inconsistent with Section 30251 of the Coastal Act.

3. Alternatives

Denial of the proposed private beach access pathway will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant already possess a substantial residential development of significant economic value on the property. In addition, the "no project alternative," at least with respect to the new private pathway, presents fewer environmental impacts.

Regrading of the Bluff to Match the Existing Slope and Landscaping the Bluff to Make it Appear Natural Without the Addition of a Beach Access Pathway Along the Bluff

The applicant is seeking development consisting of a new private beach access pathway down the bluff face, which would be significant new development encroaching seaward. As stated previously in the approval findings of this staff report, the proposed project also will regrade the existing bluff to match the existing slope and also landscape the bluff to make it appear natural consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural. However, proposing a new private beach access pathway down the bluff face would result in significant landform alteration of the mid and lower bluff and sandy beach and thus would adversely affect public views of the bluff from the adjacent public vantage points such as the beach (Corona del Mar State Beach) and from elevated vantages such as Inspiration Point, and is inconsistent with the pattern of development in the subject area. Thus, regrading the bluff to match the existing slope and also landscape the bluff to make it appear natural, without the addition of a new private pathway along the bluff would result in development that is consistent with the character of the surrounding area.

4. Local Coastal Program (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Scenic and Visual Resources, Policy 4.4.1-1 states,

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Scenic and Visual Resources, Policy 4.4.1-3 states,

Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

Natural Landform Protection, Policy 4.4.3-8 states,

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Natural Landform Protection, Policy 4.4.3-9 states,

Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Coast Drive in Corona Del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

Natural Landform Protection, Policy 4.4.3-12 H. states,

Employ site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible, such as:

- I. requiring any altered slopes to blend into the natural contours of the site*

Natural Landform Protection, Policy 4.4.3-15 states,

Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.

Natural Landform Protection, Policy 4.4.3-17 states,

Identify and remove all unauthorized structures, including protective devices, fences, and stairways, which encroach into coastal bluffs.

Public Access and Recreation, Policy 3.1.2-1 states,

Protect, and where feasible, expand and enhance public access to and along coastal bluffs.

The construction of the proposed private pathway on the bluff-face is inconsistent with the policies in the City's certified LUP. The proposed private beach access pathway is not sited and designed to protect and, where feasible, enhance the scenic and visual qualities of the coastal zone. Denial of the proposed private pathway down the bluff face (and approval of the removal of the existing unpermitted development, regrading of the bluff face to natural contours and re-landscaping) would restore scenic resources to conditions existing prior to the unpermitted development and would be consistent with preserving the existing community character where development occurs at the upper bluff face. In addition, the proposed pathway would encroach substantially seaward of the predominant line of development, more specifically approximately 46-feet seaward of the predominant line of development. Allowing the proposed pathway would lead to seaward encroachment that would affect public use of the beach by discouraging the public from using the public beach area intended for public use. This would compel the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project would adversely impact recreation on the public beach. The proposed development is inconsistent with the policies in the City's certified LUP, as well as the policies in Chapter 3 of the Coastal Act, as indicated above, and would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the proposed private beach access pathway down the bluff face must be denied.

5. California Environmental Quality Act (CEQA)

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

As described above, the proposed private beach access pathway down the bluff face would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as regrading of the bluff to match the existing slope and landscaping the bluff to make it appear natural without the addition of a beach access pathway along the bluff. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the private beach access pathway down the bluff face must be denied.

D. UNPERMITTED DEVELOPMENT

Development has occurred on site without benefit of the required coastal development permit, including existing unpermitted grading, retaining walls and beach access stairway from bluff face.

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

Appendix "A"

1. 3431 Ocean Boulevard (Located 4 lots down-coast from the subject site): CDP No. 5-01-191-[Tabak]

At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-01-191-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence. The proposed structure would have covered virtually the entire upper and lower bluff face areas. The primary issues of the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

2. 3431 Ocean Boulevard (Located 4 lots down-coast from the subject site): CDP No. 5-02-203-[Tabak]

At the January 2003 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-02-203-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence and also demolition and replacement of existing wooden staircase to the toe of the bluff (due to the presence of the landing for the public accessway from Inspiration Point, there is no sandy beach at the toe of the bluff at this location). The proposed project had been reduced compared with a prior proposal (CDP No. 5-01-191). The Commission found that the proposed development was consistent with the pattern of development in the immediate vicinity and the project would not have a cumulative adverse impact on visual coastal resources. Under this proposal, living space additions were located landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. However, no other additions were allowed below the 33-foot elevation contour upon the lower bluff face.

3. 3431 Ocean Boulevard (Located 4 lots down-coast from the subject site): CDP No. 5-02-203-A1-[Tabak]

At the March 2005 Commission Hearing, the Commission approved an Immaterial Amendment to Coastal Development Permit Application No. 5-02-203-A1-[Tabak] that proposed redesign of the previously approved project including revision of an approximate 22-foot long portion of the previously approved stairway located at the base of the bluff and also the grading would now consist of 3,400 cubic yards of cut and export to an area outside of the coastal zone. No habitable area would extend past the approved line of development for enclosed area (48-foot contour) and the pool would not extend past the approved line of development for accessory structures (33-foot contour).

4. 3425 Ocean Boulevard (Located 3 lots down-coast from the subject site): CDP No. 5-03-100-[Halfacre]

At the January 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-03-100-[Halfacre] for the conversion and addition to an existing basement to living area, construction of a new basement-level deck, construction of a new sundeck on the bluff face that does not extend any further than the 33-foot contour line, a new stairway connection to an approved pathway leading down to the toe of the bluff located on the downcoast adjacent property (i.e. Tabak), removal and replacement of existing side yard and rear yard fences, and after-the-fact approval of two 2nd floor decks on the seaward side of the existing single-family residence. The primary issues before the Commission were the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. The Commission found that the proposed development, as conditioned, was consistent with the pattern of development in the immediate vicinity and the project would not have a cumulative adverse impact on visual coastal resources and would be consistent with the hazard policies of the Coastal Act. The proposed new habitable space adhered to the 48-foot bluff elevation contour limit established for CDP No. 5-02-203-[Tabak]. As conditioned, the proposed project also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements. No other accessory improvements were allowed below the 33-foot elevation contour upon the lower bluff face or on the sandy beach.

4. 3415 Ocean Boulevard (Located 2 lots down-coast from subject site): CDP No. 5-01-112-[Ensign]

At the February 2002 Commission Hearing, the Commission approved Coastal Development Permit No. 5-02-112-[Ensign] for the after-the-fact authorization of a new switchback bluff face pathway with keystone-type earth retention blocks, landscaping and in-ground irrigation. The applicant also proposed a public access easement over the privately owned portion of the sandy beach located seaward of the toe of the bluff. The primary issues before the Commission were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, community character and impacts to public access. As submitted, the proposed project raised issues with Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The Commission found that the proposed stairway that may have followed a pre-Coastal Act pathway, as conditioned, does not present an adverse visual impact because it follows the natural topography of the bluff, was effectively screened with vegetation and was consistent with the character of the surrounding area.

6. 3415 Ocean Boulevard (Located 2 lots down-coast from the subject site): CDP NO. 5-05-095-[Circle]

At the October 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-05-095-[Circle] for the demolition of an existing approximately 2,100 square foot, two (2) story single family residence with an attached garage and construction of a new 4,488 square foot two (2) story single-family residence with a basement and an attached 388 square foot four (4) car garage. Associated construction consisted of: a 141 square foot basement deck, a 392 square foot 1st floor

deck and a 383 square foot 2nd floor deck. The foundation for the residence consisted of a caisson and deepened conventional footings system. The primary concern before the Commission on this matter were to assure that the project conformed to the predominant line of development such that scenic resources were preserved, landform alteration was minimized and development in hazard prone locations was avoided. The Commission found that the proposed development, as conditioned, conformed to the predominant line of development and would not affect public views and would be consistent with the hazard policies of the Coastal Act. The project's proposed livable area aligned approximately with the 56-foot elevation contour line, while the basement level deck did not extend seaward from approximately 46-foot contour to the east and the approximately 50-foot contour to the west, thus the project was landward of the Tabak and Halfacre projects.

7. 3415 Ocean Boulevard (Located 2 lots down-coast from the subject site): CDP NO. 5-05-095-A1-[Circle]

At the January 2007 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-05-095-A1-[Circle] for development that consisted of enlarging the previously approved 141 square foot basement level deck (cantilevered portion) located along the bluff face associated with a single-family residence. The enlarged deck would extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. In addition, a section of the existing bluff face stairway above the approximately 33-foot contour line would be replaced with a new stair in a different configuration. No work below the 33-foot contour would take place and the foundation system for the proposed deck would consist of retaining walls and a caisson system. Minor grading was proposed. The Commission found that the proposed project, as conditioned, was sited and designed to protect scenic and visual qualities of coastal areas. Approval of the proposed project, as conditioned, would preserve existing scenic resources and would be consistent with preserving the existing community character where structures are sited at the upper bluff face, while the mid and lower bluff face remains largely undisturbed and vegetated. The alteration of the already developed upper bluff face would not result in a significant adverse visual effect when viewed from public vantage points such as the beach and would be visually compatible with the character of the surrounding area. Furthermore, the development would be consistent with the predominant pattern of development and is consistent with the recently approved Commission projects in the area (Tabak and Halfacre).

8. 3401 Ocean Boulevard (Located 1 lot down-coast from the subject site): CDP NO. 5-01-199-[Butterfield]

At the December 2001 Commission Hearing, the Commission approved in part and denied in part Coastal Development Permit Application No. 5-01-199-[Butterfield] for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels on the existing pre-Coastal Act bluff face stairway. The Commission denied the toe of slope cut-out and approved the portion of the lattice work and gate located on a previously approved landing area. The Commission found that the gate replacement and lattice enclosures on the previously permitted landing areas to be consistent with the scenic and visual resources policies of the Coastal Act, as they will not obstruct views to or along the shoreline and are in keeping with the pattern of development in the area and therefore is consistent with

Section 30251 of the Coastal Act. However, the Commission found that the proposed sand pit cut-out would not minimize alteration natural landforms, was not visually compatible with the character of surrounding development and would affect the scenic and visual qualities of the subject area. As such, the portion of the proposed project involving the establishment of a sand pit cut-out area was inconsistent with Section 30251 of the Coastal Act.

9. 3401 Ocean Boulevard (Located 1 lot down-coast from the subject site): CDP No. 5-07-042-[Butterfield]

Development at the subject site was last considered by the Commission in December 2001 under Coastal Development Permit Application No. 5-01-199-[Butterfield] as described above. The proposal at that time requested after-the-fact approval of the decorative gate, lattice panels, expanded landing and the "sand pit" area described above. The Commission approved the decorative gate and some of the lattice panels, but conditioned the approval on submission of plans showing removal of the side landing and its lattice paneling and removal of the sand pit. The applicants filed a lawsuit challenging the Commission's action. Subsequently, the parties entered into a settlement agreement to resolve the matter. Coastal Development Permit Application No. 5-07-042-[Butterfield] was submitted as a condition of the settlement agreement.

At the February 2008 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-07-042-[Butterfield] for development that was substantially the same as the previous proposal (Coastal Development Permit Application No. 5-01-199-[Butterfield]), except that the recent application requests removal of the "sand pit" described above. The proposal relative to the decorative gate, various lattice panels, and expanded landing remained unchanged from the prior application (Coastal Development Permit Application No. 5-01-199-[Butterfield]).

10. 3335 Ocean Boulevard (The subject site): CDP No. 5-04-214-[Battram]

In October 2005, the Commission opened a public hearing on Coastal Development Permit Application No. 5-04-214-[Battram]; however, the applicant withdrew the application before the Commission took their action. The application was for the after-the-fact approval for a stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. The applicant also proposed the following: adding landscaping along the stairway; painting the upper portion of the stairway a color that helps blend into the background; removing the existing iceplant at the bottom of the lot; and the granting of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. Staff recommended denial of the proposal. Since the October 2005 hearing, the Battram's sold the property to a new owner who has stated to staff that they intend to take over and process an after-the-fact permit application.

11. 3329 Ocean Boulevard (Located 1 lot up-coast from the subject site): CDP No. 5-04-482-[McNamee]

At the July 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-482-[McNamee] for the after-the-fact approval of existing storage lockers; built-in barbeque and cabinets; counter with sink and cabinets; shower at stair base; thatched shade palapa with four posts; two concrete tables and benches—all

located on a sandy beach and, on the bluff face, a shed with refrigerator storage and toilet and floral garden improvements. The primary issues before the Commission was whether the development preserves scenic resources, minimizes landform alteration and avoids development in hazard prone locations. The applicant was seeking after-the-fact approval of development on the sandy beach and lower bluff face/bluff toe. Along this segment of Ocean Boulevard, there is no history of Commission approval of development on the sandy beach (associated with a single-family residence). The toe of the bluff and sandy beach area are immediately inland of Corona del Mar State Beach, which is a public beach. Thus, the development is highly visible from the public beach and other public vantage points, such as Inspiration Point. In addition, the proposed project is not needed for full use and enjoyment of the property as they have a substantial improvement in the form of a single-family dwelling on site. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

12. 3317 Ocean Boulevard (Located 2 lots up-coast from the subject site): CDP No. 5-01-080-[Palermo]

At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-01-080-(Palermo) for the construction of a 864 square foot pool house, pool, spa and exercise room on the beach and the lower portion of the bluff face. In addition, two (2) retaining walls were proposed. One was to be a 6-foot high wall located along the western perimeter of the swimming pool at the beach level and one was to be a 12-foot high wall at the rear of the pool house on the lower bluff face. These walls varied from approximately 6 to 12 feet in height. The primary issues raised by the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

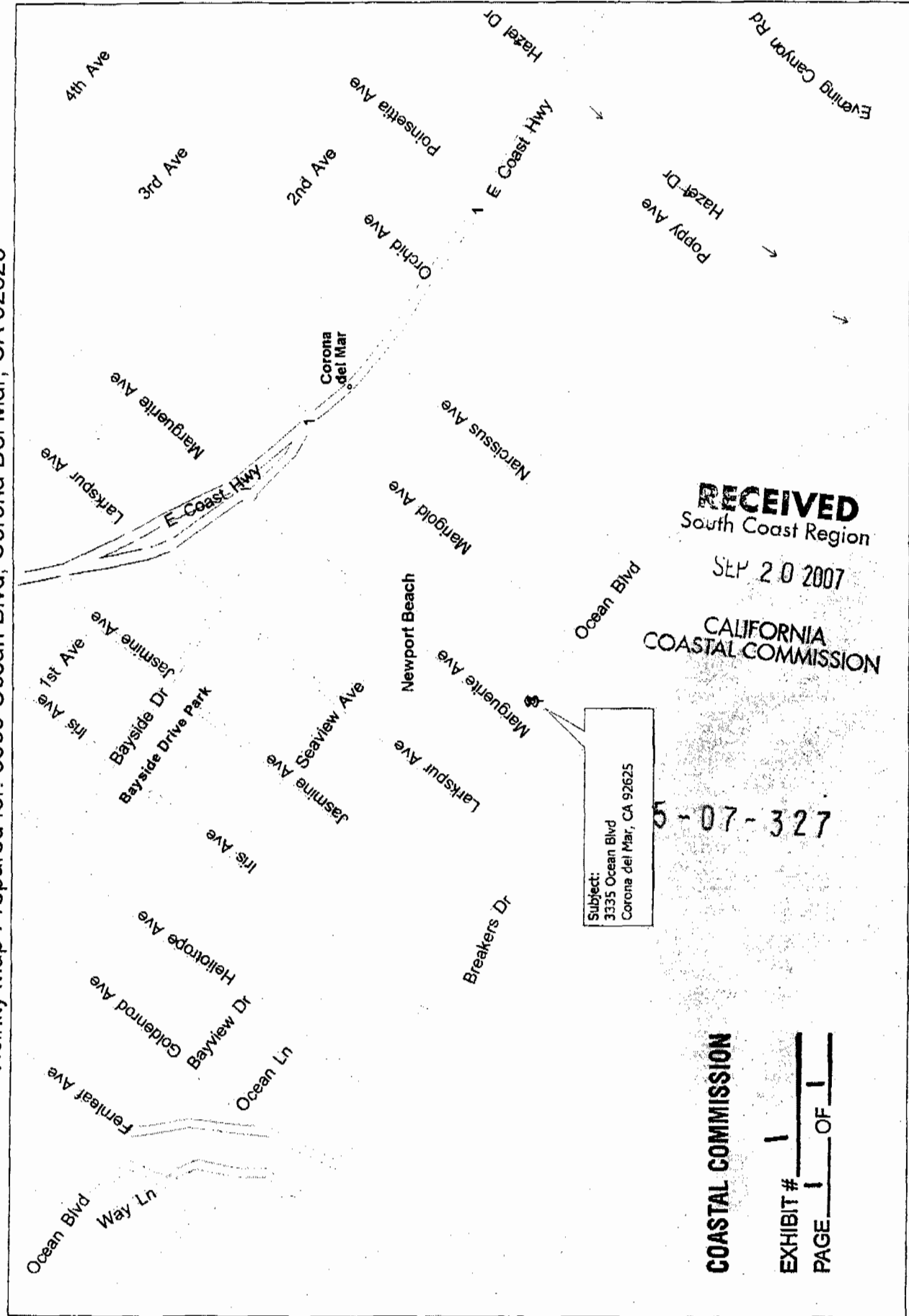
13. 3317 Ocean Boulevard (Located 2 lots up-coast from the subject site): CDP No. 5-04-339-[Palermo]

At the June 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-339-(Palermo) for the removal of an existing beach bathroom and construction of a new 623 square foot pool house, pool, spa and patio area on the beach and lower bluff face. In addition, there would have been construction of new retaining walls, landscape planters, an outdoor barbeque area and modification of the existing stairway. Footings, retaining walls, slab on grade and a caisson foundation system were proposed to support the proposed project. The proposed project was similar to a previously denied project for the project site (CDP No. 5-01-080). The primary issues raised by proposed project were the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

13. 3317 Ocean Boulevard (Located 2 lots up-coast from the subject site): CDP No. 5-05-328-
[Palermo]

On May 10, 2006, the California Coastal Commission granted to Salvatore Palermo Coastal Development Permit 5-05-328, subject to the standard and special conditions, for development consisting of: Construction of a new two-story, 746 square foot pool house plus pool on the bluff face. The pool house consisted of an exterior stair linking the two floors, the upper level consisted of a recreation room and exercise room, and the lower level consisted of a sun deck and a pool. Grading consisted of 888 cubic yards of cut and export to a location outside of the coastal zone. Deepened footings or a caisson foundation system were proposed to support the proposed project. A connection to an existing unpermitted stairway to the beach and modification of an existing unpermitted beach bathroom were not approved. Furthermore, the Commission prohibited any work seaward of the approximately 33-foot contour and also any work to the existing unpermitted stairway, including any connection from the proposed pool house or pool/deck to the existing unpermitted stairway, which also includes any work to the unpermitted beach bathroom with the proposed project. As conditioned, the development would be consistent with the predominant pattern of development and consistent with the recently approved Commission projects in the area (Tabak and Halfacre).

Vicinity Map Prepared for: 3335 Ocean Blvd, Corona Del Mar, CA 92625



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South Coast Region

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COASTAL COMMISSION

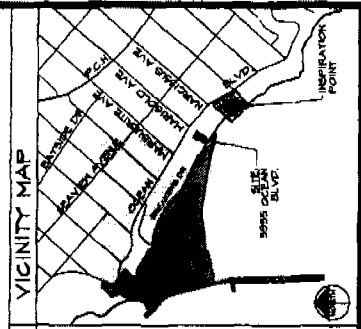
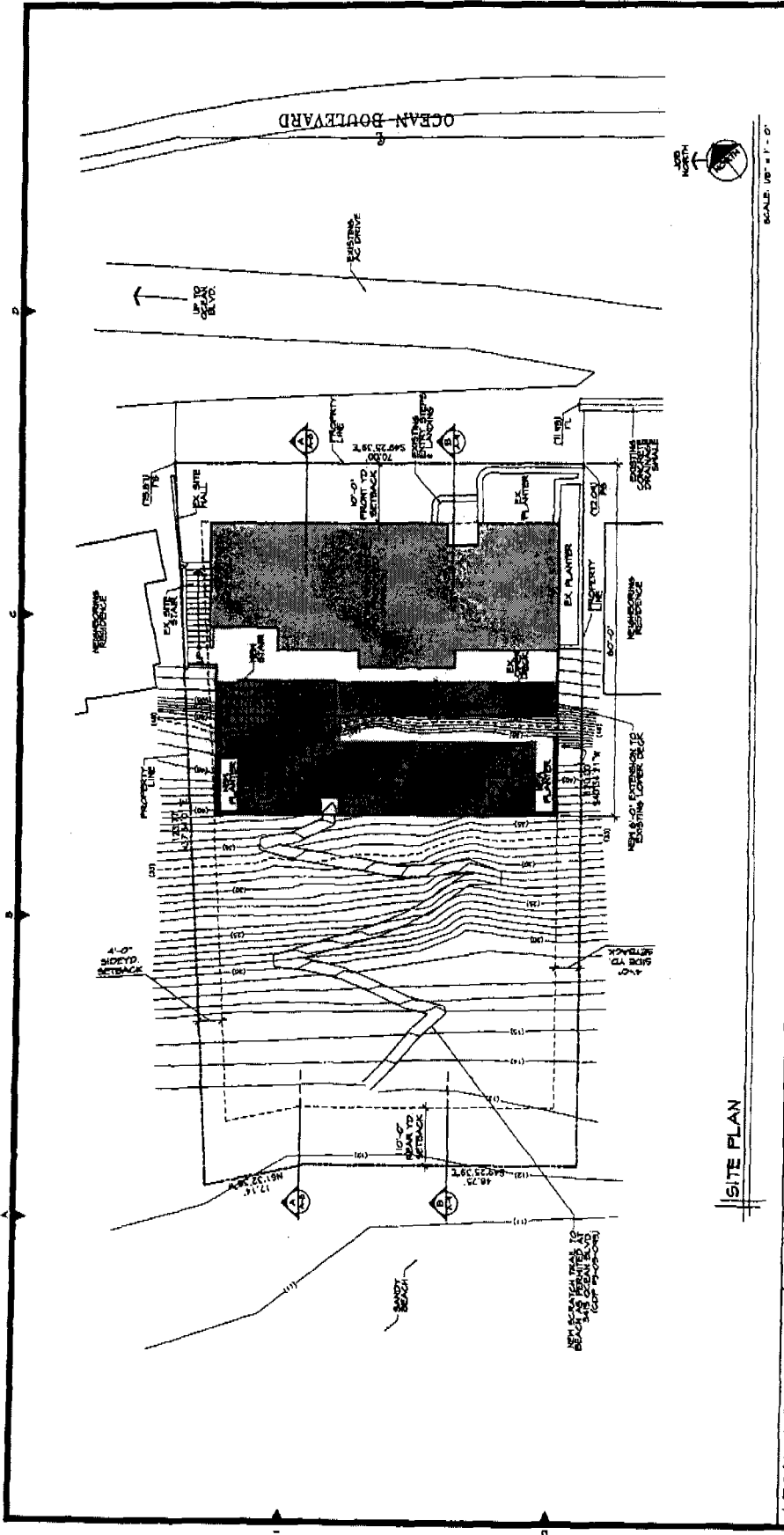
Subject:
3335 Ocean Blvd
Corona del Mar, CA 92625

5-07-327

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

Date:	
Revision:	
Revision:	
Revision:	
Revision:	
Revision:	
Job No. 00-004	



SHEET INDEX

A-1	SITE PLAN
A-2	CONCEPTUAL FOUNDATION PLAN
A-3	CONCEPTUAL GRADING & DRAINAGE PLAN
A-4	CONCEPTUAL LANDSCAPE PLAN
A-5	TEMPORARY SURVEY
A-6	STREET SITE PLAN & ELEVATION BY AGENT'S OVERLAY
A-7	PANORAMIC PHOTO OF SITE ELEVATION BY AGENT'S OVERLAY
A-8	CONCEPTUAL FOUNDATION PLAN
A-9	CONCEPTUAL GRADING & DRAINAGE PLAN
A-10	CONCEPTUAL LANDSCAPE PLAN
A-11	TEMPORARY SURVEY

