

CALIFORNIA COASTAL COMMISSION

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**Item F7c**

Filed: November 12, 2009
49th Day: December 31, 2009
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Staff: Liliana Roman-LB
Staff Report: January 19, 2010
Hearing Date: February 10-12, 2009
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-09-175

APPLICANT: Donald Downs

PROJECT LOCATION: 333 West Paseo de Cristobal, San Clemente (Orange County)

PROJECT DESCRIPTION: 100 sq. ft. addition to an existing single-family residence and improvements to an existing 506 sq. ft. two-car garage consisting of installation of caisson foundation re-enforcements, 60 sq. ft. garage addition, remodel of the garage roof deck, after-the-fact approval of a 350 sq. ft. garage lower level guestroom/bathroom and 125 sq. ft. deck on a bluff-top lot

LOCAL APPROVALS RECEIVED City of San Clemente Planning Division Approval-in-Concept dated September 11, 2009

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP), *Preliminary Geotechnical Investigation Report, Proposed Improvements and Structural Evaluation, 333 W. Paseo de Cristobal, Existing Garage/Bedroom and Deck Repair, San Clemente, CA* prepared by G.A. Nicoll and Associates, Inc. dated March 13, 2009 and *Supplemental Report, Slope Stability Analyses and Bluff Retreat Evaluation, Downs Residence, 333 West Paseo de Cristobal, San Clemente, CA* prepared by G.A. Nicoll and Associates, Inc. dated October 6, 2009.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of the proposed project with **nine (9) special conditions**, which require 1) storage of construction materials, mechanized equipment and removal of construction debris; 2) submittal of final drainage plan; 3) bird strike prevention treatment; 4) conformance to geotechnical report; 5) landscaping; 6) future caisson, grade beam, retaining wall exposure plans; 7) assumption of risk, waiver of liability and indemnity; 8) future improvements come back to the Commission for review; and 9) deed restriction.

The proposed project includes development is on a coastal bluff top lot, the City's LUP identifies all coastal bluffs as containing environmentally sensitive habitat. Primary issues associated with this development include assurance that the proposed development is consistent with the geologic

hazard policies of the Coastal Act, as well as assuring that the development is consistent with protection of environmentally sensitive habitat areas (ESHA).

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points
4. Project Plans

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-09-175 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 TO APPROVE THE PERMIT:

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. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- C. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- D. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.
- E. Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
- F. Staging and storage of construction machinery and storage of debris shall not take place within the drainage channel and public Coastal Multi-Use Trail.

2. Drainage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a final drainage plan prepared by an appropriately licensed professional. The plan shall incorporate the following criteria:
 - (a) Runoff from the garage roof deck, new roofs and other impervious surfaces and slopes on the site shall be directed to dry wells or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements;
 - (b) Where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be collected and discharged via pipe or other non-erosive conveyance to a designated outlet point to avoid ponding or erosion either on- or off- site;

- (c) Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the coastal bluff; and
 - (d) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.
 - B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- 3. Bird Strike Prevention
 - A. Where the backyard of the residence abuts coastal bluffs, there shall be walls, fences, gates, safety devices and boundary treatments, as necessary, to protect coastal bluff habitat. Bluff top fences and gates subject to this permit shall use materials designed to minimize bird-strikes with the fence, or gate. Material selection and structural design shall be made in consultation with a qualified project biologist, the California Department of Fish and Game and the United States Fish and Wildlife Service (herein 'Resource Agencies'), and the Executive Director of the Commission. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit final revised plans showing the location, design, height and materials of fences, and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition. The plans shall have received prior review and approval by the City of San Clemente.
 - B. The permittee shall undertake development in accordance with the approval 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. Conformance of Construction Plans to Geotechnical Report Geologic Hazard
 - A. All final design and construction plans, including foundation and drainage plans, shall be consistent with all recommendations contained in the *Preliminary Geotechnical Investigation Report, Proposed Improvements and Structural Evaluation, 333 W. Paseo de Cristobal, Existing Garage/Bedroom and Deck Repair, San Clemente, CA* prepared by G.A. Nicoll and Associates, Inc. dated March 13, 2009 and *Supplemental Report, Slope Stability Analyses and Bluff Retreat Evaluation, Downs Residence, 333 West Paseo de Cristobal, San Clemente, CA*

prepared by G.A. Nicoll and Associates, Inc. dated October 6, 2009. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

- 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.

5. Landscaping – Native, Drought Tolerant, Non-Invasive Plants

All areas affected by construction activities not occupied by structural development shall be re-vegetated for habitat enhancement and erosion control purposes.

Vegetated landscaped areas shall only consist of native, drought tolerant plants, which are non-invasive and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), 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. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

6. Future Caisson , Grade Beam, Retaining Wall Exposure Plans.

In the event any project features initially proposed to be subsurface but which subsequently become exposed to view from the beach below the site, the permittee shall, through the coastal development permit process, seek to remedy the visual impact of the exposed structure(s) through, among other possible means, aesthetic treatment of the exposed structures such that they match the appearance of surrounding terrain to the extent feasible and minimize visual impact of the exposed structures.

7. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability; (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.

8. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-09-175. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-09-175. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, 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. 5-09-175 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

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 applicant has executed and recorded against the parcel 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 all 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

Project Location and Description

The project site is located at 333 West Paseo de Cristobal on a coastal bluff top lot between the first public road and the sea in the City of San Clemente, Orange County (Exhibits 1 and 2). The subject site is currently developed with a three-level single-family residence built on a split-level pad and a two-level garage connected to the residence by a garage rooftop deck. The project site is located along the southwest side of the street, at the top of the ocean bluff. The lot is roughly triangular in shape. Behind the house and the garage/bedroom addition, the ground surface slopes down a 35-40 foot bluff to the Orange County Transportation Authority (OCTA) railroad tracks, the San Clemente Coastal Trail, and sandy beach below.

The coastal bluffs in San Clemente are not subject to direct wave attack because they are separated from the beach by the railroad tracks and right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to weathering caused by natural factors such as wind and rain, poorly structured bedding, soils conducive to erosion and rodent burrowing. Bluffs may also be subject to erosion from human activities, such as irrigation, improper site drainage and grading.

The nearest vertical coastal access is available approximately 100 feet downcast of the subject site via a stairway at the “T” Street public access point (Exhibit 3). Lateral public access is located seaward of the railroad right-of-way at the beach below the subject site and along the San Clemente Coastal Trail alongside the railroad tracks.

The applicant proposes a 100 sq. ft. addition to an existing single-family residence by enclosing an existing balcony deck and improvements to an existing 506 sq. ft. two-car garage consisting of installation of caisson foundation re-enforcements, 60 sq. ft. garage addition, remodel of the garage roof deck by replacing the flooring, railing and adding a new fireplace and bbq. Additionally, the applicant requests after-the-fact approval of a 350 sq. ft. garage lower level guestroom/bathroom and 125 sq. ft. lower level deck.

Unpermitted Development

Construction of the 506 sq. ft. two-car garage with a caisson foundation in 1972 and subsequent enclosure of the lower garage level for a bedroom/bathroom addition and cantilevered bluff encroaching deck in 1973 received City approvals, however, no records of a coastal development permit were found in the City or Coastal Commission records for these improvements. The current applicant is requesting ‘after-the-fact’ approval of these improvements which were made by a previous homeowner.

C. RESOURCES

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 City of San Clemente Certified LUP includes coastal bluffs and canyons under the “Environmentally Sensitive Habitat” heading. The LUP reads,

“The coastal bluffs and canyons contain important natural habitat....The coastal bluffs support Coastal Bluff Scrub habitat, a variation or subset of Coastal Sage Scrub. This habitat is characterized by species especially tolerant of coastal conditions...The primary environmental value of these habitat areas is that they represent an ever diminishing resource within urbanized portions of the coast.”

Bluff Habitat

The proposed development is located on a coastal bluff lot designated as environmentally sensitive habitat area (ESHA) in the City’s LUP certified in 1995. The applicant’s property extends approximately halfway down the coastal bluff. No portion of the subject site contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City’s coastal bluffs is a goal supported by both the environmental protection policies of the Coastal Act, and the certified LUP. Encroachment into the bluff by development increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the bluff from excess irrigation. Encroaching development also threatens the visual quality of coastal bluffs. San Clemente’s certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation on coastal bluffs.