DESIGN DATA

CITY:	REPORT BEACH
STATE:	CA
USE:	RESIDENTIAL
CONSTRUCTION TYPE:	V-N
OCCUPANCY:	R-1A-1
SETBACKS:	10'-0"
HEIGHT:	4'-0"
DATE:	11/11/08
DESIGNER:	BRON JEANNELLE ARCH. INC.
PROJECT:	5995 OCEAN BLVD, CORONA DEL MAR, CA
LOT AREA:	8083.47 SF
MAX. BUILDABLE:	13 x 860.77 x 860.18 SF
EXISTING BUILDINGS:	THRU-CAR GARAGE TO
EXISTING ADJACENT:	40 SF
NEW BUILDING FOOTPRINT:	408 SF
ADDITION TO EXISTING LOWER PEAK:	840 SF

CONSULTANTS

LEGAL OWNER

LEGAL DESCRIPTION

SYMBOLS LEGEND

COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

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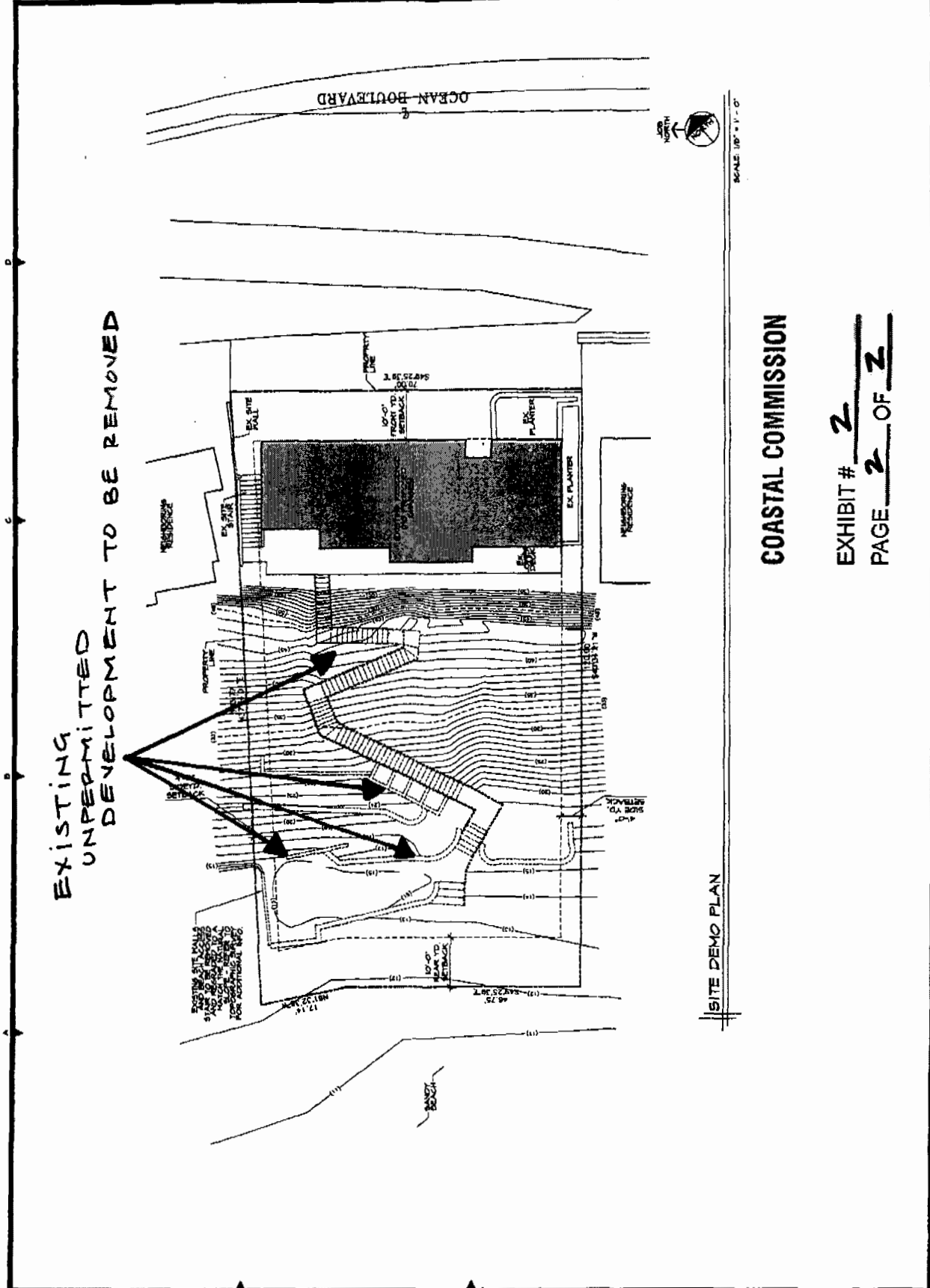
A-2

Date:	
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Revision:	

SITE DEMO PLAN

Bron Jeannette Architecture
CORONA DEL MAR, CA

LIVONI RESIDENCE
3939 OCEAN BLVD
CORONA DEL MAR, CA



EXISTING UNPERMITTED DEVELOPMENT TO BE REMOVED

COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 2

SITE DEMO PLAN

SCALE 1/8" = 1'-0"

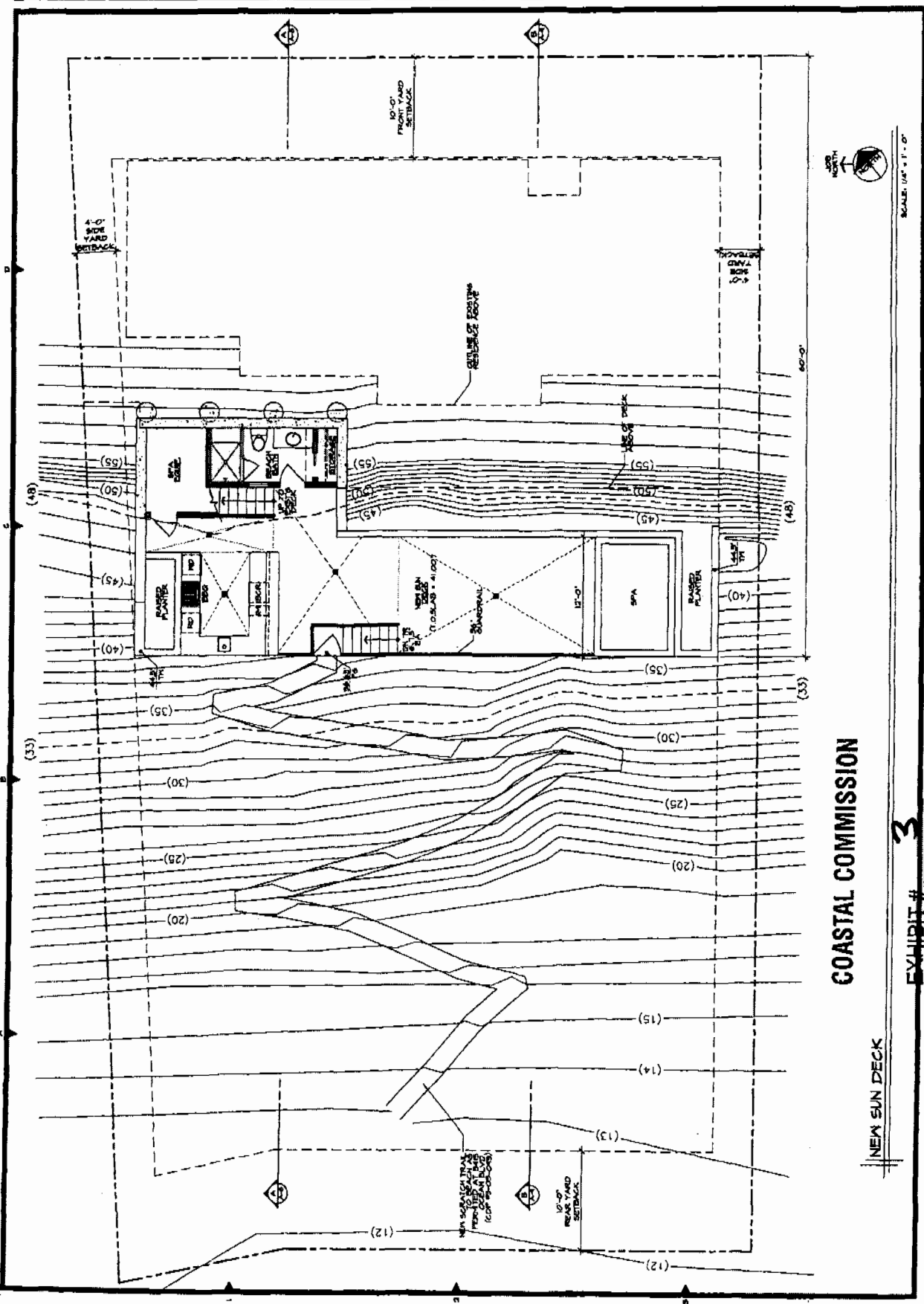
SUN DECK PLAN

Bron Jeannette Architecture

LIVONI RESIDENCE
8985 OCEAN BLVD
CORONA DEL MAR, CA

Date:	
Revision:	
Revision:	
Revision:	
Revision:	
Job No. 08-024	

A-B



COASTAL COMMISSION

NEW SUN DECK

SCALE: 1/4" = 1'-0"

EXHIBIT # 3

PAGE 1 OF 2

LIVONI RESIDENCE
8985 OCEAN BLVD
CORONA DEL MAR, CA

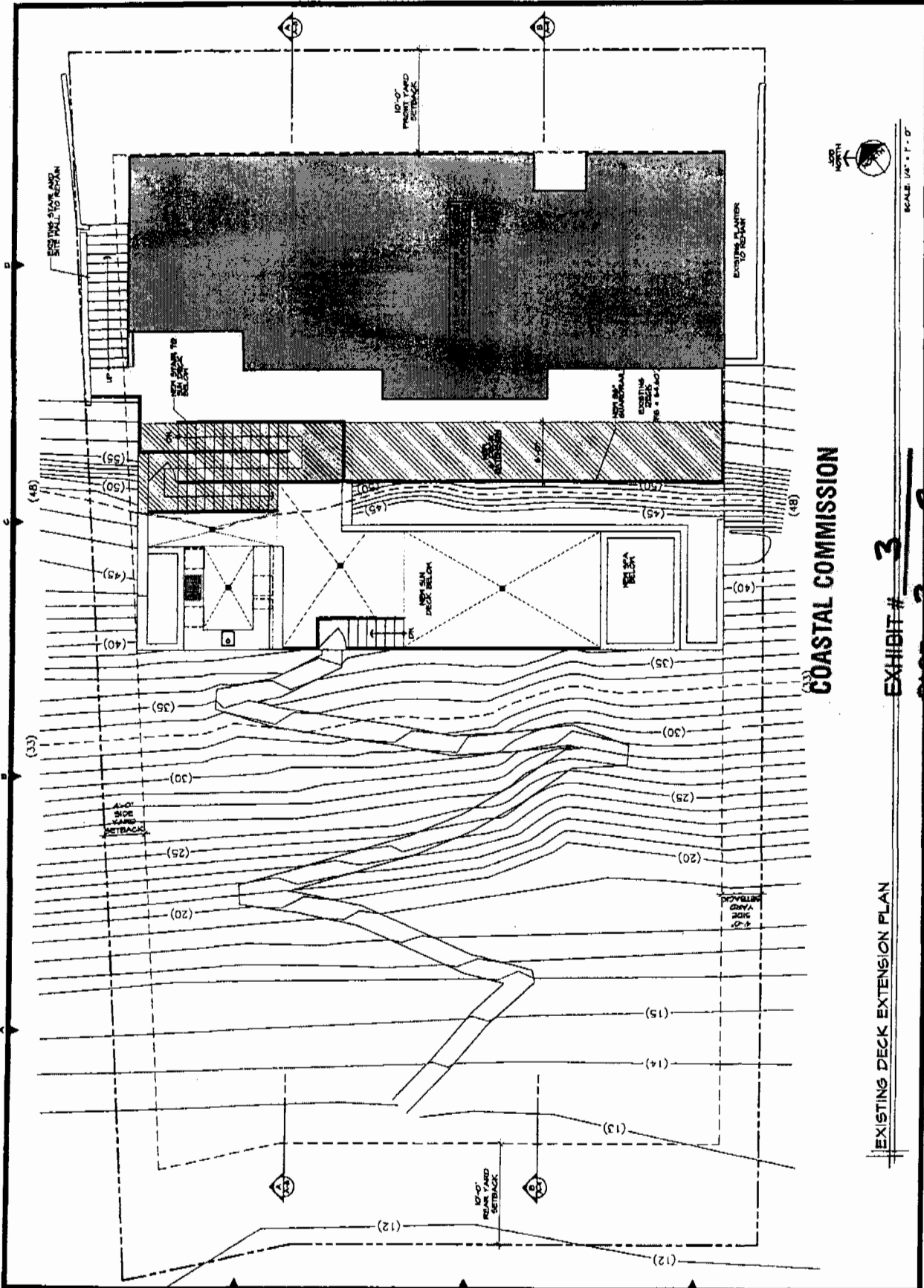
Bron Jeannette Architecture

EXISTING DECK
EXTENSION PLAN

Date:	
Revised:	
Revised:	
Revised:	
Revised:	
Job No. 08-004	



A-4



COASTAL COMMISSION

EXHIBIT # 3

PAGE 2 OF 2

EXISTING DECK EXTENSION PLAN

SCALE: 1/8" = 1'-0"

LIVONI RESIDENCE
 8985 OCEAN BLVD.
 CORONA DEL MAR, CA

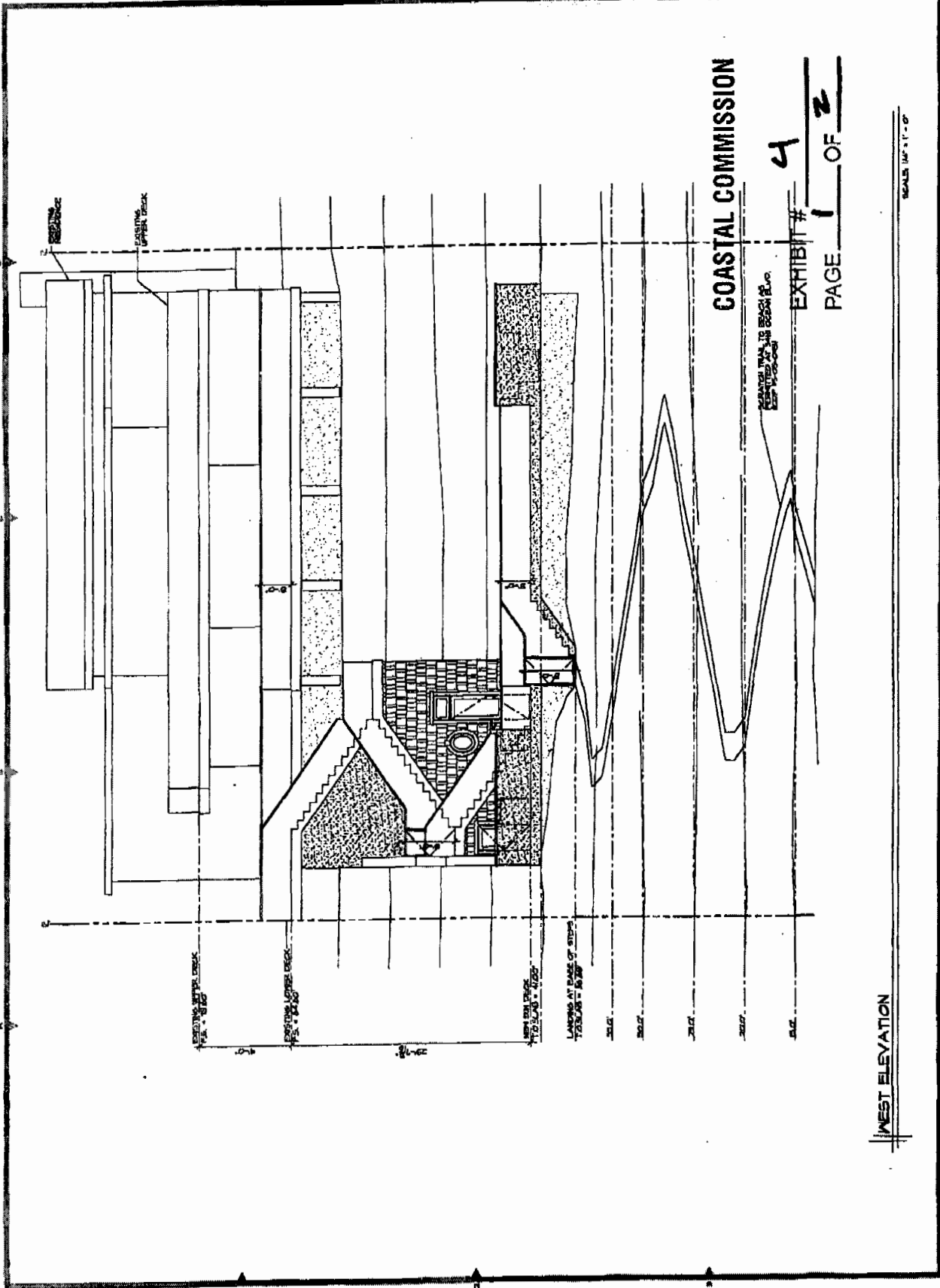
Bron Jeannelle Architecture
 10000 Wilshire Blvd., Suite 1000
 Beverly Hills, CA 90210
 Phone: (310) 274-1111
 Fax: (310) 274-1112
 Website: www.bronjeannelle.com

EXTERIOR
 ELEVATIONS

Date:	
Revision:	
Description:	
Scale:	
Project:	
Job No. 04-054	



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COASTAL COMMISSION

EXHIBIT # 4
 PAGE 1 OF 2

SCALE: 1/4" = 1'-0"
 WEST ELEVATION

LIVONI RESIDENCE
3999 OCEAN BLVD.
CORONA DEL MAR, CA

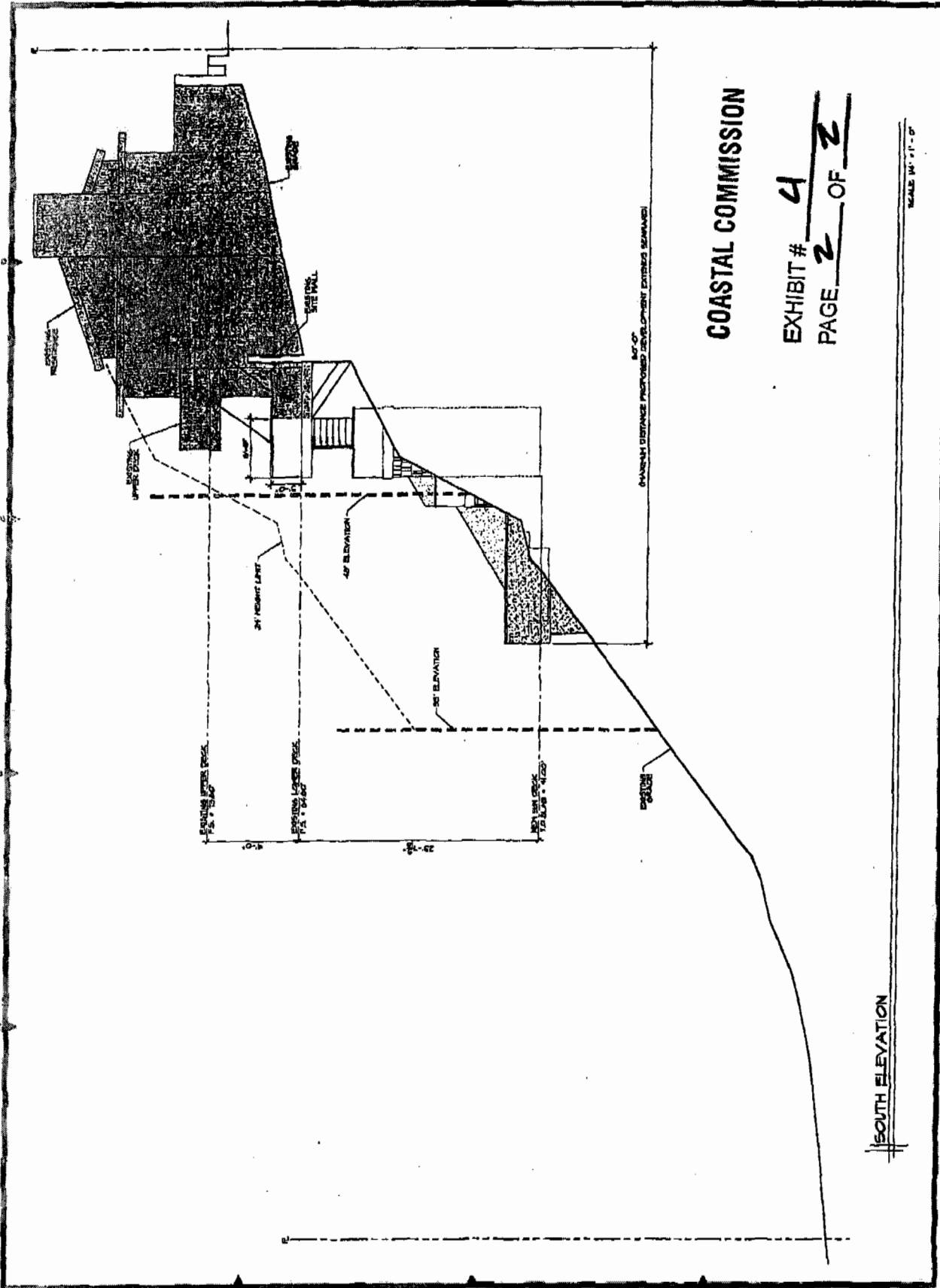
Brian Jeannelle Architecture

EXTENSION
ELEVATIONS

DATE	
REVISION	
DESCRIPTION	
PROJECT	
CLIENT	
ARCHITECT	
SCALE	
DATE	



A-1



COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 2

SOUTH ELEVATION

SCALE: 1/4" = 1'-0"

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LIVON RESIDENCE
8999 OCEAN BLVD.
CORONA DEL MAR, CA

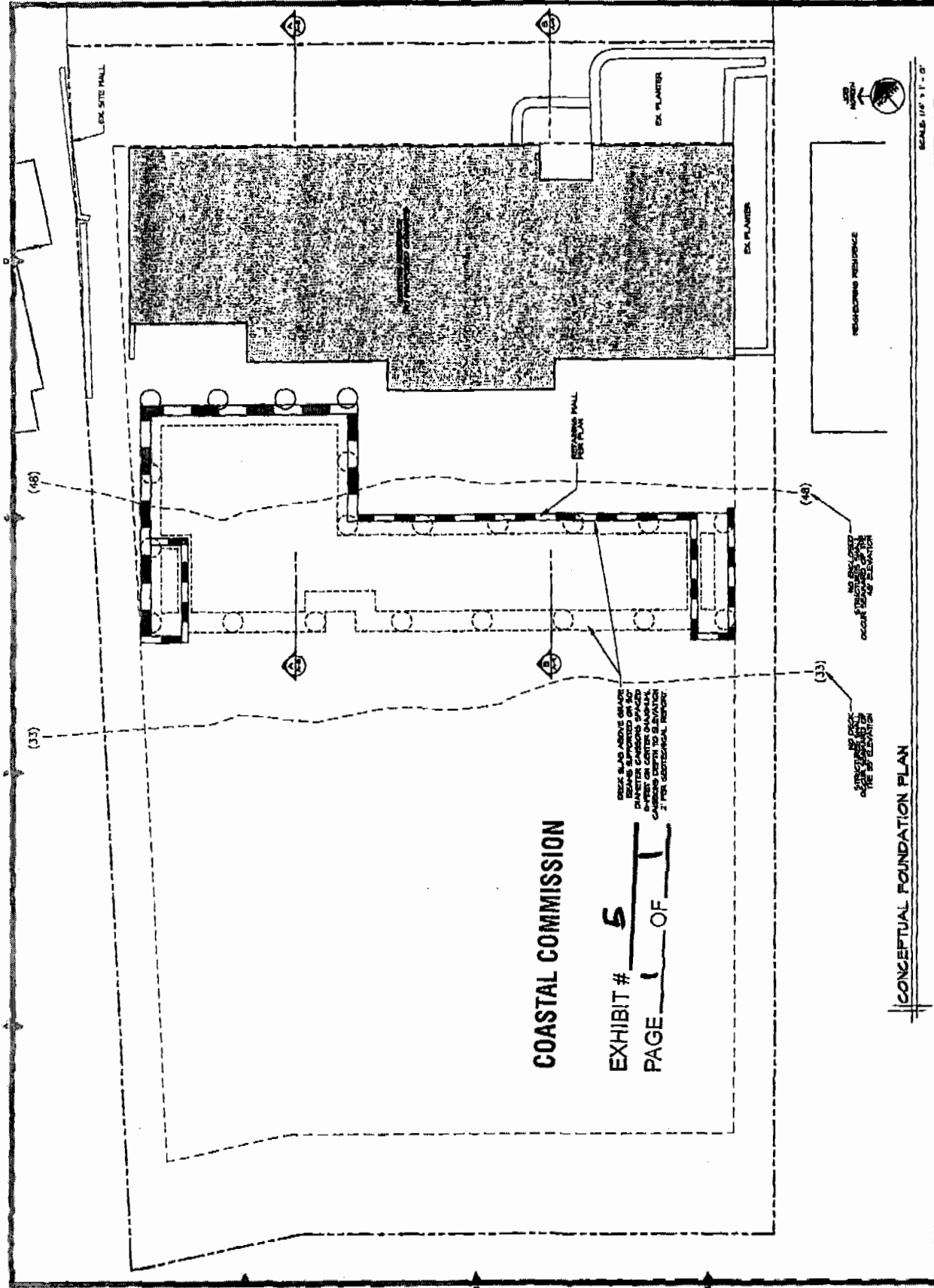
Shon Jeanneret Architecture

CONCEPTUAL
FOUNDATION PLAN



5

Scale: 1/4" = 1'-0"



COASTAL COMMISSION

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PAGE 1 OF 1

SEE PAGE 48 FOR ANNOTATED
DIMENSIONS AND NOTES ON
DIAMETER CARBONS SPACED
PER PER CENTER TO CENTER
DIMENSIONS AND NOTES ON
2 PER GEOMETRICAL NETWORK

STRUCTURE TO BE
CONSTRUCTED AT THIS
LOCATION TO ACCOMMODATE
REST ROOMS

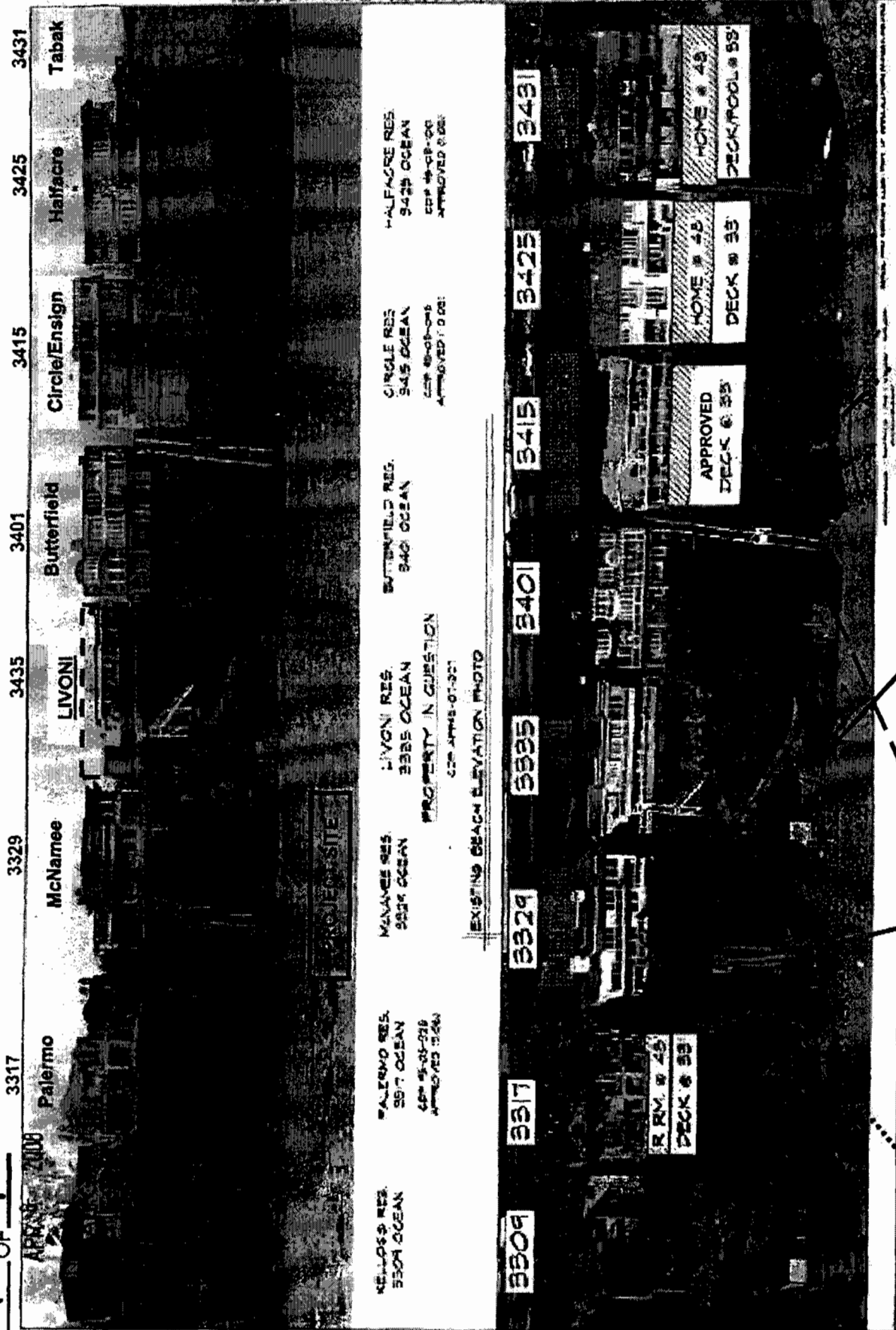
STRUCTURE TO BE
CONSTRUCTED AT THIS
LOCATION TO ACCOMMODATE
REST ROOMS

CONCEPTUAL FOUNDATION PLAN

COASTAL COMMISSION

EXHIBIT # **RECEIVED**

PAGE 1 OF South Coast Region



OCT 19 2007

Battram
Consent Order No. CCC-04-CD-01

CALIFORNIA
COASTAL COMMISSION

CONSENT AGREEMENT AND CEASE AND DESIST ORDER CCC-04-CD-01

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders Kenneth Battram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to cease and desist from: (1) engaging in any further development on his property unless authorized pursuant to the Coastal Act and (2) continuing to maintain any development on his property that violates the Coastal Act, except as authorized herein. Accordingly, through the execution of this Consent Order, the Respondents agree to comply with the terms of the above-stated order and with the following terms and conditions.

1.0 TERMS AND CONDITIONS

1.1 Within 60 days of issuance of the Consent Order, Respondents shall remove all unpermitted development from the flat/sandy beach portion of the subject property, including concrete patio, storage shed and storage cabinets.

1.2 Within 60 days of issuance of the Consent Order, Respondents shall submit a complete CDP application for retention of the unpermitted stairway and retaining walls on the subject property. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property, Respondents shall remove the remaining unpermitted development on the subject property according to Sections 1.3 and 1.4 of the Consent Order. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property and the Respondents decide to challenge such a denial without first implementing Sections 1.3 and 1.4 of the Consent Order, the Commission shall have the full right to seek penalties for Respondents' failure to remove unpermitted development under Chapter 9 of the Coastal Act.

1.3 If a CDP application to retain the stairway, retaining walls, grading and any other unpermitted development on the bluff slope is denied, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Respondents shall then submit within 60 days for the review and approval of the Executive Director of the Commission a Stairway Removal and Bluff Slope Revegetation and Monitoring Plan for the bluff face portion of the subject property, and comply with all other terms of this Order regarding removal of the stairway. The Revegetation and Monitoring Plan (hereinafter, "Plan") shall be prepared by a qualified restoration professional and shall include the following:

a) Goals and Performance Standards. Section A of the Plan shall present the following goals of the revegetation activities.

1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and

COASTAL COMMISSION

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PAGE 1 OF 9

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1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
2. Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities. No invasive plants are permitted for revegetation.
3. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Plan will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
4. Section A of the Plan shall also include specific ecological performance standards that relate logically to the revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
5. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent vegetated areas vegetated undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture.

If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

COASTAL COMMISSION

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b) **Revegetation Methodology.** Section B of the Plan shall describe the methods to be used to revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:

1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the revegetation of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated shall not be disturbed by activities related to the Plan.
2. Specify that the revegetation of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation.
3. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using local native drought resistant plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area. Invasive plants are not permitted for the revegetation of the site.

c) **Monitoring and Maintenance.** Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

1. The Respondents shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration professional, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional revegetation activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of revegetation at the site.
2. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the revegetation project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the

COASTAL COMMISSION

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revised or supplemental restoration plan must be processed as a CDF or modification of Consent Agreement and Cease and Desist Order CCC-04-CD-01.

- d) Appendix A shall include a description of the education, training and experience of the qualified restoration professional who shall prepare the Plan. A qualified restoration professional for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of coastal bluff habitats.
- e) Interim erosion control plans shall be included in the Plan. Interim erosion control measures shall be prepared by a qualified restoration professional and shall include the following:
 1. The following temporary erosion control measures shall be used: hay bales, wattles, silt fences. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
 2. Interim erosion control measures shall include, at a minimum, the following components:
 - a. A narrative describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
 - b. A detailed site plan showing the location of all temporary erosion control measures.
 - c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term revegetation and monitoring plan.

- 1.4 Within 30 days of the approval by the Executive Director of the documents submitted under Section 1.3, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under Section 1.3.

If a CDP application to retain the stairway is denied, or a complete CDP application is not submitted within nine months of the date of issuance of this Consent Order (whichever is shorter):

1. Remove the unpermitted stairway, retaining walls and all other unpermitted development from the bluff face.
2. Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development.

COASTAL COMMISSION

EXHIBIT # 7
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3. Revegetate the bluff face as described in Section 1.3.
 4. Submit to the Executive Director a report documenting the revegetation of the bluff face. The report shall include photographs that clearly show all portions of the bluff face on the subject property.
- 1.5 Within 60 days of the submittal of the report documenting the revegetation of the bluff face, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the Consent Order.
- 1.6 In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to Section 1.3 above, submit to the Executive Director monitoring reports. For the duration of the monitoring period, all persons subject to the Order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Consent Order, subject to twenty-four hours advance notice.

2.0 PERSONS SUBJECT TO THE ORDER

Mr. Kenneth Bartram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing.

3.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is described as follows:

3335 Ocean Boulevard, Corona del Mar, CA, APN 052-120-20

4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted grading and landform alteration and unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets.

5.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810, and the Respondents have elected to not challenge the Commission's jurisdiction over this matter in the interest of settling and resolving it. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has jurisdiction to act as set forth in this Consent Order, and Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

COASTAL COMMISSION

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6.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual basis and the terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist Order dated December 10, 2003. Specifically, Respondents decided not to file a statement of defense and to waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Order. Respondents are not contesting the Commission's jurisdiction and basis for the purposes of adoption, issuance and enforcement of this Consent Order. Respondents' waiver herein is limited to a hearing on the Commission's adoption, issuance and enforcement of this Consent Order and no other hearing or proceeding.

7.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is March 19, 2004. This order shall remain in effect permanently unless and until rescinded by the Commission.

8.0 FINDINGS

This order is issued on the basis of the findings adopted by the Commission on March 19, 2004, as set forth in the attached document entitled "Findings for Consent Agreement and Cease and Desist Order No. CCC-04-CD-01."

9.0 SETTLEMENT/COMPLIANCE OBLIGATION

9.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$4,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payment amount by April 30, 2004 to the attention of Sheila Ryan of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.

9.2 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension, will constitute a violation of this Consent Order and shall result in respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public

COASTAL COMMISSION

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Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

10.0 DEADLINES

Prior to the expiration of the deadlines established by this Consent Order, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under this Consent Order, but cannot meet deadlines due to unforeseen circumstances beyond their control.

11.0 SITE ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

12.0 GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by respondents or their agents in carrying out activities pursuant to this Consent Order. Respondents acknowledge and agree (a) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (b) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

13.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order shall have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order,

COASTAL COMMISSION

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Respondents agree to waive whatever right they may have to challenge the issuance and enforceability of this Consent Order in a court of law.

14.0 SETTLEMENT OF CLAIMS

The Commission and respondents agree that this Consent Order settles all monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. However, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this order.

15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future respondents of the property, interest and facility, heirs and assigns. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Order.

16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 10.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

17.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

18.0 LIMITATION OF AUTHORITY

18.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.

18.2 Correspondingly, Respondents have entered into this Consent Order and waived their right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

COASTAL COMMISSION

EXHIBIT # 7
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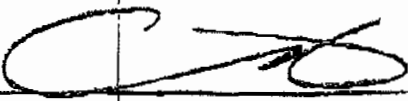
19.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

20.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:



Kenneth Batram

2-27-04
Date

Executed in Monterey on behalf of the California Coastal Commission:



Peter Douglas, Executive Director

3/18/04
Date

COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION

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

**Th 10b****ADDENDUM**

August 5, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO ITEM Th 10b, COASTAL COMMISSION PERMIT APPLICATION #5-07-327-(Livoni) FOR THE COMMISSION MEETING OF August 7, 2008.

**Email Received on July 21, 2008 from Jan D. Vandersloot, M.D.
 (Attached as Exhibit A)**

On July 21, 2008, Jan D. Vandersloot, M.D. emailed his concerns regarding the proposed project. He states that approval of the proposed project will set a precedent for the surrounding properties to remove the bluff from the upper level to the lower level (i.e. the middle half of the bluff will be lost) resulting in a significant loss of vegetation along the bluff face and resulting in significant landform alteration. He also states that the bluff face is considered a significant public view resource since it is adjacent to Corona Del Mar State Beach. In addition, he provides pictures of residences along Ocean Boulevard to help support his concerns. He states that the properties on either side of the subject site (3329 Ocean Blvd.-[McNamee] upcoast and 3401 Ocean Blvd.-[Butterfield] downcoast) do not have decks or other development on the middle or lower portion of the bluff face. In addition, he states that the property two lots upcoast (3317-Ocean Blvd.-[Palermo]) does not have any development on the middle or lower portion of the bluff. However, he does state that the two residences further downcoast of the site (3415-Ocean Blvd.-[Circle] and 3425-Ocean Blvd.-[Halfacre]) have decks extending down the bluff face similar to Livoni's proposal.

The consistency of the proposed project with the surrounding development identified in the opposition letter is discussed in detail in the staff report. Dr. Vandersloot's statements about the two adjoining properties, McNamee and Butterfield, are accurate. There are no Commission approvals for decks on those properties like the one proposed on the subject site. However, when considering the pattern of development upcoast and downcoast of this site along the entire stretch of bluff adjacent to the beach from 3317-Ocean Boulevard (upcoast of the site) to 3431 Ocean Boulevard (downcoast of the site), approval of this project -without the proposed bluff face pathway- would be consistent with prior Commission actions and the pattern of development in this area. For instance, in recent proposals at the Tabak site (CDP No. 5-02-203-[Tabak]), which is downcoast of the project site, living space additions were landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. In addition, the Palermo (CDP No. 5-05-328-[Palermo]) and Halfacre projects (CDP No. 5-03-100-[Halfacre]), also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements.

EXHIBIT 1A **5-07-327-R**
 LIVONI
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Mr. Vandersloot states that the property two lots upcoast (3317-Ocean Blvd.-[Palermo]) does not have any development on the middle or lower portion of the bluff. However, that statement is misleading since development along the upper and middle bluff face has been approved and construction is anticipated to take place in the near future. Mr. Vandersloot's email also fails to identify the property located at the downcoast end of Ocean Blvd. (3431 Ocean Blvd.-[Tabak]) where development along the bluff face has been approved by the Commission. The existing residence has been demolished and construction of the new residence is anticipated soon. The Commission approved development along the upper and middle bluff face on this site as well.

Letter dated July 25, 2008 from Sherman L. Stacey (Attached as Exhibit B)

Sherman L. Stacey submitted a letter dated July 25, 2008 discussing his concerns with the staff recommendation. His letter contains five (5) main points regarding his opposition to the staff report. His first point is that there is no basis to find possible prescriptive rights or that Livoni's access path would interfere with such nonexistent rights. Furthermore, he states: "*The staff recommendation concerning Section 30210 relies upon an unsupported postulation that there is a public right of access onto the Livoni property and that the private beach access path will somehow "intimidate" the public from using the Livoni property on which this unproven right of access is claimed to exist. No evidence supports either conclusion.*" The applicant asserts that the staff recommendation for denial is, in part, based on inconsistencies with Section 30210 of the Coastal Act. The applicant also suggests that the staff recommendation includes an effort to adjudicate the existence of prescriptive rights on the privately owned portion of the sandy beach. Neither statement is accurate. The staff report merely points out the likelihood of public use of the privately owned beach area given its location (although such use is likely reduced due to the existing visual deterrent caused by the existing stairway); and the fact that interference with such access (if the public has prescriptive rights, but not if members of the public are trespassing) would be inconsistent with Section 30210. The findings do not conclude the project is, in fact, inconsistent with Section 30210 as there is insufficient evidence before the Commission at this time to support such a conclusion.

Mr. Stacey's second point is that the homes adjoining Corona Del Mar State Beach all have access paths to the beach and the access paths do not "significantly" degrade the public recreational use of the beach. He also states that the staff report claims that the sandy beach of the Livoni property is used by the public despite the claimed "deterred effect" of the existing and prior stairways. He then concludes by stating that the staff report denies exactly what was speculated by claiming that the existence of the stairway or path itself deters precisely the public use which the staff report claims had been taking place. Staff's comments regarding public use of the private beach are discussed above. However, the deterrent effect would affect both the privately and publicly held beach areas. Commission staff disagrees with his argument since the psychological impact to public access will not only exist because of the new pathway, but that it has always existed onsite due to the pre-coastal and existing unpermitted stairways. New development, like the proposed pathway, shouldn't be allowed to perpetuate an impact when such impacts are clearly inconsistent with Section 30240(b) of the Coastal Act. Segments of the general public will be dissuaded from using the public beach due to the privatized development located along the bluff and beach; while other segments of the general public will not be affected by the privatized development and would continue to use the beach area adjacent to the development. The segment of the public that is adversely impacted would continue to avoid use of the beach adjacent to the privatized development with the construction

of the new pathway. As stated in the staff report, the presence of development establishes a privacy zone that tends to thwart members of the public from using the sandy beach adjacent to that development, even if the sandy beach is public. There is a high potential for development on the subject site to have this effect due to the small distance between the private pathway that is proposed on the bluff face and the publicly owned beach. That tendency may be exacerbated here where the boundary between private and public areas is not well defined.

Mr. Stacey's third point is that the Livoni path would not detract from the visual quality of the area. He claims that while the staff report states that the path will be visually intrusive, the staff recommended approval of, and the Commission approved, the path at 3415 Ocean Avenue (Ensign-Circle). Also, he states that the staff report fails to give any credit for the fact that a stairway had existed on the subject property since 1972. The agent's claim that Commission Staff recommended approval of the pathway at 3415 Ocean Avenue is incorrect as staff's recommendation was denial for the after-the-fact pathway. The staff recommendation of denial was overturned by the Commission at the August 2002 Hearing. The fact that a stairway has existed on the Livoni's property since 1972 is irrelevant since the stairway has been and continues to be visually intrusive, and the proposed pathway would also be visually intrusive. The pre-existing demolished stairway and the existing unpermitted stairway are nonconforming to current standards of the City's certified LUP regarding bluff face development and the protection of visual quality along the coastline. In addition, the demolition of the previous stairway and construction of the existing stairway took place without a permit. The previous stairway could have been allowed to be repaired and maintained (some of which would require a coastal permit due to its location on a bluff face), but not demolished and rebuilt without a coastal development permit. Currently, the stairway is unpermitted, constructed after the passage of the Coastal Act and highly visible. The applicant has no right for access since the existing stairway is unpermitted development.

Mr. Stacey's fourth point is that there are no detrimental cumulative impacts as every lot is developed and every home has an access to the beach. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the lower bluff face and sandy beach remain largely undisturbed and natural. Thus, the overall appearance on the lower bluff in this area is natural and undeveloped. By allowing construction of the private beach pathway down the bluff face, a precedent would be set for the construction of new development along the lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward, inconsistent with the Chapter 3 policies of the Coastal Act.

Mr. Stacey's fifth point is that Livoni is not obligated to dedicate his property to public use and the Commission cannot require him to do so. He further states that at the property located at 3415 Ocean Boulevard (Ensign-Circle) an offer to dedicate was made and thereafter the Commission approved an access path for Ensign in CDP No. 5-01-112. Furthermore, he states that Commission staff requested that if the applicants make a similar "voluntary" offer to dedicate, and if they did so, Commission staff would recommend approval of the access path. Mr. Stacey has misconstrued the facts. Staff had a meeting with the applicants at which time the applicants claimed that their proposed project was basically identical to that proposed by the Ensigns. Following the meeting, staff researched the Ensign project and determined that one significant difference between the applicants' project and the Ensign project was that the Ensign project included an offer-to-dedicate lateral access. Commission staff called the applicants to inform them that their representation in the meeting with staff that their proposal was identical to that submitted by the Ensigns was inaccurate, due to the fact that there was no lateral access included in their proposal. Staff never suggested to the applicants that had they included a

lateral accessway as part of their proposal that staff would have recommended approval of their proposed beach pathway. Staff was simply calling the applicants to inform them of the differences between their project and their neighbors' project as approved by the Commission.

**Ex Parte Form from Commissioner Kruer dated August 1, 2008
(Attached as Exhibit C)**

Fernie Sy

From: JonV3@aol.com
Sent: Monday, July 21, 2008 12:21 AM
To: Sherilyn Sarb; Teresa Henry; Karl Schwing; Fernie Sy
Subject: Application No. 5-07-327, Livoni, August CCC Agenda Thurs 10b

Dear Coastal Commission staff:

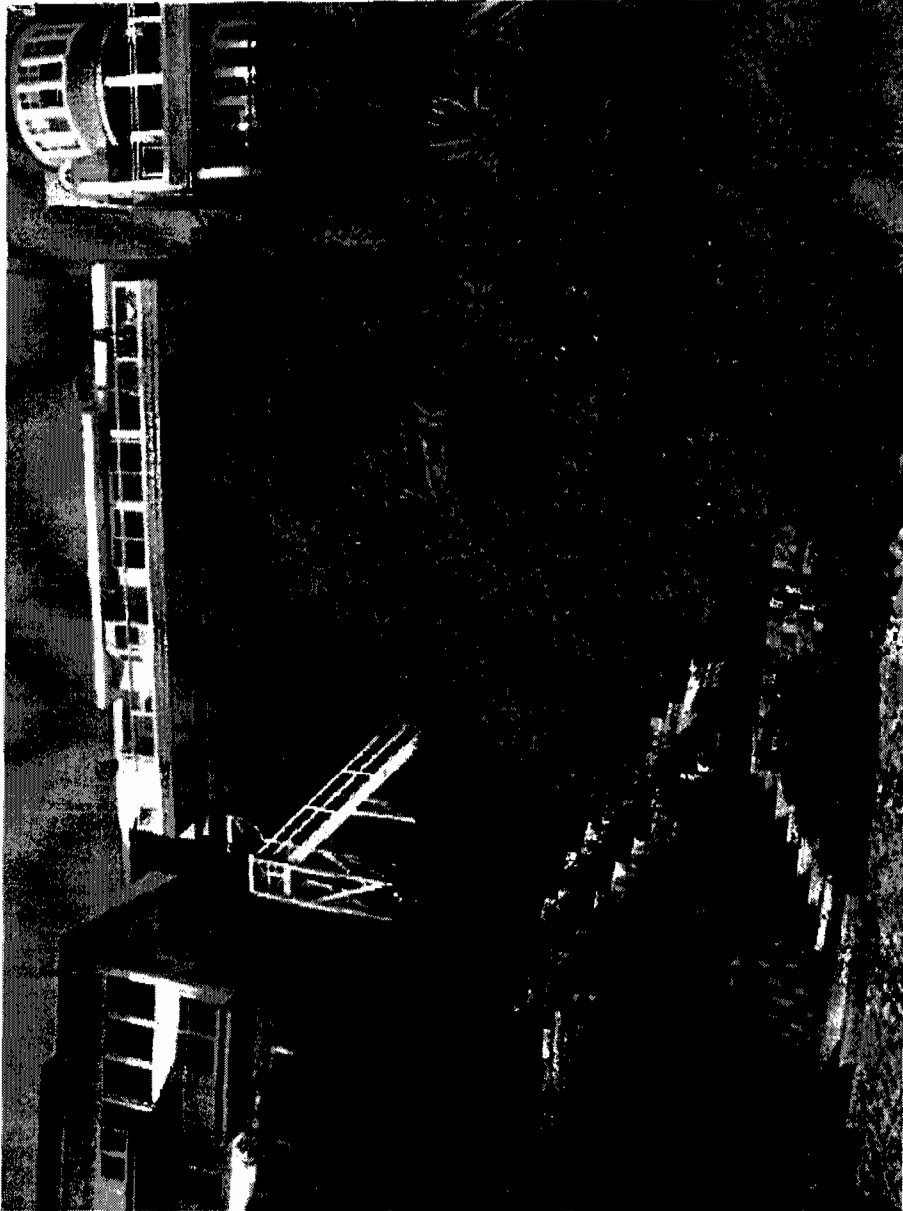
I went to the Corona del Mar State Beach today to photograph the coastal bluff above the beach and correct some statements in the staff report for this project issued for the June 11-13 Coastal Commission hearing, item Th 8a, which was postponed to the August hearing, now scheduled for Thursday, August 7, 2008, item 10b. The staff report recommends approval of "construction of a new deck that would be in alignment with surrounding approved decks" (page 1 of the staff report). The staff reports states "However, since the proposed deck would conform to the predominant line of development, it would not affect public views of the vegetated lower bluff face from the adjacent public beach..." (page 2 of staff report). This bluff face is considered a significant public view resource, being adjacent to the Corona del Mar State Beach.

The photographs below show how the surrounding properties do not have decks extending down to the level of the proposed new deck, which will be approximately at the level of the base of the white staircase halfway down the bluff face. If the new deck is approved, about half of the vegetated bluff will be removed (see Exhibit #4, page 2 of 2). The bluff face vegetation will be removed down to the level of the new deck. If this project is approved, it will set a precedent for the surrounding properties to remove the bluff from the upper level to the lower level, i.e. the middle half of the bluff will be lost, constituting a significant loss of vegetated bluff and a significant landform alteration.

COASTAL COMMISSION

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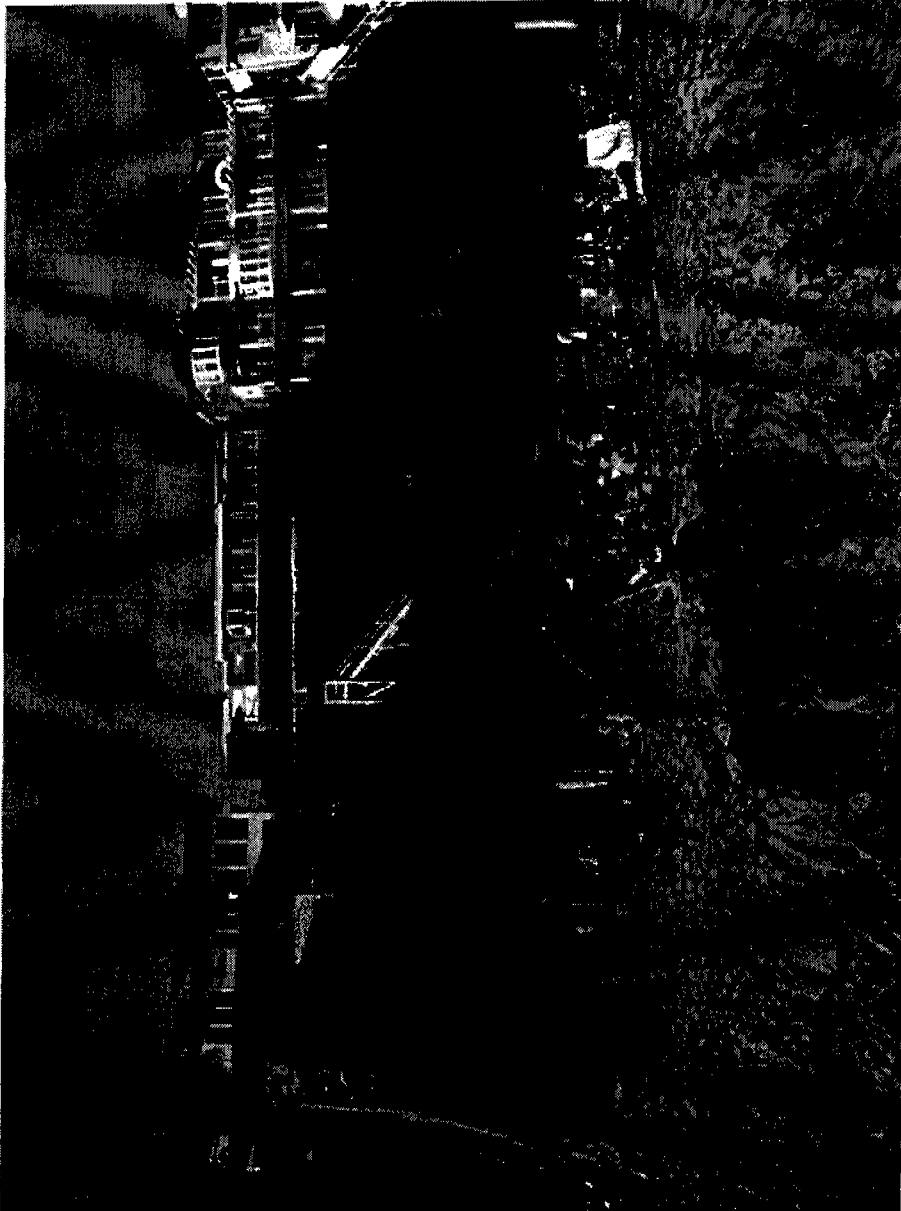
The Livoni House today. The new deck will be built at the bottom of the white staircase, obliterating about half of the existing bluff vegetation.

COASTAL COMMISSION

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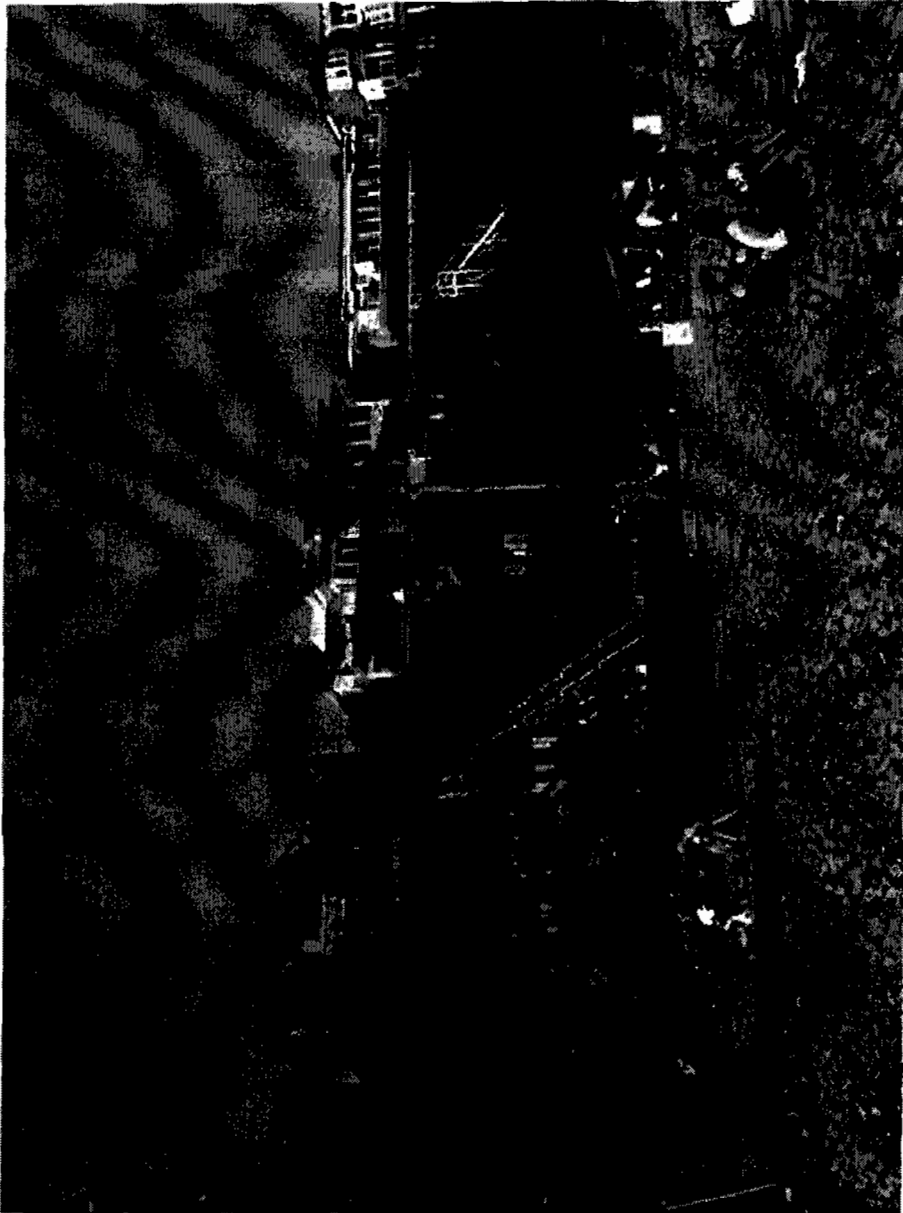


Note that the two properties on either side of Livoni do not have decks or other development on the middle and lower two-thirds of the bluff face. If a new deck is permitted at the bottom of the white staircase, the surrounding properties will want them too.

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7/21/2008



Livoni is on the right. The two houses to the left do not have development down to the level of the proposed new deck at Livoni (base of white staircase).

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7/21/2008



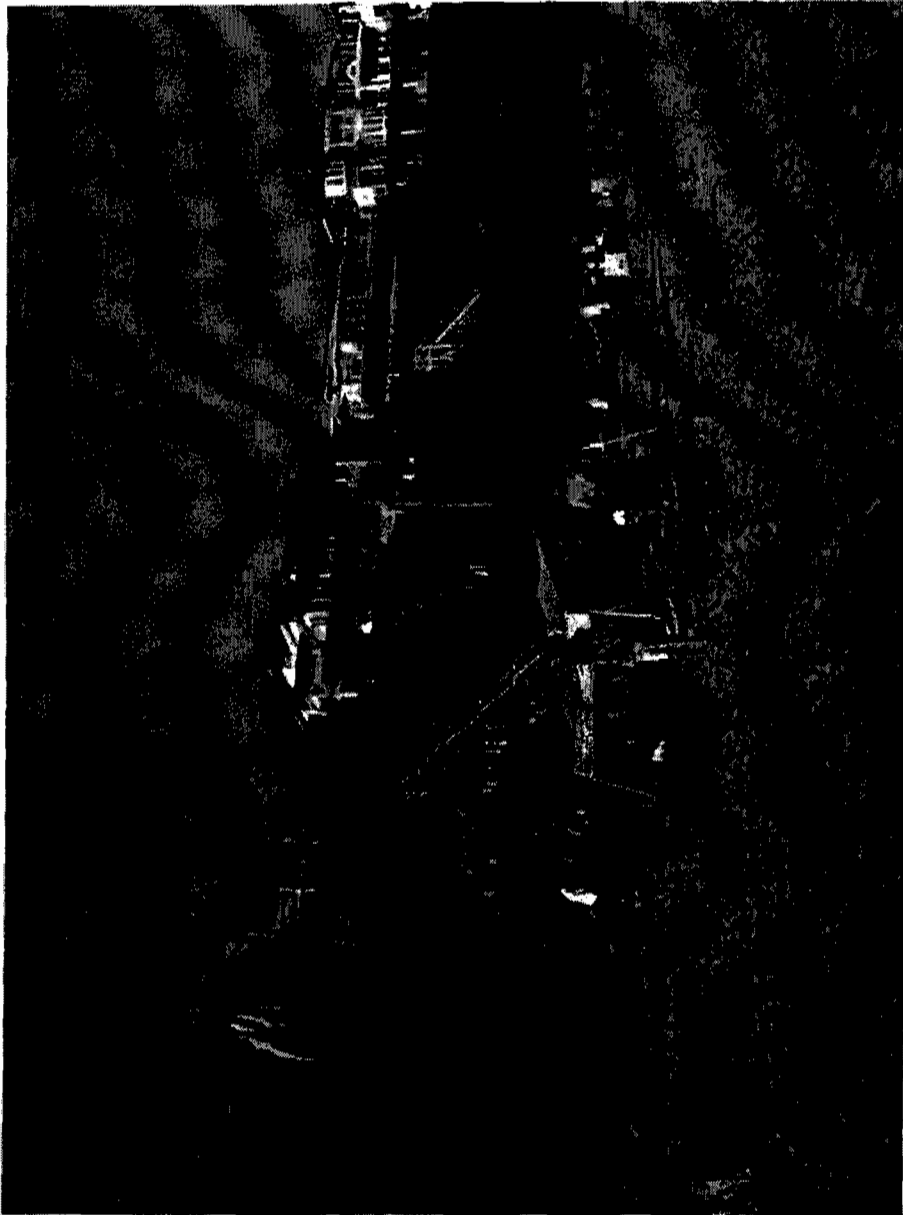
The houses at the left end of this coastal bluff do not have decks or development at the proposed new deck at Livoni.

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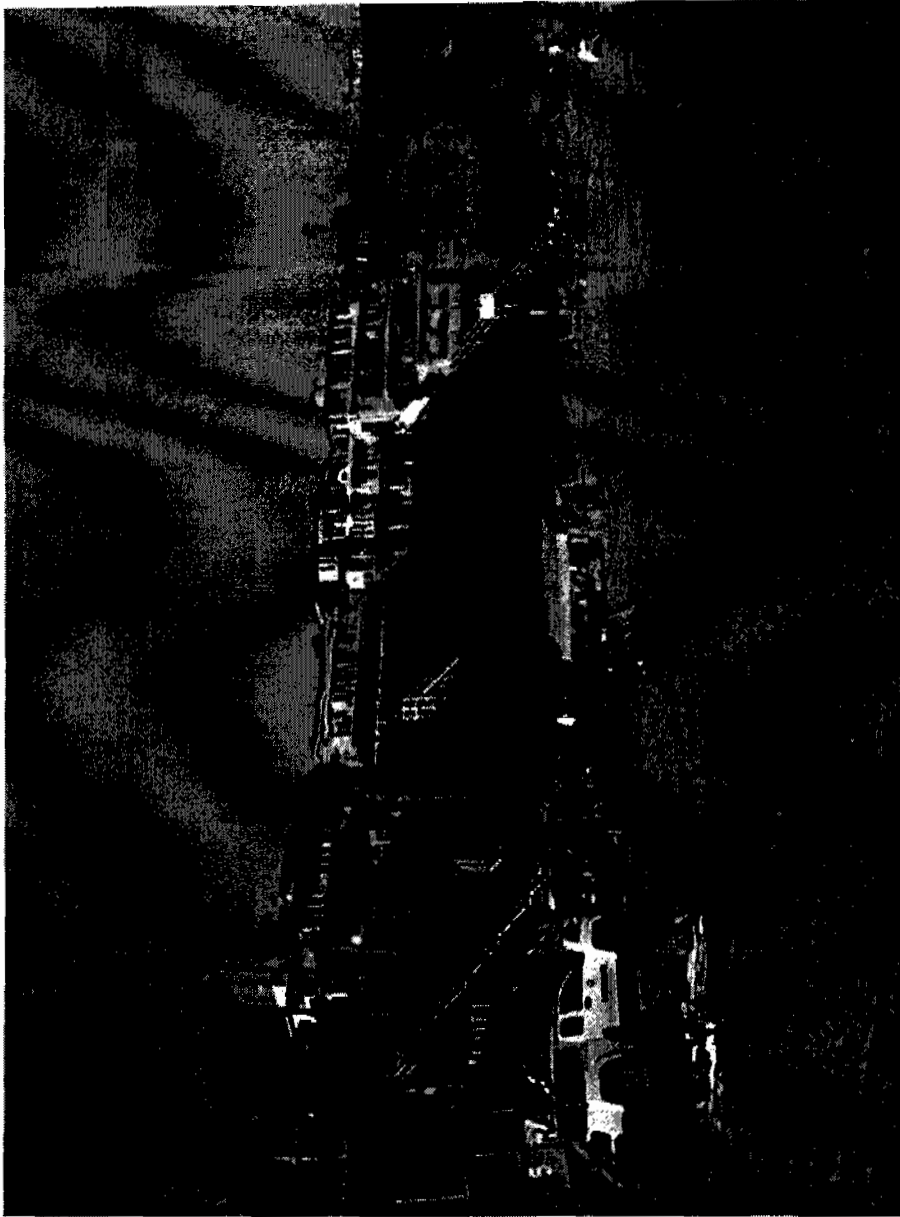
These 5 contiguous houses including the Livoni house (white staircase) do not have decks or development at the level of the proposed new deck at Livoni. The new deck at Livoni, if approved, will set a precedent for destruction of half of the remaining bluff face above Corona del Mar State Beach.

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Only the far two houses on the right now extend to the level of the new deck at Livoni. Approval of the new deck at Livoni assures the destruction of the rest of the bluff.

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7/21/2008

COASTAL COMMISSION

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FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCY S. STACEY
KIMBERLY RIDLE

LAW OFFICES OF
GAINES & STACEY
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

Th10b

July 25, 2008

Commissioners
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: Application No. A-5-07-327
Livoni Second Family Limited Partnership
3335 Ocean Boulevard, Newport Beach

Dear Commissioners:

On Thursday, August 7, 2008, I will appear before you on behalf of the Livoni Second Family Limited Partnership with regard to Application No. A-5-07-327 for the construction of a deck and the removal of unpermitted stairway and retaining walls, regrading of slopes to natural contours and placement of an at grade path to beach at the single family home at 3335 Ocean Boulevard in the Corona del Mar area of Newport Beach. The staff has recommended approval of the deck and removal of the stairway and regrading but denial on the placement of the at grade path to the beach. The Applicant asks the Commission to approve the at grade path as well as the other development.

Enclosed with this letter is a booklet of photographs and drawings prepared by the project architect, Brion Jeannette. These photographs and drawings illustrate the facts which are set forth in this letter. The photographs and drawings are referenced by page number and labeled to explain their significance.

The Applicant's home was previously owned by Kenneth Battram. Mr. Battram had a stairway to the beach which had existed prior to 1972. However, without obtaining a permit, Mr. Battram demolished those stairs and constructed the stairs which are presently existing as well as other beach improvements. The Commission pursued a violation against Mr. Battram and an agreement was made under which the beach improvements were removed and Mr. Battram had the opportunity to seek a permit for stairs to the beach.

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Mr. Battram filed Application No. 5-04-214 with the Commission which asked for the existing stairs with some modifications. The matter was heard on October 13, 2005. At the conclusion of the hearing, but prior to the vote, the Application was withdrawn with the suggestions by Commissioners that a modified stair or path of some sort be worked out between Mr. Battram and the Staff.

After withdrawing his application, Mr. Battram passed away. His heirs sold the property to the Livoni Second Family Limited Partnership who are the Applicant today. Livoni hired Brion Jeannette Architecture to design improvements to the house as well as a revised access to the beach. Brion Jeannette had designed a deck and access stair for Circle at 3415 Ocean Boulevard (two doors away) which were approved on October 13, 2005, by the Commission in Application No. 5-05-095 (originally approved for Circle's predecessor in Application No. 5-01-112 (Ensign)). The path which Jeannette has designed for Livoni is based upon the design of forest trails in the John Muir Wilderness (see booklet photograph 12). Although the Staff recommended approval of the Circle access stair, the Staff has recommended denial for the Livoni access path.

The enclosed booklet of photographs and drawings which demonstrate the following facts:

- Every house in the neighborhood where the Livoni property is located has a visible access path from the home at the top of the bluff to the beach. (See booklet cover and pages 3 - 9.)
- The Livoni property had a stairway from the house to the beach prior to the enactment of the Coastal Act in 1972. (See booklet pages 1, 2.)
- The Commission approved an access path for Circle two doors away at 3415 Ocean Boulevard. (See booklet pages 8, 11.)
- The proposed access path for Livoni is less visually obvious and less of an alteration of natural landforms than the Commission approved in Circle. (See booklet pages 8, 11, 12.)

The Staff bases its recommendation for denial on three provisions of Chapter 3. First, the Staff relies on Section 30210 concerning public access. Second, the Staff relies on Section 30240(b) concerning development adjoining public recreation areas. Third, the Staff relies on Section 30251 concerning visual quality. The Findings proposed in support of denial are found at pages 30-36 of the Staff Report. On each of these statutory provisions, the Staff Report and the Commission reached the opposite conclusion when approving the access path for Circle. There is no material difference between the two proposals.

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1. **There is No Basis for the Commission to Find Possible Prescriptive Rights or that Livoni's Access Path would Interfere with Such Nonexistent Rights.**

The Staff recommendation concerning Section 30210 relies upon an unsupported postulation that there is a public right of access onto the Livoni property and that the private beach access path will somehow "intimidate" the public from using the Livoni property on which this unproven right of access is claimed to exist. No evidence supports either conclusion.

First, the Livoni property includes about 25 feet of sandy beach from the toe of the bluff. There is no evidence of public use of the Livoni property. The Staff Report postulates, without evidence, that

"... the privately owned sandy beach is likely used by the public in the same fashion it uses the publicly owned beach area. Thus, there may be a right of access acquired through use of the privately owned sandy beach area on the lot; although there has been no judicial determination regarding the presence of such rights. Interference with public access rights acquired through use would be inconsistent with Section 30211 [sic] of the Coastal Act." Staff Report, page 31.

The Coastal Commission cannot base the denial of a permit on the unproven possibility that public rights "may exist". When the Commission denied a gate on a road based upon the possibility of public rights in *LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770; 60 Cal.Rptr.3d 417, modified, 152 Cal.App.4th 427, the Court of Appeal overturned the denial of a permit based upon speculation of "public rights". The Court wrote as follows:

"Inherent in one's ownership of real property is the right to exclude uninvited visitors. (See Black's Law Dict. (5th ed. 1979) p. 1095 [definition of property]; *General Dynamics Corp. v. County of L. A.* (1958) 51 Cal.2d 59, 71 [330 P.2d 794] (conc. opn. of McComb, J.)) The Commission's decision would deny LT-WR that right. In precluding LT-WR from barring the public from traversing its property on the theory that potential exists to establish prescriptive rights for public use of this road," the Commission in effect decreed the existence of such prescriptive rights.

We recognize one of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas. Public Resources Code section 30210 provides: "In carrying out the requirement of Section 4 of Article X of the California Constitution [access to navigable waters], *maximum access*, which shall be

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conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (*Italics added.*) However, the Commission is not vested with the authority to adjudicate the existence of prescriptive rights for public use of privately owned property. In denying LT-WR a permit for the gates and no trespassing signs due to the possibility of "potential" prescriptive rights, was speculative and properly was overturned by the trial court." 151 Cal.App.4th at 806.

In Livoni's case, the Staff Report again engages in speculation about the possibility of public rights which "the Commission is not vested with the authority to adjudicate the existence of" such rights. Therefore, the Commission must operate under the legal presumption that Livoni, as the owner of the property, has the right to exclude the public from his property.

Livoni, however, is not proposing any improvements on the sandy beach. The improvement to which the Staff Report objects is a path from his home to the beach. There is no evidence that anything which Livoni proposes would interfere with any public rights. The Staff Report goes on to speculate that the grade level path would deter the public from using Livoni's property, a right whose existence the Commission has no legal authority to declare. Even this speculation of a deterrent effect is not supported by any evidence.

Indeed, the Staff Report effectively denies its own conclusion. There has been a stair on the Livoni property continuously since before 1972. The Staff Report claims that the sandy beach portion of the Livoni property is used by the public anyway, despite the claimed "deterrent effect" of the existing and prior stairways. Then the Staff Report denies exactly what was speculated by claiming that the existence of the stairway or path itself deters precisely the public use which the Staff Report claims had been taking place.

2. **The Homes Adjoining Corona Del Mar State Beach All Have Access Paths to the Beach and the Access Paths Do Not "Significantly" Degrade the Public Recreational Use of the Beach.**

The second rationale for denial is alleged inconsistency with Public Resources Code §30240(b) which requires that development adjoining recreation areas be sited and designed to prevent impacts which would "significantly" degrade those areas. The Staff Report claims that the grade level path would "significantly" degrade Corona del Mar State Beach. There have been homes, stairs and paths adjoining Corona del Mar State Beach at every house for almost 40 years (see booklet pages 1, 2, 3). The Staff Report agrees that there was a stairway at Livoni's home since before 1972. Yet

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Corona del Mar State Beach remains one of the most popular beaches in Orange County. Nothing in the private development of private property adjoining the beach has "significantly" degraded the public recreational use of Corona del Mar State Beach.

Booklet pages 4-10 show each house described at pages 37 to 43 of the Staff Report in detail. The path approved by the Commission for Circle is shown at booklet page 8.

3. **The Livoni Path would not Detract from the Visual Quality of the Area.**

The third rationale for denial is alleged inconsistency with Public Resources Code §30251 concerning visual quality. The Staff Report claims that the grade level path will be visually intrusive. But the Staff recommended approval and the Commission approved the path at 3415 Ocean Boulevard, closer to Inspiration Point and more visually prominent than proposed by Livoni. The Staff Report also fails to give any credit for the fact that a stairway had existed on the Livoni property since before 1972. Thus, the Livoni property has a pre-Coastal right to gain access from the house to the beach. Livoni is prepared to modify the access path in a manner which is the least alteration to the bluff and the least visually prominent of any access stair or path in the neighborhood.

4. **There are No Detrimental Cumulate Impacts as Every Lot is Developed and Every Home Has an Access to the Beach.**

The Staff Report claims that approval of the access path would have detrimental cumulative effects. There can be no cumulative effects when every other house already has an access path or stairs. Livoni would be the only house along Ocean Boulevard between Inspiration Point and the beach parking lot which has no access to the sandy beach.

5. **Livoni is Not Obligated to Dedicate His Property to Public Use and the Commission Cannot Require Him to do So.**

There is one difference between the Circle decision and Livoni. On Circle's property, the prior owner, Ensign, made an offer to dedicate the sandy beach area to the State. Thereafter, the Commission approved an access path for Ensign in Permit No. 5-01-112. On April 21, 2008, Teresa Henry telephoned Brion Jeannette and stated that if Livoni would make a similar "voluntary" offer of the sandy beach on his property, that the Staff would recommend approval of the access path. Livoni declined to make the suggested offer and the Staff Report thereafter recommended denial.

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The suggestion that a "voluntary" offer of dedication would garner a favorable treatment on the Livoni application is a back door violation of the decision of the United States Supreme Court in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 97 L.Ed.2d 677, 107 S.Ct. 3141. *Nollan* prohibits exacting interests in property from persons seeking to build unless there is a burden imposed on the public which the exaction would relieve. No such burden arises from Livoni's home or path.

Therefore, the fact that there is an offer of a public access easement going to the toe of the slope on Circle's property and no such offer on Livoni's property is not a distinction that justifies approval of access for Circle and denial for Livoni. The Commission cannot find that the alleged public access impacts, public recreational impacts and visual impacts do not arise for Circle and then find that they do arise for Livoni.

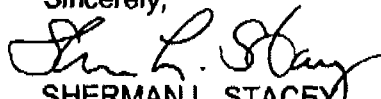
6. Modifications to Special Conditions.

Other than Special Conditions 2A and 10, the Special Conditions recommended for approval of the remainder of the development would not need to be modified. The Special Conditions would apply equally to the access path. Special Condition No. 2A should be modified to eliminate the language at pages 7-8 of the Staff Report which reads: "No new private pathway seaward of the line identified above is allowed." Special Condition No. 10 should be modified to allow the condition compliance for item (1) (removal of stairs) to be 60 days, and for items (2) and (3) grading and landscaping) and to be within 60 days of the completion of the deck. Construction of the deck will make the regrading of the slope and the landscaping difficult until the deck is completed.

7. Conclusion.

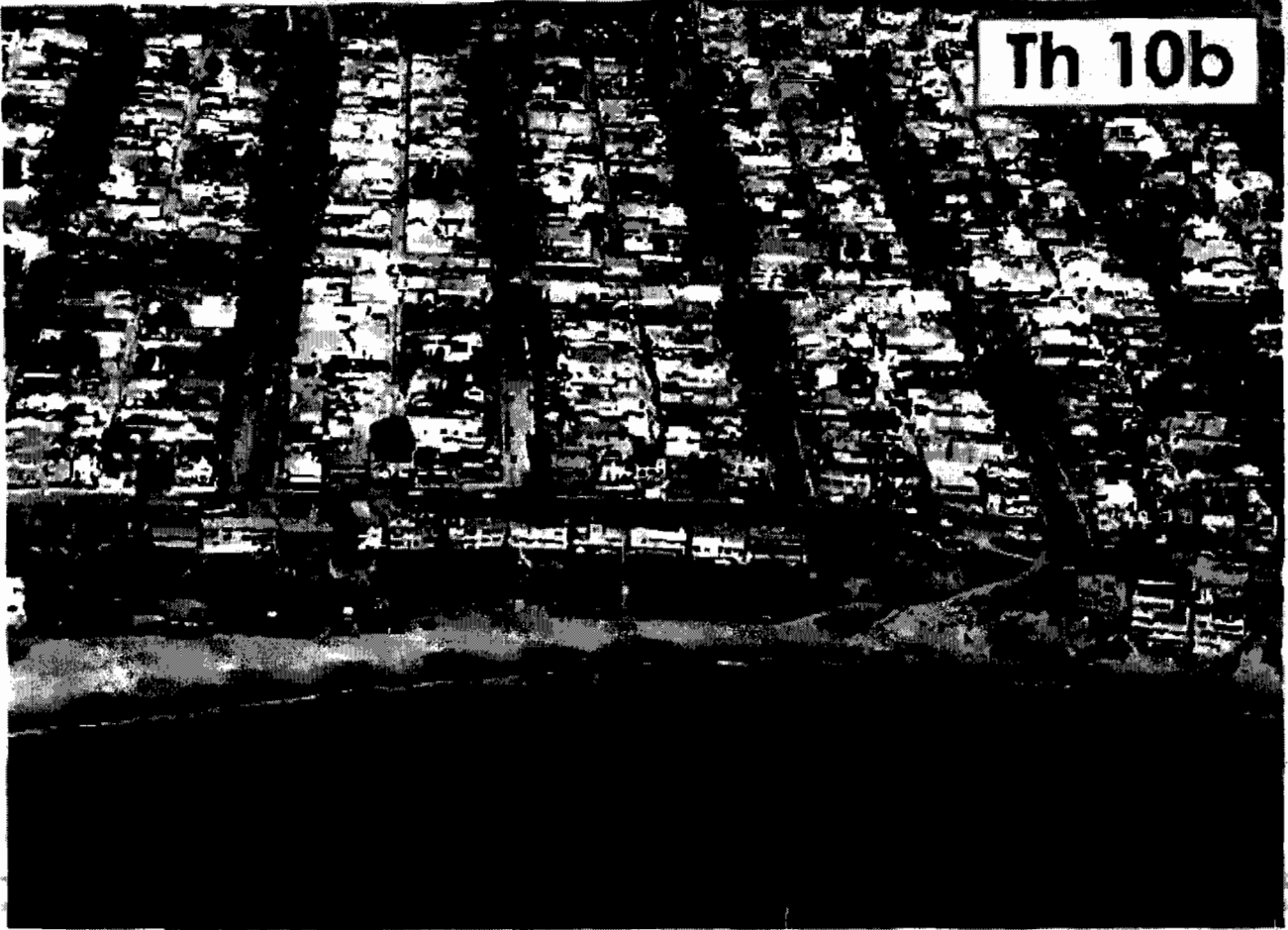
The Commission should approve the requested access path and should modify the motion set forth in the Staff Report for full approval subject to modified conditions as set forth above.

Sincerely,


SHERMAN L. STACEY

cc: All Commissioners and Alternates
Commission Office - Long Beach
Jerry Livoni
Brion Jeannette

Th 10b



REBUTTAL TO STAFF REPORT

AUGUST 7, 2008
ITEM NO: Th 10b

BRIEFING BOOKLET FOR:
LIVONI RESIDENCE
3335 OCEAN BLVD, CORONA DEL MAR

CDP APPLICATION NO: 5-07-327

Brion Jeannette Architecture

470 Old Newport Boulevard • Newport Beach, CA • 92663 • Tel 949.645.5854 • Fax 949.645.5183

www.customarchitecture.com

MEMBERS AIA & NCARB • ENERGY CONSCIOUS DESIGN

COASTAL COMMISSION

EXHIBIT # B
PAGE 7 OF 19

PG. 18 OF 31



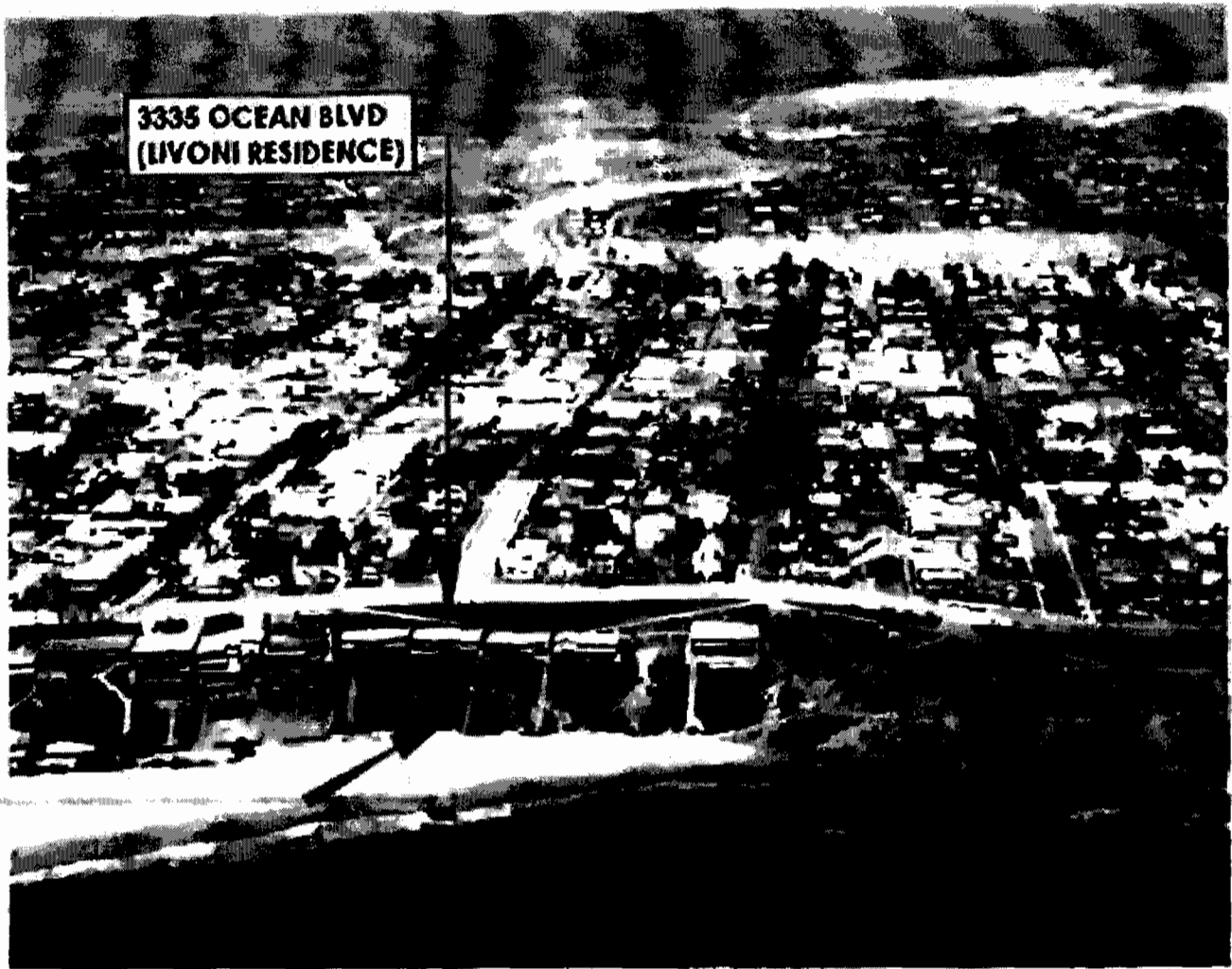
- 1972 AERIAL PHOTO SHOWING THE PRE-COASTAL STAIR TO THE BEACH LOCATED ALONG THE SOUTHEASTERN SIDE OF THE PROPERTY

COASTAL COMMISSION

EXHIBIT # B
PAGE 8 OF 19

1

PG. 190P31



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CALIFORNIA COASTAL RECORDS PROJECT
WWW.CALIFORNIAOCCASIONE.ORG

- 1972 COASTAL PHOTO SHOWING THE PRE-COASTAL STAIR TO THE BEACH LOCATED ALONG THE SOUTHEASTERN SIDE OF THE PROPERTY

COASTAL COMMISSION

EXHIBIT # B
PAGE 9 OF 19

2

PG. 20 OF 31

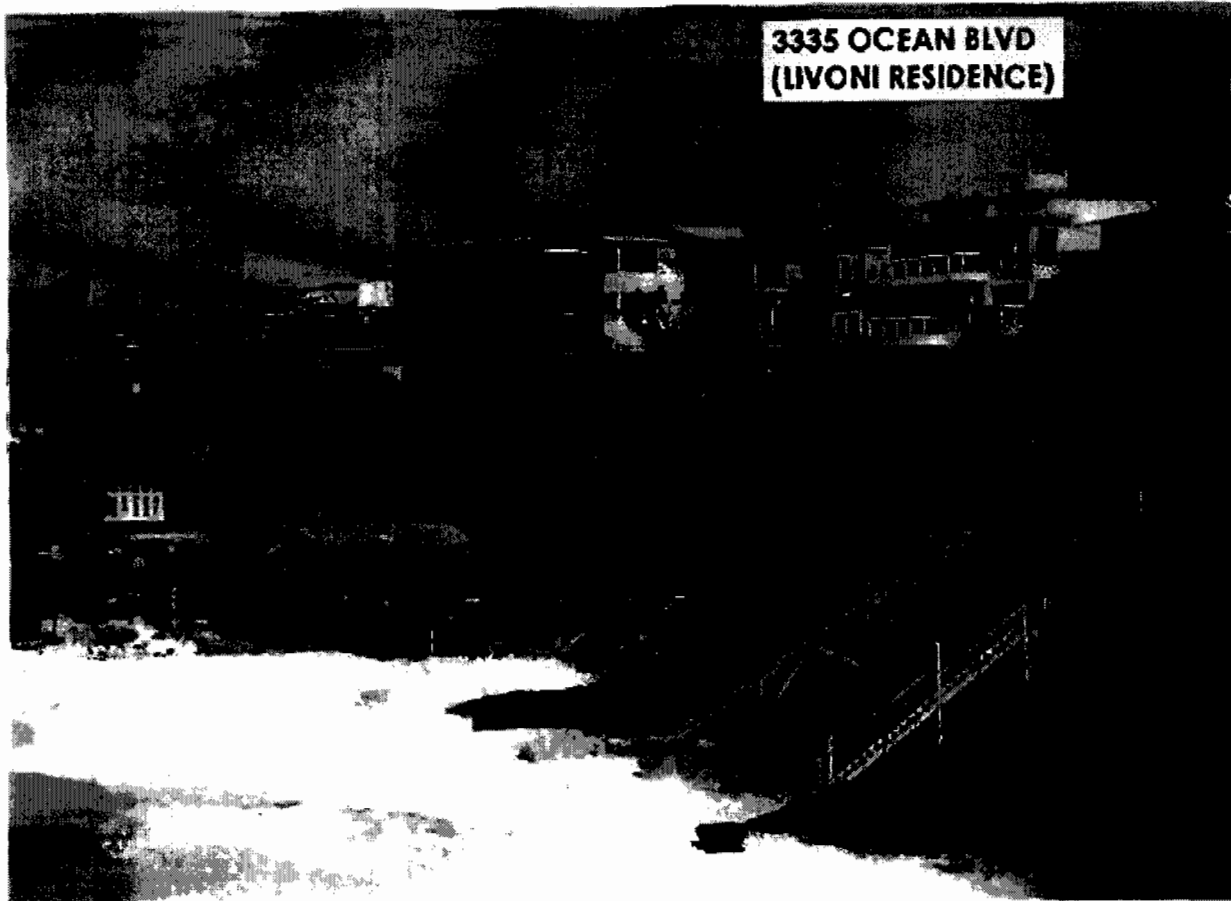


Photo taken by architect prior to 1985 relocation.

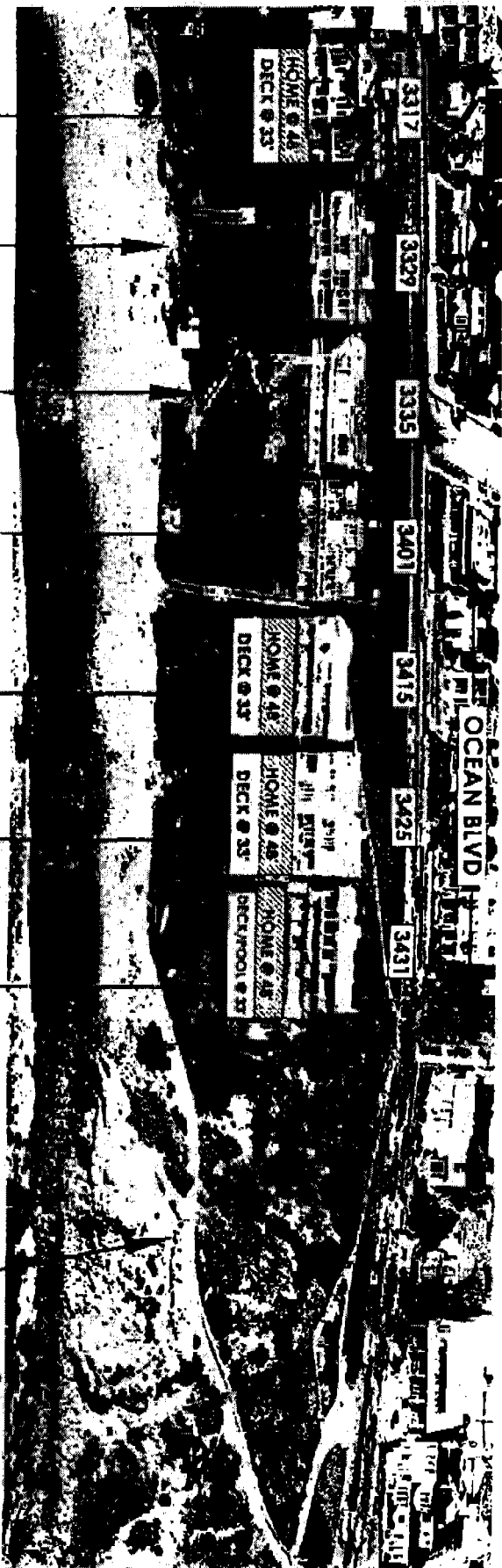
- HISTORICAL PHOTO SHOWING THE PRE-COASTAL STAIR TO THE BEACH PRIOR TO ITS RELOCATION c. 1985

COASTAL COMMISSION

EXHIBIT # B
PAGE 10 OF 19

3

PG. 21 OF 31



PALERMO RESIDENCE
CDP #5-05-328
APPROVED (5/06)

MCNAMEE RESIDENCE
PRE-COASTAL STAIR

BUTTERFIELD RESIDENCE
CDP #5-01-199
APPROVED (12/01)

CIRCLE RESIDENCE
CDP #5-05-095-A1
APPROVED (1/07)

HALFACRE RESIDENCE
CDP #5-03-100
APPROVED (1/05)

TAMAR RESIDENCE
CDP #5-02-203-A1
APPROVED (3/05)

LIVONI

- RECENT APPROVALS HAVE THREE AND FOUR LEVELS WITH DECK BELOW
- ALL PROPERTIES ENJOY ACCESS TO THE BEACH FROM THEIR REAR DECKS

ALL THREE RESIDENCES
ARE IN CONSTRUCTION
OR RECENTLY
COMPLETED

4

COASTAL COMMISSION

EXHIBIT # B
PAGE 11 OF 19

INSPIRATION
POINT

Pg. 22 of 31

CIRCLE RESIDENCE
CDP NO. 5-05-095-A1

LIVONI RESIDENCE
CDP NO. 5-07-327



VIEW FROM INSPIRATION POINT
LOOKING TOWARDS THE NORTHWEST

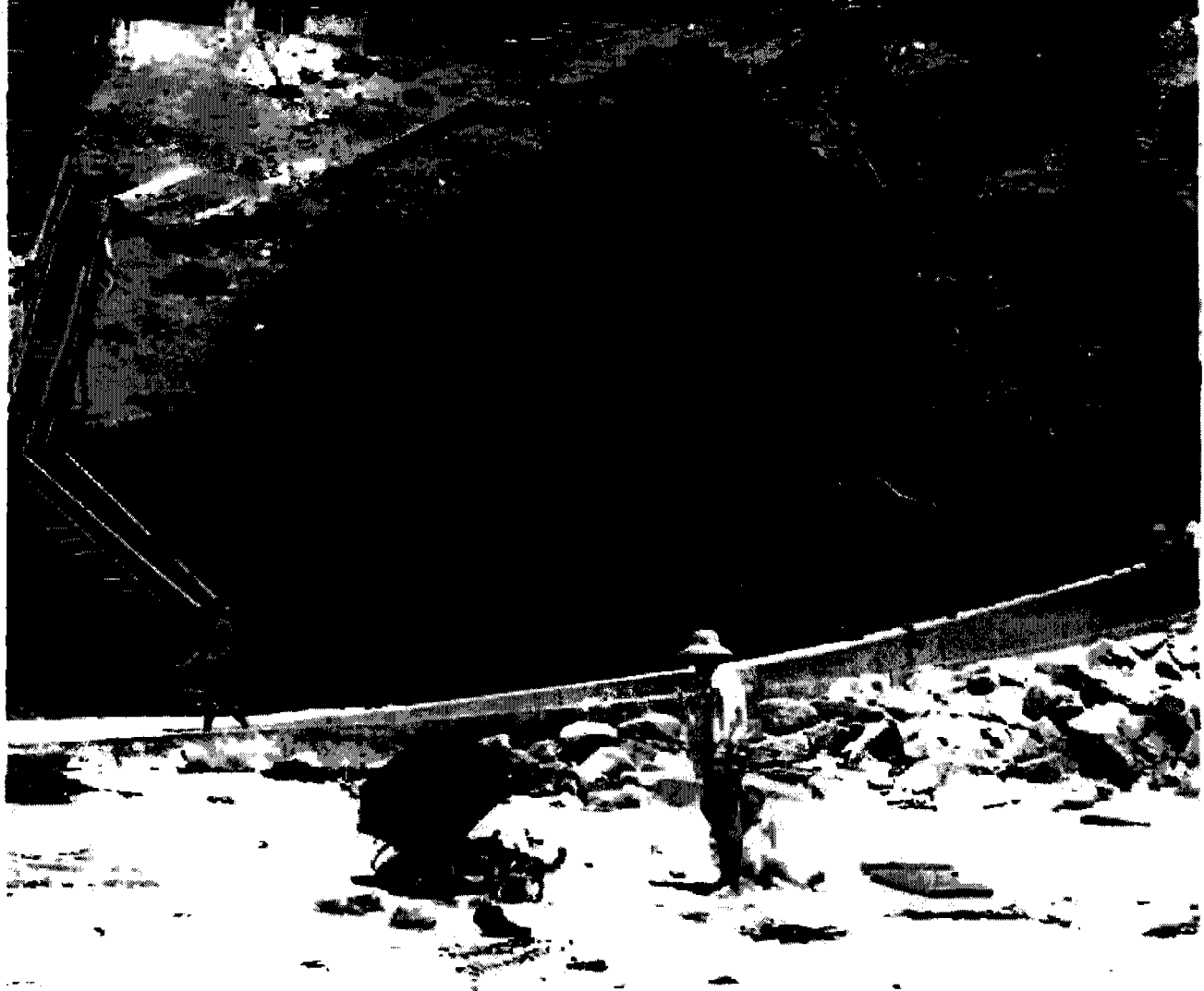
COASTAL COMMISSION

EXHIBIT # B
PAGE 12 OF 19

5

PG. 23 OF 31

**RESIDENCE HAS BEEN DEMOLISHED;
NEW RESIDENCE IS UNDER CONSTRUCTION**



TABAK - 3431 OCEAN BLVD
STAIR TO BEACH

COASTAL COMMISSION

EXHIBIT # B
PAGE 13 OF 19

6

PL-24 OF 31



COASTAL COMMISSION

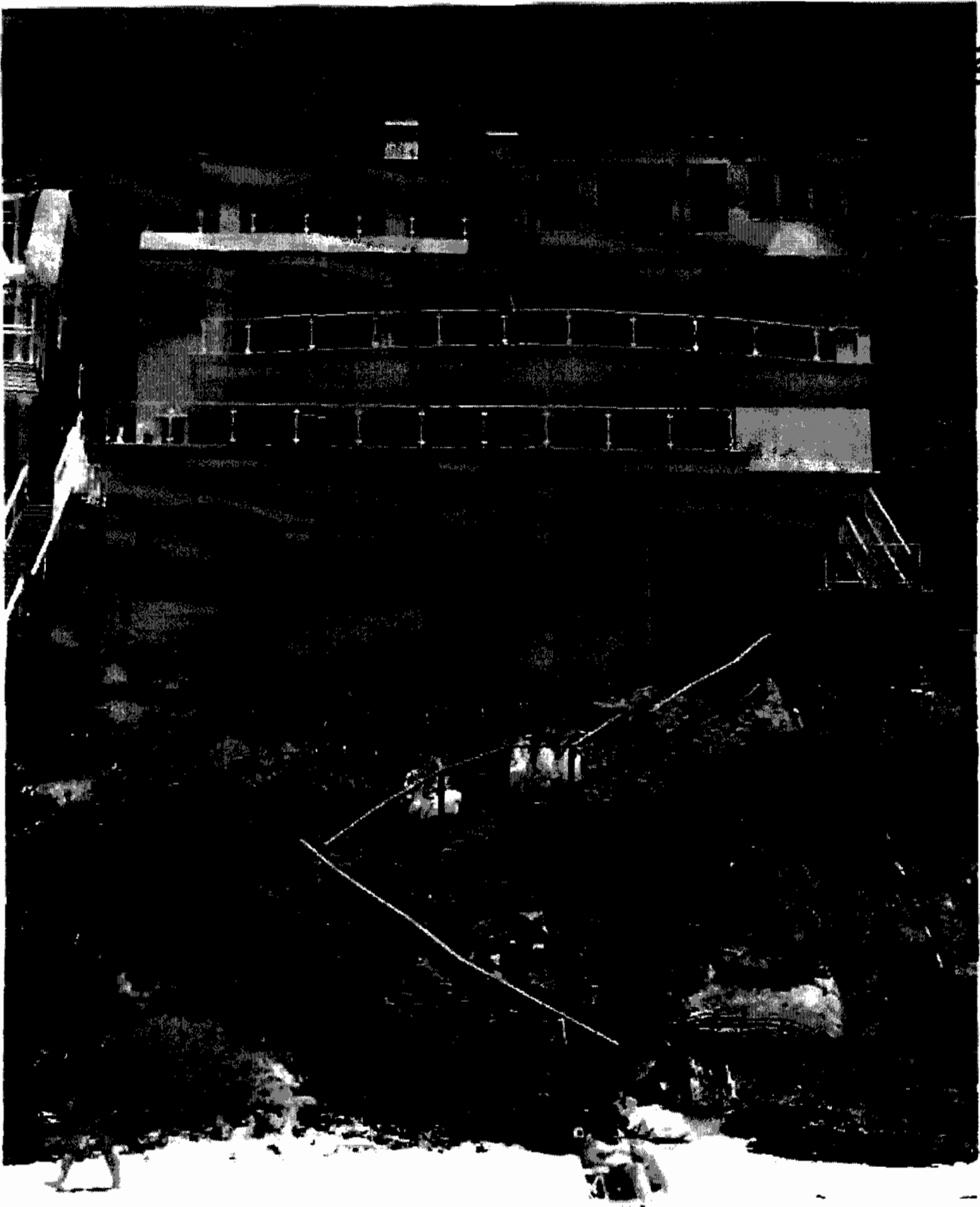
EXHIBIT # B
PAGE 14 OF 19

HALFACRE - 3425 OCEAN BLVD

HAS USE OF 3431 OCEAN BLVD's (TABAK) STAIR TO BEACH

7

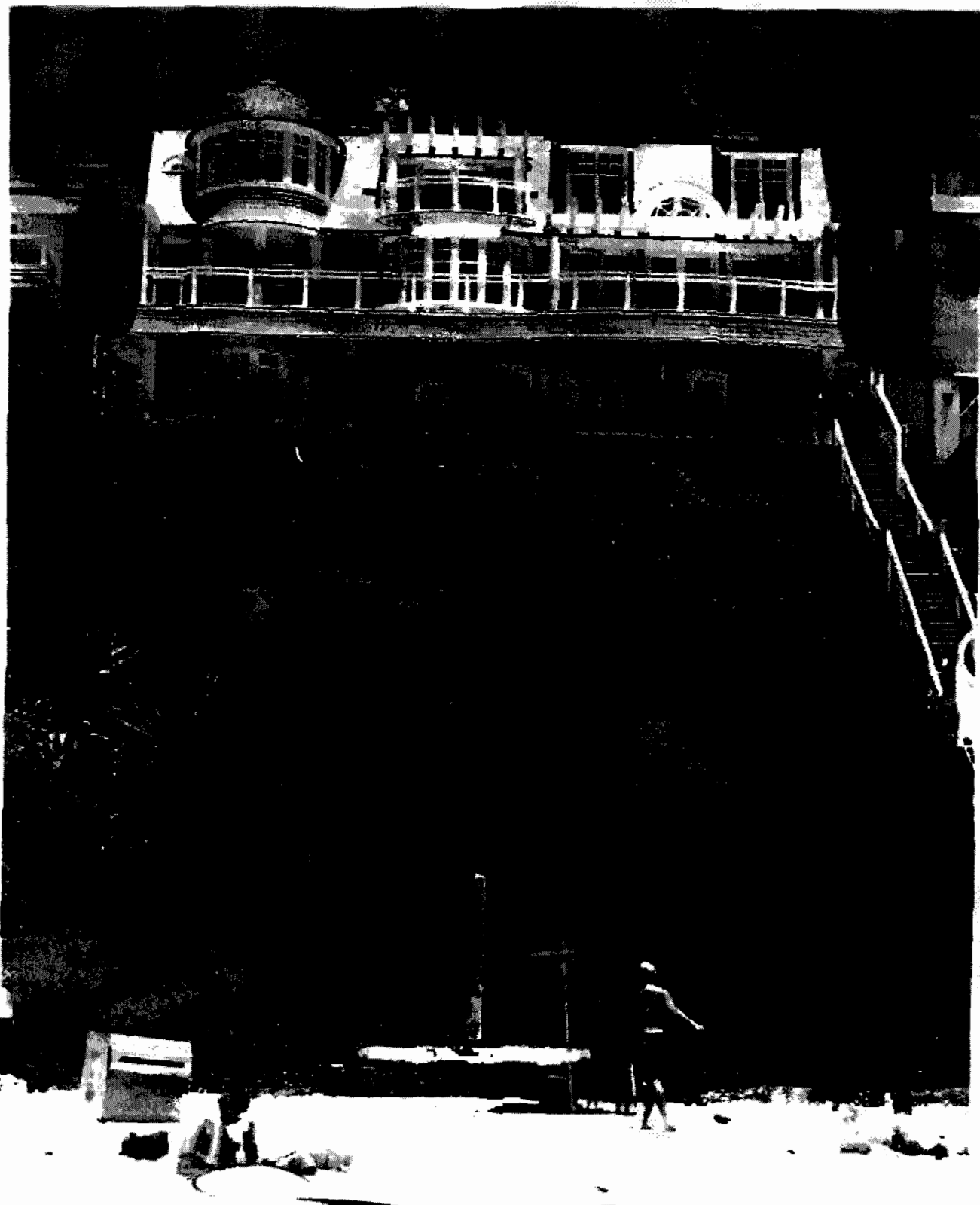
PG. 25 OF 31



CIRCLE (FORMERLY ENSIGN) - 3415 OCEAN BLVD

**STAFF RECOMMENDED APPROVAL OF SWITCHBACK
BLUFF FACE STAIRWAY PER CDP NO. 5-05-095-A1**

8



BUTTERFIELD - 3401 OCEAN BLVD
STAIR TO BEACH

COASTAL COMMISSION

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9

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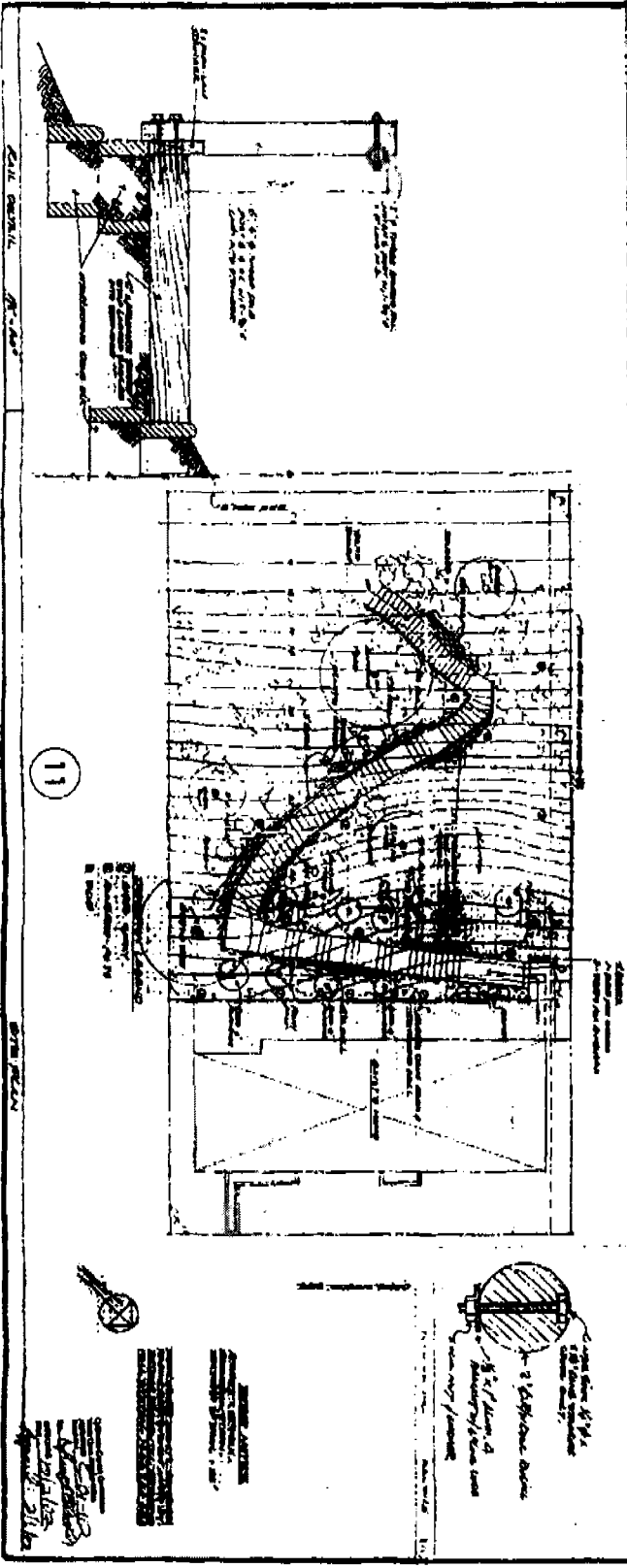
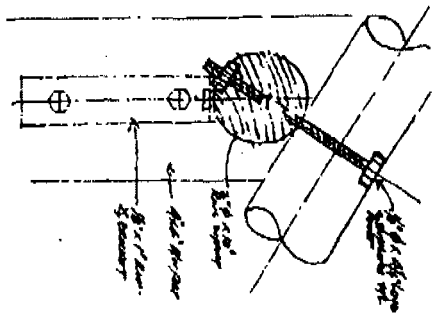
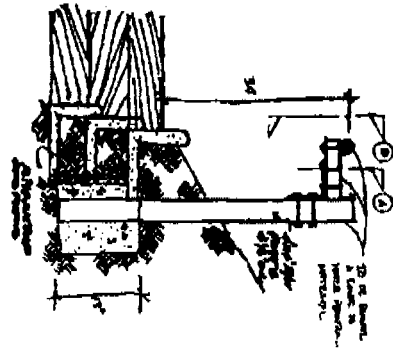
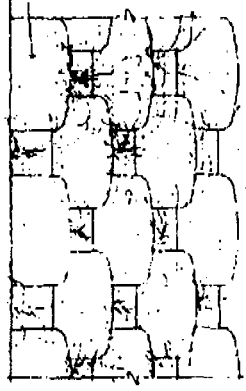
LIVONI - 3335 OCEAN BLVD

**PROPERTY IN QUESTION- ALL EXISTING BLUFF FACE
IMPROVEMENTS TO BE REMOVED**

10

EXHIBIT # 8
PAGE 10 OF 19

ENSIGN CIRCLE
3401 OCEAN BLVD. SWITCHBACK BLUFF FACE STAIRWAY PER CDP NO. 5-01-112 (ENSIGN) & 5-05-095-A1 (CIRCLE)



NO.	DATE	BY	REVISION
1	11/29/83		

HILLSIDE TRAIL FOR CURT W. ENSIGN RESIDENCE

111 OCEAN AVENUE, TORRENTIA BEACH, CALIFORNIA



NO.	DATE	BY	REVISION



- THE PROPOSED SCRATCH TRAIL IS BASED ON JOHN MUIR WILDERNESS TRAILS

COASTAL COMMISSION

EXHIBIT # B
PAGE 19 OF 19

12

COASTAL COMMISSION

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

EXHIBIT # C
PAGE 1 OF 1

Name or description of the project: Thursday 10.b. Application No. 5-07-327 (Livoni Second Family Limited Partnership, Newport Beach)

Time/Date of communication: 10 am, August 1, 2008

Location of communication: San Diego


Person(s) initiating communication: Gabriel Solmer, Marco Gonzalez, Leslie Gaunt

Person(s) receiving communication: Pat Krueer

Type of communication: Meeting

Speakers urged approval of the staff recommendation to eliminate the lower pathway to the beach, but opposition to the staff recommendation to approve the third deck with restroom as being contrary to Section 30251 of the Coastal Act.

Date: August 1, 2008



Pat Krueer

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South Coast Region

AUG 4 2008

CALIFORNIA
COASTAL COMMISSION

5

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE

LAW OFFICES OF
GAINES & STACEY
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)219-2000
FAX
(949)219-9908

September 8, 2008

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South Coast Region

SEP 8 - 2008

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
200 Oceangate, #1000
Long Beach, CA 90802

Re: Request for Reconsideration:
Application No. A-5-07-327
Livoni Second Family Limited Partnership
3335 Ocean Boulevard, Newport Beach

Dear Commission:

On behalf of the Livoni Second Family Limited Partnership ("Livoni"), this letter constitutes a Request for Reconsideration of the Commission decision of August 7, 2008, to approve in part with Special Conditions and to deny in part, Application for Permit No. A-5-07-327 for the construction of a deck and the removal of a stairway and retaining walls, regrading of slopes to natural contours and placement of an at grade path to the beach for the single family home at 3335 Ocean Boulevard in the Corona del Mar area of Newport Beach. In accordance with California Code of Admin. Regs., Title 14, §13055(b)(1)(A), I am enclosing a check in the amount of \$500.00 for the filing fee. I am also enclosing a set of stamped, addressed envelopes for notice of the future hearing.

1. Statutory Basis for Reconsideration.

Public Resources Code §30627 provides for the reconsideration by the Coastal Commission of denials and terms and conditions imposed on permits. Subsection (a) of §30627 provides that reconsideration may be granted as to the following:

- (1) Any decision to deny an application for a coastal development permit.

5-07-327-R
Livoni
Exhibit 2
p. 1 of 8

- (2) Any term or condition of a coastal development permit which has been granted.

This Request for Reconsideration is directed both to the decision to deny that portion of the Permit Application which sought to construct a beach access pathway that descends the bluff face from the proposed deck to the beach portion of the Applicant's property, and (2) to the imposition of the following Special Conditions on the approval of the remaining improvements:

1. Special Condition 2A which prohibits any private pathway or other development (other than restoration) seaward of the approved development.
2. Special Condition 10 which requires that the certain existing improvements be removed and other development be implemented within certain time limited time frames.

Subsection (b) of Public Resources Code §30627 provides that a basis for a request for reconsideration shall be that "an error of fact or law has occurred which has the potential of altering the initial decision." In this circumstance, the Commission committed numerous errors of fact and law in reaching the decision both to partially deny the Permit Application and to impose the objectionable Special Conditions. The findings that were adopted in support of that decision are based upon errors of fact and law and are without merit.

2. Prior Judicial Evaluation of Similar Errors of Fact and Law in Similar Circumstances.

In support of this application I have enclosed a copy of the Commission's decision on January 9, 2008 to approve Permit No. 5-04-324 (Bredesen) for the construction of a path down a bluff and retaining walls and a patio at the bottom of the bluff at a single family residence at 437 Paseo de la Playa in Torrance. This Commission did not reach this decision in its initial action. Rather, on June 6, 2005, the Commission adopted a Staff Recommendation on Permit No. 5-04-324 to deny the permit, making recommended findings substantially similar to those recommended by the Staff and adopted by the Commission in the present case. The Commission's decision was reached only because the Commission was found by Superior Court Judge Dznitra Janavs to have abused its discretion in denying Permit No. 5-04-324. Judge Janavs issued a Writ of Mandate and adopted a Statement of Decision in support of her judgment which effectively ordered the Commission to approve the Bredesen permit. (A copy of Judge Janavs Statement of Decision is attached to the Bredesen Staff Report as Exhibit 11.)

Before getting into the details of the Livoni request, a brief, side-by-side comparison of the development approved by the Commission for Bredesen after Judge Janavs Writ of Mandate and the development denied by the Commission to Livoni appears below.

<u>Physical characteristic</u>	<u>Bredesen</u>	<u>Livoni</u>
Coastal Bluff	Yes	Yes
Pathway to Beach	Yes	Yes
State Beach at Base of Bluff	Yes	Yes
Single Family Neighborhood	Yes	Yes
Upper & Lower elevation of Bluff	97' - 17'	33' - 15'
Materials	Concrete, Wood, Flagstone	Soil
Handrail	Yes	No
Retaining Wall	Yes	No
Patio at Base of Bluff	Yes	No
Other existing pathways	Yes	Yes
Approved by Commission	Yes	No

This comparison of both Bredesen and Livoni demonstrates the inconsistent application of the law. Bredesen and Livoni occupy similar properties located on a bluff with a path in a developed neighborhood of single family homes abutting a State Beach. The location of the path approved for Bredesen was a substantially higher bluff. The neighborhood of Livoni is more densely developed. The Bredesen path was constructed of substantially more visible elements. The Bredesen pathway also included patios and retaining walls not proposed by Livoni. In short, in a location with much more visible existing development, Livoni was denied a much shorter, smaller and less visible path than approved in Bredesen.

This is not simply a case of the Commission applying different standards to different locations. It is a case where the Commission first sought to deny Bredesen on substantially the same grounds as Livoni. The Superior Court rejected those grounds as having no substantial evidence to support the essential facts found by the Commission to exist and the Superior Court found that the Commission made numerous errors of law in the interpretation of Chapter 3 policies. It is those errors of fact and errors of law that form the basis of this Request for Reconsideration.

The Commission based its denial of the Livoni pathway on only two policies contained in Chapter 3, §30240(b) and §30251. The errors of fact made by the Commission were those facts found to exist by the Commission which untrue and which were not supported by substantial evidence. The Commission committed errors of law because the findings omit critical terms required by the statutes in Chapter 3.

3. The Commission made Errors of Fact and Law in the Application of Public Resources Code Section 30240(b).

The first provision of Chapter 3 that the Commission made findings to support its denial of the Livoni pathway was Public Resources Code §30240(b) which provides:

“Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.”

The Commission made the following findings of fact:

“The perception of privatization created in this area would dissuade the public from using the beach adjacent to the toe of the bluff, which would crowd the public into an even narrower band of sandy beach, resulting in adverse impacts upon public use of the beach.

“Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. The presence of the proposed private beach access pathway would degrade the publicly owned beach area adjacent to it. Thus, the proposed private beach access pathway is inconsistent with Section 30240(b) of the Coastal Act and must be denied.” Findings, p. 32.

(A) The Commission found that as a matter of fact that the Livoni path would “degrade” the publicly owned beach area adjacent to it. No evidence of any sort was

offered to support this assertion. The Commission findings make a litany of unsupported assertions about the psychological effect that the observation of the path by users of Corona del Mar State Beach would have. No evidence of either the existence of the so-called "perception of privatization" or the deterrent effect that such "perception of privatization" might have is offered. The findings are supported by nothing but the opinion of the Staff and the Staff offered no evidence of any sort to support the facts on which the opinion was based.

The identical argument was used to support the denial of the Bredesen path. Judge Janavs made short work of that claim. "There is no substantial evidence in the record to support this finding. Coastal Staff's opinion, without more, is not evidence. The Briles and Hawthorne [neighboring] improvements have been in place for 10-20 years. Yet there is not one word of testimony, written or oral, to support the finding that the public is deterred from Torrance Beach by the visibility of those private improvements on private property." Statement of Decision, p. 15-16.

(B) The Commission did not find that the Livoni path would "significantly" degrade Corona del Mar State Beach. The finding at page 32 of the Commission's findings was only that the presence of the Livoni path would "degrade" the publicly owned beach area adjacent to it. Although there was no evidence to support that finding, the finding itself fails as a matter of law to support the denial. Section 30240(b) does not authorize the denial of a permit for a development that does not "significantly" degrade the recreation area. Since the Commission did not adopt a finding that would support the denial under §30240(b), then the Commission erred as a matter of law (as well as a matter of fact) by relying on §30240(b) as a basis for its denial.

(C) The Commission found that the existence of the Livoni pathway would deter the public from the use of the beach adjacent to the toe of the bluff. The beach adjacent to the toe of the bluff is Livoni's private property. The public has no right of use of the beach adjacent to the toe of the bluff and out for more than 20 feet. It is an error of law for the Commission to deny a permit for the Livoni pathway because the public will be deterred from trespassing on Livoni's property.

(D) The Commission also found that public rights to use Livoni's property likely exist. Such a finding is an error of law. *LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770; 60 Cal.Rptr.3d 417, modified, 152 Cal.App.4th 427. Although in the Addendum dated August 5, 2008, the Commission Staff claims that the assertion of public right to use Livoni's property is not a basis for denial, the findings actually made by the Commission continue to rely upon that legally erroneous conclusion.

4. **The Commission made Errors of Fact and Law in the Application of Public Resources Code Section 30251.**

Public Resources Code §30251 provides as follows:

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

The Commission made the following finding which contains errors of fact, and, as it forms the basis of the decision to deny, errors of law.

"The Commission finds that the proposed private beach access pathway results in the alteration of natural landforms, does not preserve scenic views, and is not visually compatible with the character of the surrounding area. Consequently, the proposed private beach access pathway increases adverse impacts upon visual quality in the subject area. Therefore the Commission finds that the proposed private beach access pathway is inconsistent with Section 30251 of the Coastal Act."

(A) There are numerous errors of law and fact in this finding. First, Section 30251 does not authorize the Commission to deny development because it "results in the alteration of natural landforms". Section 30251 only requires that development "minimize" the alteration of natural landforms. There is no finding that the Livoni pathway does not minimize alteration of natural landforms. Indeed, it is a surface path following the contours of the land.

The real issue is that the Commission does not follow the requirements of Section 30251. Rather, the Commission prohibits all alterations of natural landforms, not just minimize the alterations as the statute directs. The Commission made the same finding in Bredesen which Judge Janavs treated as follows:

"The Coastal Commission construes Public Resources Code section 310251 [sic] to include the words "or prohibit" after "minimize" as a modifies to "alterations to natural landforms". It appears that the Coastal Commission means to prohibit any improvements on the slope at the beach when it finds at 8 AR 1590, "Any alteration of this landform would affect views to and along the public beach." The Coastal Commission has

no authority to construe the statute with added words. *Schneider v. California Coastal Commission* [(2006) 140 Cal.App.4th 1339, 1345].”

The Commission continues to make errors of law by giving a construction to its governing statute that is not supported by the words of the statute itself.

(B) The Commission finds that the Livoni pathway will not be “visually compatible with the character of the surrounding area”. This is the most obvious error of fact. Every property from the entrance to Corona del Mar State Beach to Inspiration Point has an access path on the lower portion of the property and many have structures on the lower portion. Even looking only at the six lots beyond the end of Breakers Drive, every lot has an access stair or path to the beach (including the path approved in 2001 at 3415 Ocean Boulevard in Permit No. 5-05-112). The repeated claim that mid and lower bluff development in the area remains largely undisturbed and natural is entirely an error of fact.

Again, Judge Janavs decision provides explanation of why the similar finding in *Bredesen* was untrue.

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

(C) The Commission found that there were cumulative impacts to a bluff that was “natural and undeveloped”. Findings, p. 33. The error of fact of that finding has already been discussed. The Commission then went on to find that approving Livoni would set a precedent for other development of access paths or stairs on the lower part of this bluff. This is an error of fact. Every other property in the surrounding area has an existing access stair or path. A decision to approve the Livoni pathway cannot be a precedent for what already exists on every other similarly situated property.

5. The Commission Committed Errors of Fact and Law when It Found that the Livoni Pathway was Inconsistent with the Newport Beach Land Use Plan.

In addition to the errors of law and fact made in the application of Chapter 3 policies to the Livoni pathway, the Commission's findings that the Livoni pathway would

be inconsistent with the adopted Newport Beach Land Use Plan. Numerous policies from the LUP are cited which, by and large, mirror the statutory language of Chapter 3 policies. Therefore, the Commission's findings repeat the errors of fact and law described above.

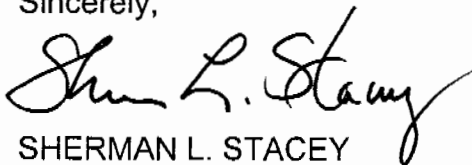
The findings completely misconstrue Policy 4.4.3-8 and Policy 4.4.3-9 which limit development on coastal bluffs, but allow development on Ocean Boulevard "determined to be consistent with the predominant line of existing development." In approving the new deck, the Commission recognizes that as to structures, the location of the deck is consistent with the predominant line of existing development. But as to access to the beach, even though every other existing home along Ocean Boulevard abutting Corona del Mar State Beach has a stair or path to the beach (which in every case descends the bluff from the residence to the beach) the Commission behaves as though there is no predominant line of development for access improvements.

The Livoni pathway is located on the coastal bluff in a location consistent with the predominant line of the existing development and is, therefore, consistent with the LUP. The City of Newport Beach made this determination in its approval in concept when it concluded that the proposed development, including the pathway, was consistent with all applicable City of Newport Beach policies. Findings to the contrary are an error of fact.

6. Conclusion.

The Commission should grant the Request for Reconsideration and subsequently revise its decision to deny the Livoni pathway and to impose Special Conditions 2A and 10 on Permit No. 5-07-327 which would prohibit the pathway.

Sincerely,



SHERMAN L. STACEY

cc: Jerry Livoni
Brion Jeannette

CALIFORNIA COASTAL COMMISSION

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

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

**W12a****STAFF REPORT: REGULAR CALENDAR**

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South Coast Region

SEP 8 - 2008

CALIFORNIA
COASTAL COMMISSION

APPLICATION NUMBER: 5-04-324

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

AGENT: Sherman Stacey

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

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

LOCAL APPROVALS RECEIVED:

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

SUBSTANTIVE FILE DOCUMENTS:

See Appendix A.

EXHIBIT 2A

**S-07-327-R
LIVONI
PG. 1 OF 68**

LIST OF EXHIBITS:

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

SUMMARY OF STAFF RECOMMENDATION:

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

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

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

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

STAFF RECOMMENDATION:

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

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

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

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

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity

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

2. No Future Shoreline Protective Device

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

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

3. **Submittal of Revised Project Plans**

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

4. **Future Development**

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

5. **Erosion Control Plan**

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

1. **EROSION CONTROL PLAN**

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

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

- (b) The plan shall include, at a minimum, the following components:
- (1) A narrative report describing all temporary erosion control measures to be used during construction.
 - (2) A site plan showing the location of all temporary erosion control measures.
 - (3) A schedule for installation and removal of the temporary erosion control measures.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Landscaping Installation and Monitoring

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

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

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

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

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

8. **Conformance of Plans to Recommendations and Requirements**

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

9. **Deed Restriction**

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

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

10. Condition Compliance

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. Project Description and Location

Project Location

The project site is located within an existing residential area at 437 Paseo de la Playa, City of Torrance, Los Angeles County (Exhibits 1, 2). The project site is one of 28 bluff top lots located between the first public road, Paseo de la Playa, and the sea. This group of 28 residential lots extends south of the Torrance Beach Parking Lot to the border of Palos Verdes Estates and the Palos Verdes Peninsula. The project site is the sixth lot to the south of the parking lot. The bluff in question varies in height from approximately 60 feet at the Los Angeles County Torrance Beach Park to the north of the residential lots to 140 feet near the boundary of Palos Verdes Estates. The bluff tops of all 28 residential lots have been developed with single-family residences. Torrance Beach, the beach seaward of the toe of the bluff, is public. Vertical public access to this beach is available to pedestrians via public parking lots and footpaths located at the Torrance Beach Park, which is approximately 500 feet to the north of the project site (Exhibits 2). There is also a vertical beach public access way and public parking in Palos Verdes Estates located approximately ¾ of a mile to the south of project site.

Project Description

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

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

Prior Development at Subject Site and Surrounding Area

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

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

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

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

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

Permit History for Bluff Face Development in Project Vicinity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Scenic Resources/Community Character & Cumulative Adverse Impacts

Section 30251 of the Coastal Act states, in part:

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

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

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

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

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

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

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

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

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

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

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

C. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

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

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

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

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

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

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

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

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

Evidence of Past or Potential Landslide Conditions

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

Section 30253 of the Coastal Act of 1976 provides, in relevant part, that "New development shall: (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard, and (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs". Based on our evaluation of the site conditions, and the understanding that the recommended actions (mitigations) detailed herein will be incorporated into the comprehensive project description for submittal to Coastal Commission as part of the coastal development permit application and then, subsequently implemented, we conclude that: a) the improvements do not pose a risk to life and property, b) the improvements do not adversely affect stability or structural integrity of the site, c) the improvements do not contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, and d) the improvements do not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.(Cotton, Shires, and Associates, Inc.)

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

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

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

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

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

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

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

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

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

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

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

D. Beach Erosion and Beach Processes

Section 30235 of the Coastal Act states in part:

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Public Access and Recreation

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

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

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

F. Habitat

Section 30240 of the Coastal Act states:

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

Legal Mechanisms to Install and Protect Habitat

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

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

Site Description and Habitat Enhancement Plan

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

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

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

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

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

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

A further revision added:

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

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

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

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

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

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

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

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

G. Deed Restriction

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

H. Unpermitted Development

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

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

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

I. Local Coastal Program

Section 30604 (a) of the Coastal Act states:

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

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

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

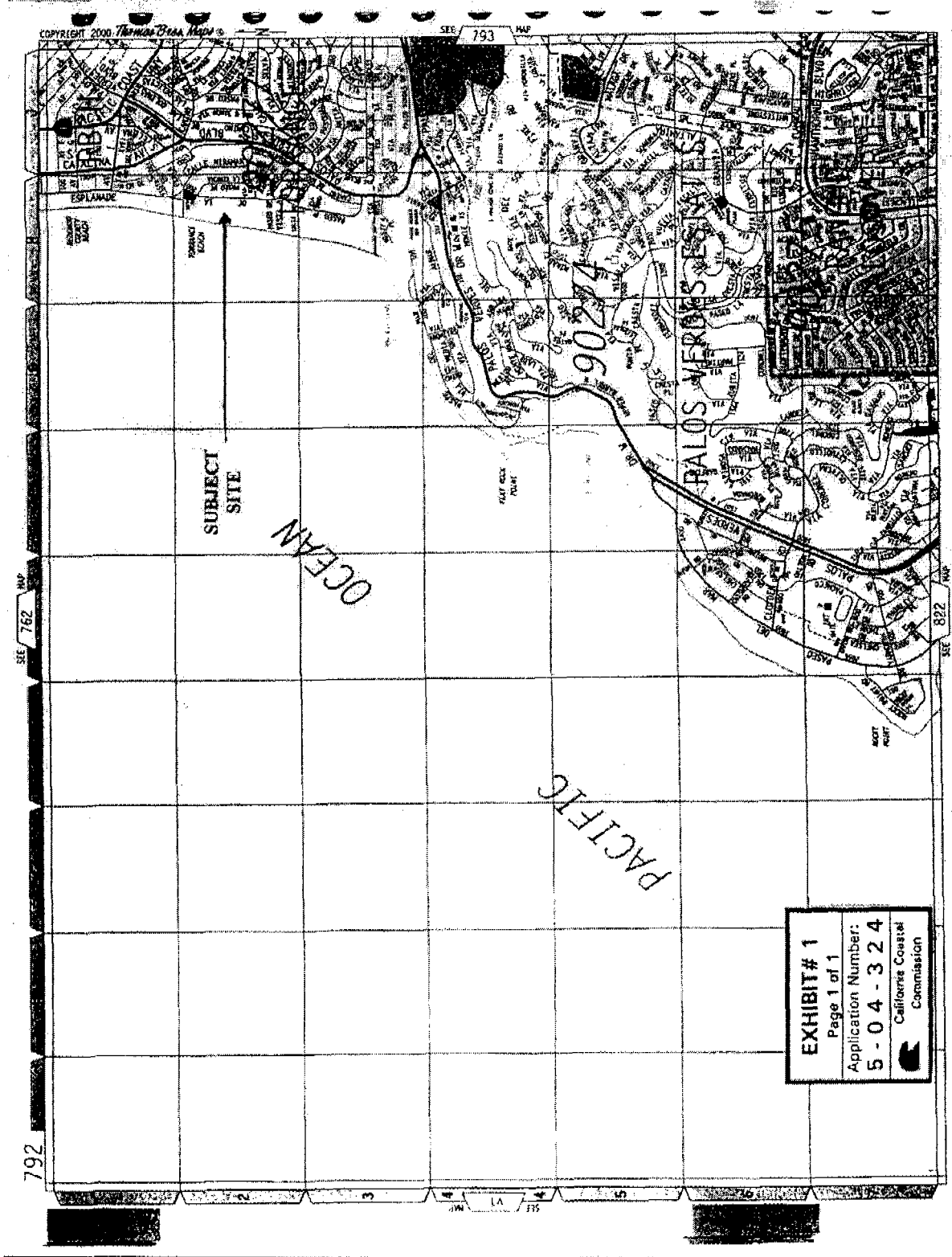
J. California Environmental Quality Act (CEQA)

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

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

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permits P-7342 (Hood), 5-97-050 (Kreag) and applicable amendments (Prince), 5-84-187 (Briles), 5-84-187-A (Briles), 5-85-755 (Briles), 5-90-1041 and amendments (Stamegna, Hawthorne Savings and Campbell), P-77-716 (Warren), P-7266 (Bacon), A-80-6753 (Bacon), 5-90-868 (Schreiber), 5-01-018 and 5-01-409 (Conger), 5-85-183 (Hall), 5-90-1079 (Wright), 5-91-697 (Wright), A-79-4879 (McGraw), 5-83-618 (Fire), 5-96-167 (Lichter), 5-01-080 (Palmero), 5-03-212 (Bredesen), 5-03-328 (Carey), 5-03-280 (City of Redondo Beach), 5-07-206 (Joyce).
2. Terchunian, A.V., 1988, *Permitting coastal armoring structures: Can seawalls and beaches coexist?* Journal of Coastal Research, Special Issue No. 4, p. 65-75.
3. United States Geological Survey, Monty A. Hampton and Gary B. Griggs, Editors, Professional Paper 1693, *Formation, Evolution and Stability of Coastal Cliffs – Status and Trends, pp1-4, Introduction.*
4. *Geologic and Soils Engineering Investigation Proposed Single Family Residence, 437 Paseo de la Playa, Torrance, California for Mr. and Mrs. Robert Hood, (Project No. KB 1935) prepared by Kovacs – Byer and Associates Inc. January 23, 1976.*
5. United States Department of the Interior, United States Fish and Wildlife Service, *"Habitat Restoration and Enhancement Plan, C.G. and V.C. Bredesen Trust Property, 437 Paseo de la Playa Redondo Beach, CA,"* letter signed by Ken Corey for Karen Goebel, November 3, 3004
6. Department of Boating and Waterways and State Coastal Conservancy, 2002, *"California Beach Restoration Study,"* Sacramento, California, www.dbw.ca.gov/beachreport.htm.
7. City of Torrance, Aerial photograph, 1978.
8. City of Torrance, Aerial photograph, 1992
9. USGS, 1:40,000 map, Santa Monica Bay, 1893,
10. United States Army Corps of Engineers, 1:62,500 map, Redondo Beach, Quadrangle Sheet, 1944.
11. Cotton, Shires and Associates, Inc., "Geotechnical Investigation and Evaluation, 437 Paseo de la Playa, Torrance, California" March 2004.
12. Skelley Engineering wave run-up and coastal hazard study, 437 Paseo de la Playa Redondo Beach, CA" June, 2004.
13. SMP inc. Structural Analysis of Existing Detached Palapa Patio Cover, 437 Paseo de la Playa Torrance ca 90277" 5-06-04, 8 pages.
14. David Skelly, Geosoils, Memorandum to Mr. Chris Bredesen, November 30, 2004.
15. Stanley E. Remelmeyer, City Attorney, City of Torrance, 1976. Position Paper of the City of Torrance Regarding the Proposal to Acquire Eight (8) Blufftop Parcels at Torrance; Requesting Deletion from the Acquisition List of the Proposal to Acquire Eight (8) Blufftop parcels at Torrance Beach;
16. Kelley, and Associates, Environmental Sciences, Inc. "Supplemental Habitat Enhancement Plan, Native Vegetation Landscape Plan, seaward slope, 437 Paseo de la Playa, Torrance, Los Angeles County, California," January 2005.
17. Kelley and Associates, Environmental Services, Inc., "Native Vegetation Landscaping Plan, 437 Paseo de la Playa, Torrance, Los Angeles County, California, " November 2003.
18. Kelley and Associates, Environmental Sciences, Inc., Supplemental Habitat Enhancement Plan and Supporting Documents, 11 October 2004



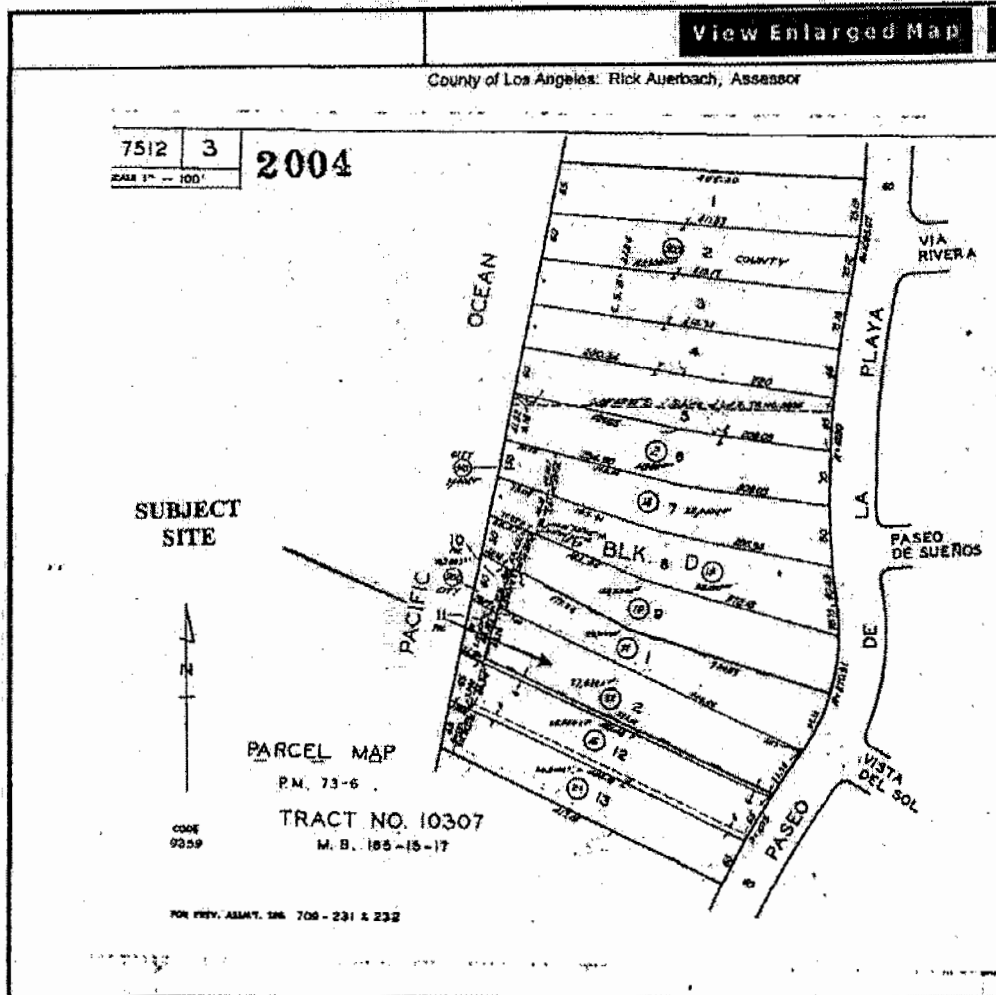
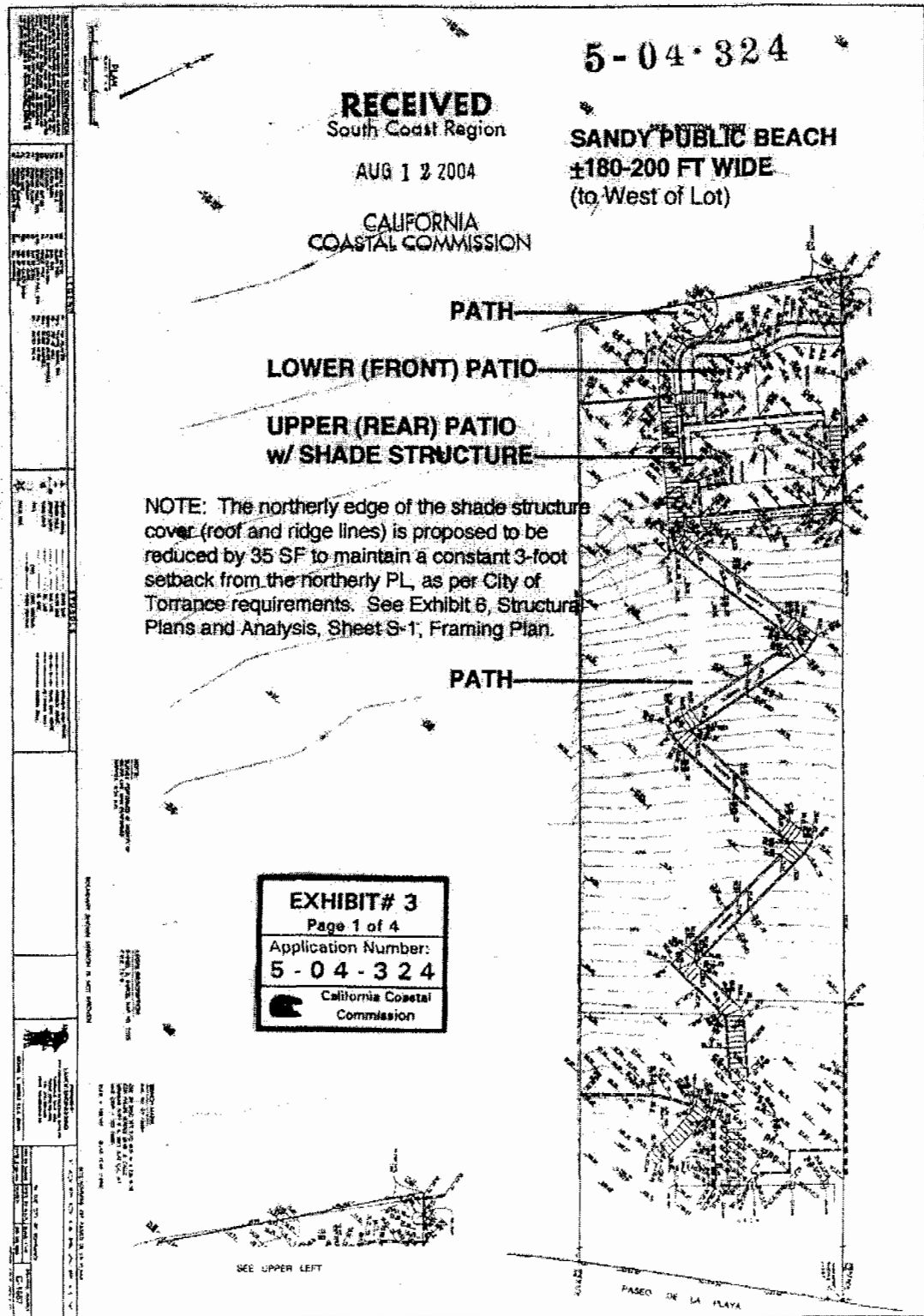


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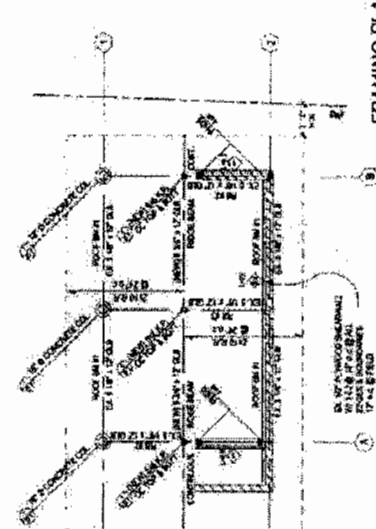


S&P CONSULTING & DESIGN & DEVELOPMENT
 STRUCTURAL ENGINEERING
 10000 WILSON AVENUE, SUITE 100
 DOWNEY, CALIFORNIA 90241
 (714) 941-1111

DATE	05-12-04
BY	AMNT
FOR ADDRESS	417 RIVER LA PLAZA
PROJECT NO.	5-04-324
SCALE	1/4" = 1' N

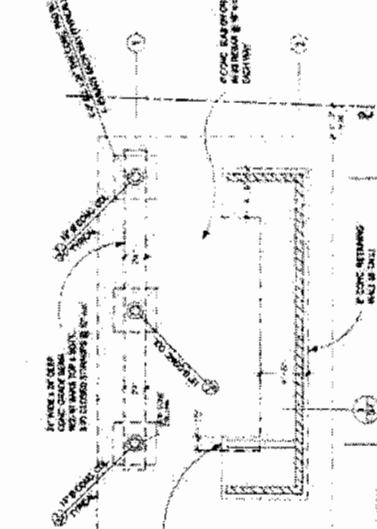
FRAMING PLAN

SCALE: 1/4" = 1' N



FOUNDATION PLAN

SCALE: 1/4" = 1' N



NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE REGULATIONS.
2. ALL FOUNDATION WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA FOUNDATION CODES AND ALL APPLICABLE REGULATIONS.
3. ALL STRUCTURAL STEEL SHALL BE A36 STEEL UNLESS OTHERWISE SPECIFIED.
4. ALL STRUCTURAL CONCRETE SHALL BE 3000 PSI UNLESS OTHERWISE SPECIFIED.
5. ALL STRUCTURAL WOOD SHALL BE SYPRESS UNLESS OTHERWISE SPECIFIED.
6. ALL STRUCTURAL GLASS SHALL BE 1/2" THICK UNLESS OTHERWISE SPECIFIED.
7. ALL STRUCTURAL PARTS SHALL BE FABRICATED AND INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE REGULATIONS.
8. ALL STRUCTURAL PARTS SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE REGULATIONS.
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20. ALL STRUCTURAL PARTS SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE REGULATIONS.

MEMORANDUM

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	05/12/04
2	ISSUED FOR PERMITTING	05/12/04
3	ISSUED FOR PERMITTING	05/12/04
4	ISSUED FOR PERMITTING	05/12/04
5	ISSUED FOR PERMITTING	05/12/04
6	ISSUED FOR PERMITTING	05/12/04
7	ISSUED FOR PERMITTING	05/12/04
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17	ISSUED FOR PERMITTING	05/12/04
18	ISSUED FOR PERMITTING	05/12/04
19	ISSUED FOR PERMITTING	05/12/04
20	ISSUED FOR PERMITTING	05/12/04

CABANA / PATIO

SCALE: 1/4" = 1' N




EXHIBIT # 3

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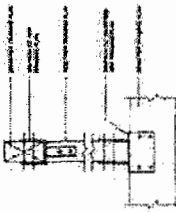
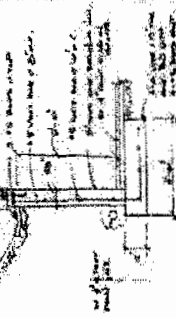

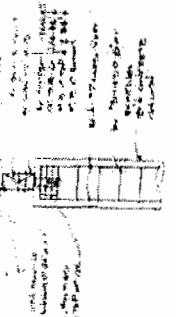
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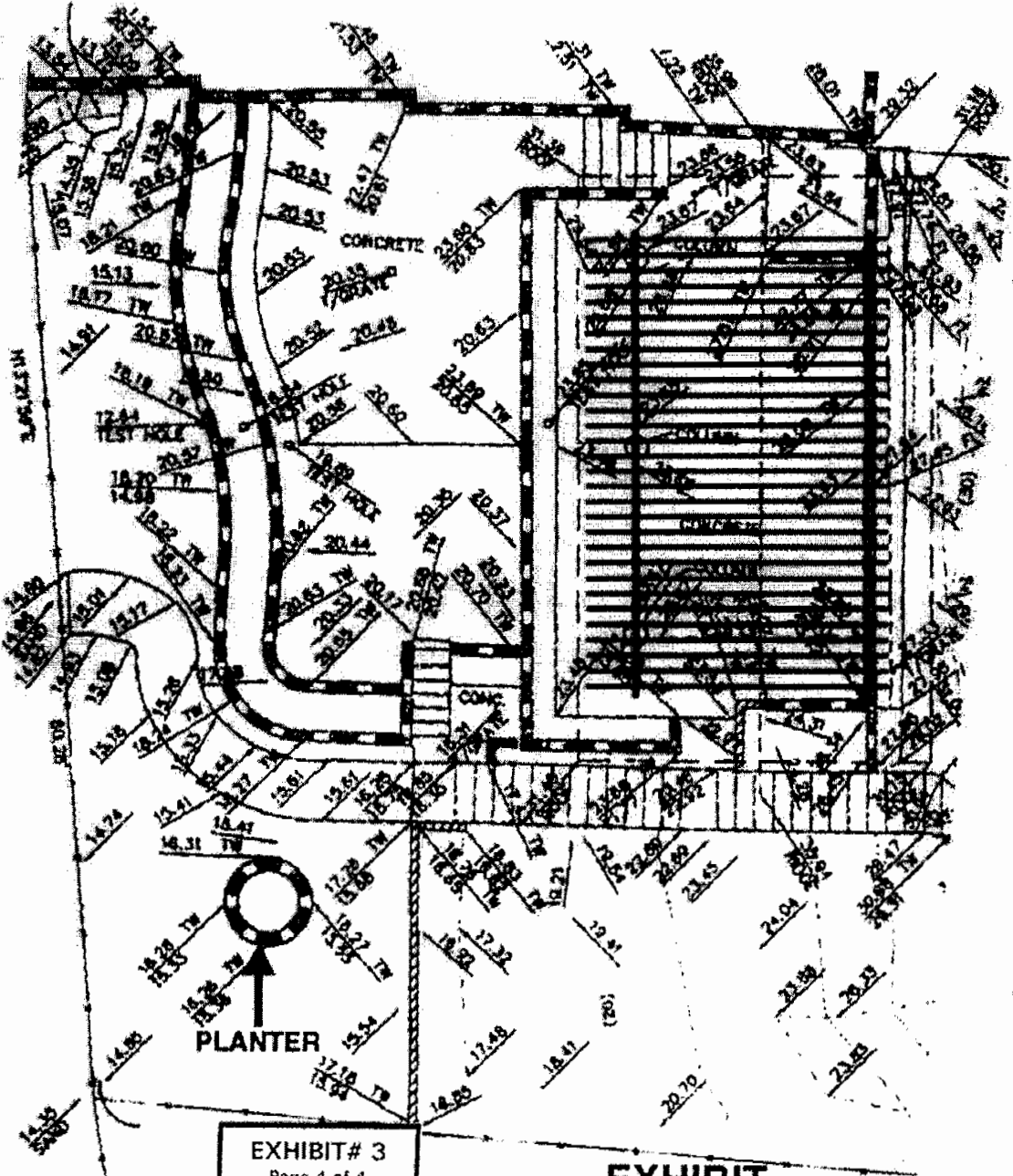
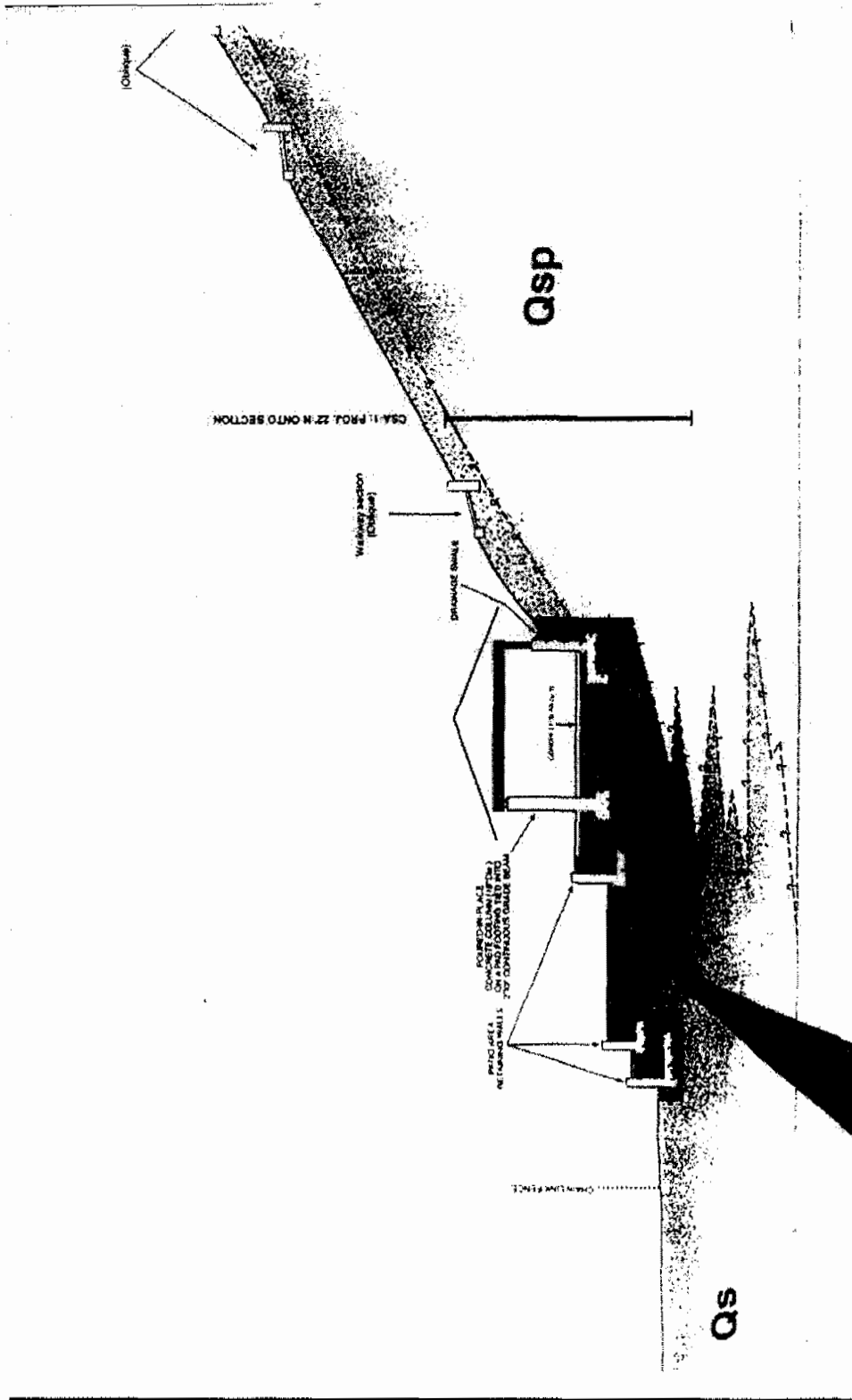


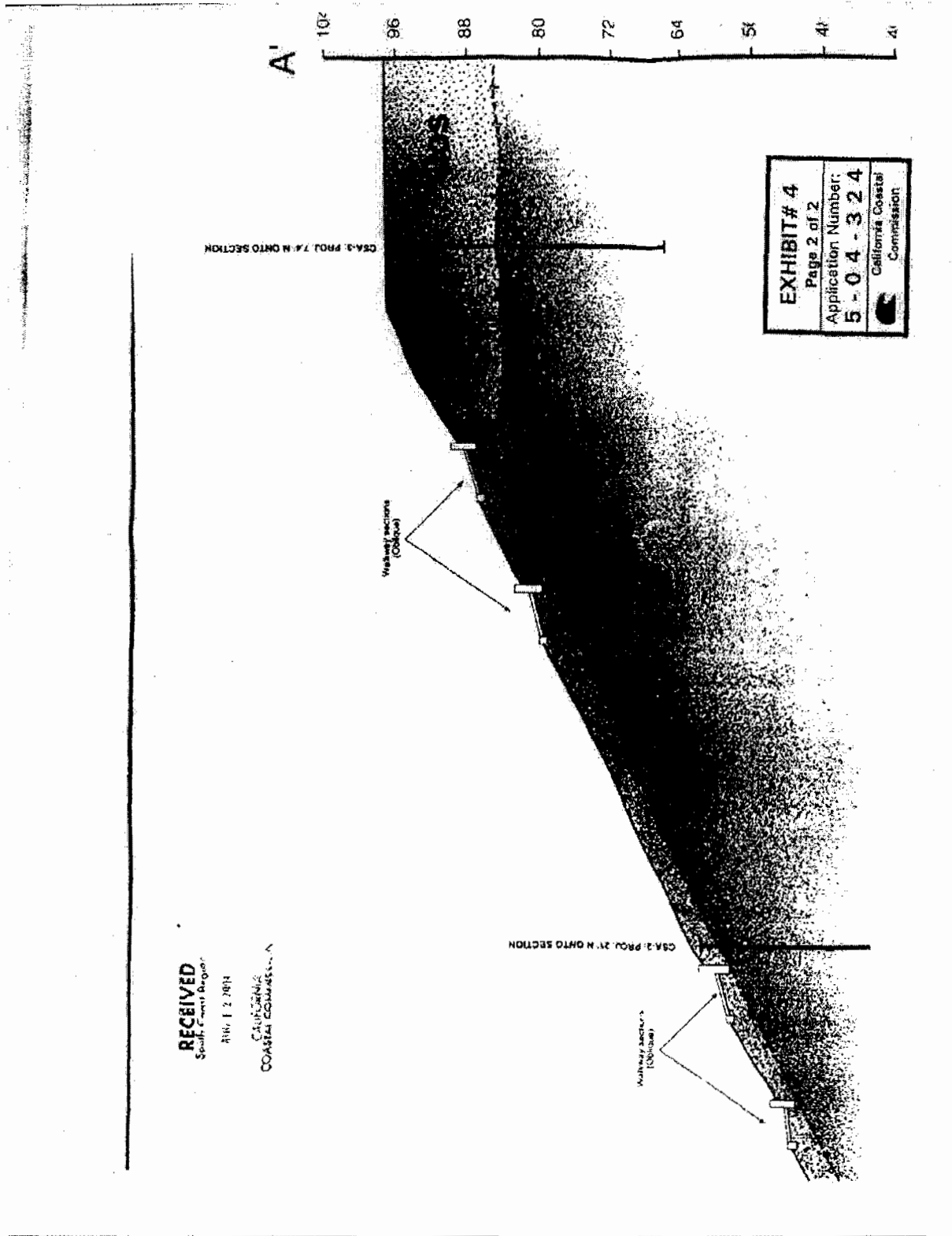
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EXHIBIT
REAR PATIO TRELLIS
CDP 5-04-324 (BREDESEN)
May, 2005




NOTE: LIMITS OF EXCAVATION FOR CABANA AND PATIO CONSTRUCTION AND FOOTING LIMITS (WHERE DASHED) ARE NOT CONFIRMED. LIMITS SHOWN ARE BASED ON DISCUSSIONS WITH CONTRACTOR ONLY.

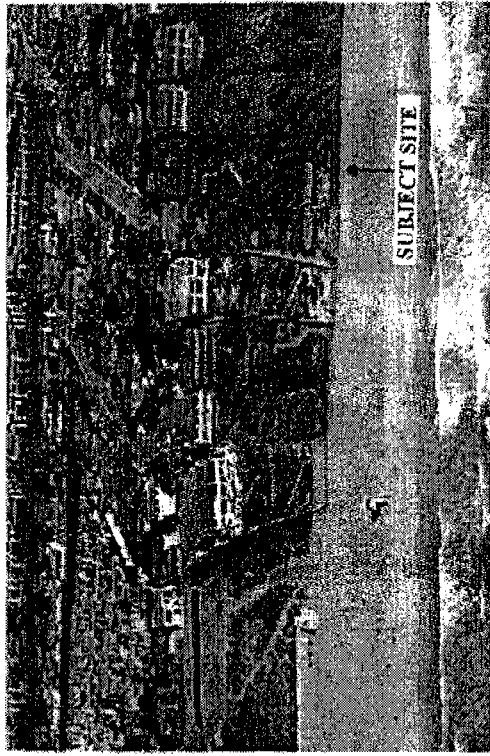
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417 – 605 Pasco de la Playa, Torrance, CA, Image from Coastal Records, 1972


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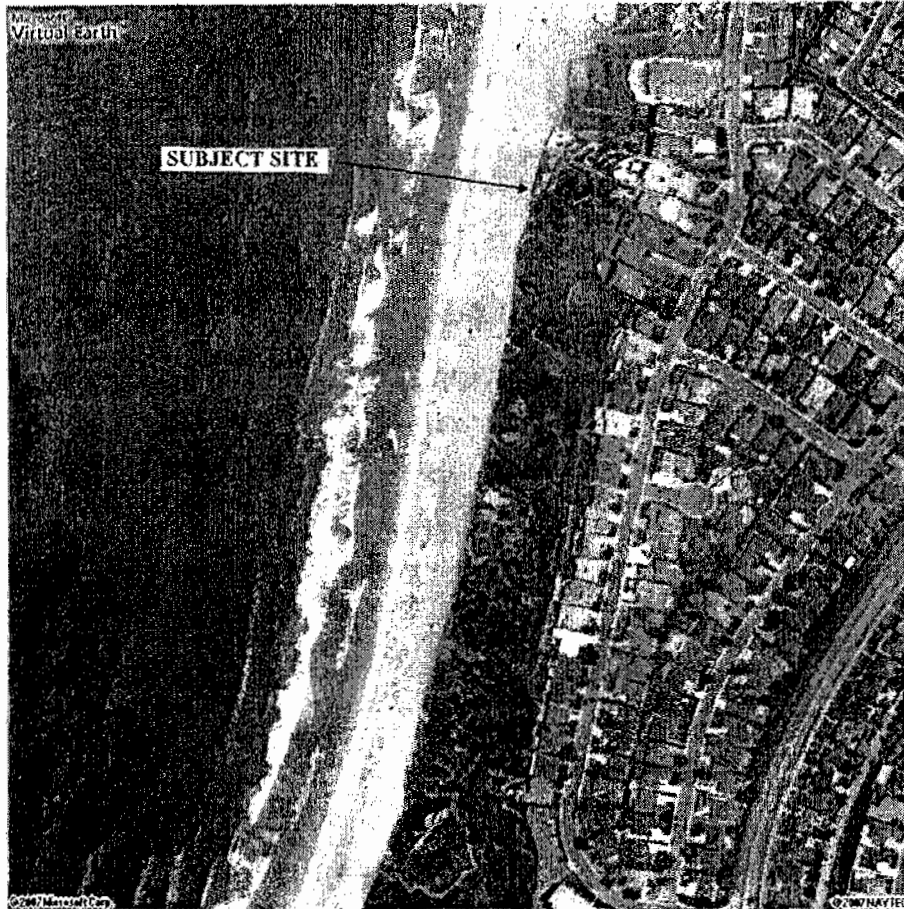


417 - 445 Paseo de la Playa, Torrance, CA, Image from Coastal Records, 2006




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

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

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DAVID B. KELLEY
Consulting Plant and Soil Scientist

23 December 2004

Mr. Mike Bianchi
U. S. Fish and Wildlife Service
8010 Hidden Valley Road
Carlsbad, California 92009
TEL: 760-431-9440 x304
mike_bianchi@R1.fws.gov

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

Dear Mike:

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

Note Added in Revision (23 December 2004)

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

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

EXHIBIT# 7
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Application Number: 5 - 0 4 - 3 2 4
 California Coastal Commission

DAVID B. KELLEY
Consulting Plant and Soil Scientist

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

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

Sincerely yours,

David B. Kelley
Consulting Plant and Soil Scientist

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

Letter: M. Bianchi • Native Vegetation Plan • December 2001

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 California Coastal Commission

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Pam Emerson

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

Ms. Emerson,

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

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

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 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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



MEMORANDUM

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

TO: Pam Emerson

SUBJECT: Bredesen landscaping plan

DATE: November 2, 2004



Documents reviewed:

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

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

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

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

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

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



STATE OF CALIFORNIA

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

EXHIBIT# 10

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Application Number:
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California Coastal
Commission

EDMUND G. BROWN JR.

RESOLUTION OF APPROVAL AND PERMIT

590-5071

FILE COPY

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

Name of Applicant: Robert S. Hood

517 Paseo de la Playa, Redondo Beach, CA 902

Permit Type: Standard

Emergency

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

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

Commission Resolution:

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



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

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

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

Condition/s Met On June 21, 1976 By jlrl/R

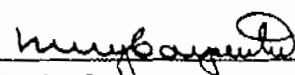
III. Said terms and conditions shall be perpetual and bind all future owners and possessors of the property or any part thereof unless otherwise specified herein.

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

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

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

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


M. J. Carpenter
Executive Director

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NO. 348 0002

JB
FILED
LOS ANGELES SUPERIOR COURT

SEP 04 2007

JOHN A. CLARKE, CLERK

[Signature]
BY S. BARRETT, DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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

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

28 ///

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

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

11 I.

12 NATURE OF THE CASE

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

19 II.

20 DESCRIPTION OF ADMINISTRATIVE ACTION

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

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

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

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

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

14 III.

15 STANDARD OF REVIEW

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

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

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

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

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

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

IV.

ABUSE OF DISCRETION HAS BEEN ESTABLISHED

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

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

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

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

10 Public Resources Code section 30251 states:

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

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

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

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

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

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

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

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

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

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

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

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

26 ²Subsequently, in 1996, the Coastal Commission approved a four-foot
27 retaining wall at the bottom of the slope at 433 Paseo de la Playa. The
28 Coastal Commission found the retaining wall to be immaterial. (CDP
29 5-90-1041A3; 3 AR 588.) Under the Commission's regulations, an
30 immaterial amendment is one which has no "potential for adverse impacts,
31 either individually or cumulatively, on coastal resources or public
32 access to and along the shoreline." Cal. Code of Adm. Regs., Title 14,
33 § 13166(b).

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

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

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

25 While the patio and the retaining wall at the bottom of the slope
26 are obscured from visibility by the fabric with which the Petitioners
27 seek to cover the fence,¹ the roof of the patio and its supports are

28 ¹Although the Coastal Commission found that the vinyl fabric was not
consistent with the Coastal Act because it was subject to deterioration
(8 AR 1592); no evidence supports this finding.

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

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

11 Public Resources Code section 30253 states:

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

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

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

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

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

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

26
27
28 'Surficial erosion was a problem with the historic sandy paths down
the slope. The proposed path would have solved that problem.

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

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

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

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

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

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

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

7 30235. Retenments, breakwaters, groins, harbor channels,
8 cliff retaining walls, and other such construction that alters
9 natural shoreline processes shall be permitted when required
10 to serve coastal-dependent uses or to protect existing
structures or public beaches in danger from erosion and when
designed to eliminate or mitigate adverse impacts on local
shoreline sand supply.


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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 The Coastal Commission found that there would be cumulative impacts
10 from approval of Petitioners' because it would set a precedent "not just
11 for the northern eight lots but along the entire bluff face". (8 AR
12 1591.) The evidence, as well as the prior actions and express findings
13 of the Coastal Commission, establish a clear distinction between lots
14 located at the north end of Torrance Beach (including Petitioners'
15 Property) and the twenty lots lying to the south. (See CDP 5-01-409
16 (Conger), 4 AR 779.) The distinctions are clear in the photographs. (9
17 AR 1793-1984.) There are several relevant factors: (i) the Coastal
18 Commission approved Permit No. A12-20-73-2419 for a fence along the
19 property line on the beach for 5 properties (including Petitioners'),
20 each property having a gate in the fence to go to and from the beach⁹,
21 (ii) the eight lots to the north have their house pads at a much lower
22 elevation, making a path less steep and a path less visible from the
23 beach; (iii) the eight lots to the north have a much gentler slope,
24 making the paths possible without significant grading, engineering or
25

26
27 ⁹The fence and gate coupled with the existing paths at that time
28 certainly created a reasonable expectation among the five owners that
traversing from their home to the beach was expected by the Coastal
Commission.

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

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

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

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

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

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

24 ///

25 ///

26

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

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

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

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

18 B. Denial of Equal Protection.

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

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

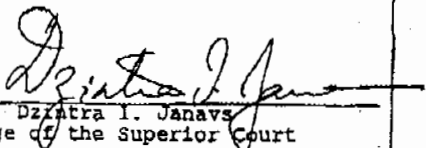
3 C. Other Causes Of Action.

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

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

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

22 DATED: September 4, 2007

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

28 DIJ:d1

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CALIFORNIA COASTAL COMMISSION

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

**W12a****ADDENDUM**

January 4, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

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

Changes to Staff Report

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

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

5. Erosion Control Plan

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

1. EROSION CONTROL PLAN

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

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

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

10. Condition Compliance

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

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

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

H. Unpermitted Development

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

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