The proposed caisson foundation consisting of three 36” diameter concrete caissons will be on the bluff side of the two-level garage structure with roof deck at seaward/bluff side the property line. The existing unpermitted lower bedroom level cantilevered wood deck encroaches over the bluff

onto the City's property. The City approved a rear yard setback variance and encroachment permit for the deck in 1973.

The applicant is not proposing any landscaping or bluff vegetation removal as part of the proposed project as the proposed work will take place within the footprint of existing structures. **Special Condition #5** requires the applicant re-vegetated any bluff areas affected by construction with drought tolerant, non-invasive plants.

Bird Strike Hazard

Due to the coastal bluff top location of the proposed tempered glass screenwall there is a substantial risk of bird strikes to the screenwall. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the backyards of residences abut coastal bluffs. The submitted "as-built" plans show a 42" tempered glass screenwall along the edge of the concrete patio and coastal bluff. To provide further protection to coastal avian species, **Special Condition 3** requires the applicant submit final revised plans showing a treatment to the tempered glass screenwall to address bird strike issues, necessary to protect against significant disruption of habitat values.

There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. Where clear glass is used, appliques (e.g.) stickers can be affixed to the glass that have a pattern that is visible to birds. Some appliques incorporate features that allow humans to see through the glass, but which are visible birds. Usually appliques must be replaced with some frequency in order to retain their effectiveness. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to appliques because of the lower maintenance and less frequent replacement that is required.

B. HAZARDS – GEOLOGIC STABILITY

Bluff top development poses potential adverse impacts to the geologic stability of coastal bluffs, to the preservation of coastal visual resources, and to the stability of residential structures. Bluff stability has been an issue of historic concern throughout the City of San Clemente. Coastal bluffs in San Clemente are composed of fractured bedding which is subject to block toppling and unconsolidated surface soils which are subject to sloughing, creep, and land sliding. The Commission has traditionally followed a set of setback and string-line policies as a means of limiting the encroachment of development seaward to the bluff edges on unstable bluffs and preventing the need for construction of revetments and other engineered structures to protect new development on coastal bluffs, as per Section 30253 of the Coastal Act. However, the existing single-family residence was constructed in 1959, prior to passage of the Coastal Act. The residence is located on an artificially graded pad created when the street was graded as part of a tract development and therefore has zero setback. The 21' x 22' detached garage was constructed just northwest of the house in 1972. The garage was constructed with four 18-inch diameter, 14-foot deep caissons (per structural plans) that support two grade beams which support two 24-inch concrete columns and a concrete retaining wall that supports the garage and the deck over the garage. The garage floor is approximately the same level as the street and short driveway. A bedroom/bathroom and lower deck addition was constructed beneath the garage in 1973, both the

garage and garage lower level bedroom/bathroom/deck additions were constructed without the benefit of a coastal development permit.

Section 30235 of the Coastal Act allows the construction of protective devices to protect existing structures when designed to mitigate adverse impacts. The owner now requests to further improve the foundation system of the existing unpermitted garage by adding three 36" diameter concrete caissons will be on the bluff side of the two-level garage structure.

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

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

Section 30253 of the Coastal Act states in relevant 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.*

Structural observations of the garage foundation included in the geotechnical report state that soil creep in the bluff slope area beneath the rear portion of the entrance to the garage lower level bedroom has caused cracks and about five inches of vertical and horizontal displacement in part of the concrete slab that is not supported by an existing caisson and grade beam. The 24-inch concrete columns appear to lean back from the vertical in the direction of the street, suggesting that some down-slope movement of the grade beam and tilting of the caissons has occurred and support beams show some downward bending. Although the proposed additional caissons are recommended by the applicant's geotechnical report as necessary to protect the existing structure, they must be designed and carried out in a manner that ensures structural stability and minimizes impacts to the natural landform. The proposed three 36" diameter concrete caissons and grade beams are proposed to be installed beneath the existing structure and will be visible from the public beach or public coastal access trail.

The geotechnical report does not provide drainage recommendations for the proposed improvements. **Special Condition #2** requires the applicant submit final drainage plans for the proposed improvements to the existing garage roof deck demonstrating rooftop and surface runoff directed away from the bluff and to the street to avoid bluff erosion hazards.

Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" methods designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, Section 30235 limits the construction of shoreline protective works to those required to serve coastal-dependant uses, or to protect existing structures or public beaches in danger from erosion, provided they are designed to eliminate or mitigate adverse impacts on shoreline sand supply. The Coastal Act provides these limitations because shoreline structures can have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, adjacent

properties, and overall shoreline dynamics. The Commission must always consider the specifics of each individual project, but under the standards established by Section 30235, prefers alternatives that avoid the needs for shoreline armoring. In addition, the Commission has generally interpreted Section 30235 to require the Commission to approve protective devices for residential development only for existing principal structures. In this case, non-structural alternatives such as addressing landscaping and drainage have already been implemented and have not fully addressed the geologic stability issues at the site. Other alternatives, such as relocation of the existing structure isn't feasible since there are no landward areas on the property to relocate the garage structure. Shoreline sand supply won't be affected by the project because the bluffs at this location are presently isolated from the beach by railroad tracks and shoreline armoring, thus eroding material from the bluff at this site doesn't presently contribute to sand supply. Measures to mitigate issues from this proposal are described below.

As discussed throughout the report, development on a coastal bluff is inherently hazardous. Consequently, the Commission requires applicants on bluff lots to comply with certain specific special conditions to bring the project into compliance with the resource protection policies of the Coastal Act. In this case, the special conditions require assumption of risk; future improvements be submitted to the Commission for a new permit or permit amendment; potential future visual impacts, and a generic deed restriction.

Special Condition #7 requires the standard waiver of liability condition for the applicant undertake the assumption of risk. The proposed garage foundation repairs reduce the risk to the existing structure for the time being, especially since the existing bluff appears to exhibit a 2.1 factor of safety static conditions and a 1.3 factor of safety under pseudo static conditions using empirical methodology of slope stability analysis (*Supplemental Report, Slope Stability Analyses and Bluff Retreat Evaluation, Downs Residence, 333 West Paseo de Cristobal, San Clemente, CA* prepared by G.A. Nicoll and Associates, Inc. dated October 6, 2009). By this means, the applicant is notified that the development is built in an area that is potentially subject to bluff erosion that can damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development.

Development on coastal bluffs which may affect the stability of the bluffs and residential structures or may require future bluff protective structures, require a coastal development permit. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability and/or environmentally sensitive habitat area concerns expressed in this staff report, the Commission imposes **Special Condition #8**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-09-175) or a new coastal development permit. Future development includes, but is not limited to, hardscape improvements, grading, structural additions, landscaping/bluff vegetation removal and fencing.

Finally, a deed restriction as required by **Special Condition #9** ensures that future owners of the property will be informed of the inherent coastal hazard risks with coastal bluff sites and the Commission's immunity for liability.

As such, these special conditions guarantee that the final development plans are consistent with Section 30253 and 30235 of the Coastal Act.

D. SCENIC AND VISUAL QUALITIES

Section 30251 of the Coastal Act states, in pertinent 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....”

The proposed development is located on a bluff top lot adjacent to a public beach and public coastal access trail. The site is visible from the public beach and trail. Development at this location must be sited and designed to be visually compatible with the character of the area. It is also necessary to ensure that new development be sited and designed to protect views along the public vantage points.

Existing ornamental bluff vegetation blocks the view of a small solid block retaining wall that sits on the rear grade beam supporting the garage structure. The proposed caisson and grade beam structures are subsurface and would not have a visual impact. However, future erosion and/or failure of existing protective structures could expose them. Under such circumstances, the proposed structures would have an adverse visual impact since they would be visible from the public trail and beach. Therefore, **Special Condition #6** requires the landowner to address such visual impacts should they arise in the future.

As conditioned, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

F. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored...

Section 30231 of the Coastal Act states:

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

To protect water quality during construction, the applicant proposes and **Special Condition #1** requires the applicant to implement best management practices (BMPs) designed to avoid temporary impacts by minimizing erosion and preventing soil and debris from entering coastal waters during construction. As proposed and conditioned, the project will minimize possible adverse impacts on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

G. UNPERMITTED DEVELOPMENT

A portion of the development has occurred on site without benefit of the required coastal development permit, consisting of construction of a 506 sq. ft. two-car garage with a caisson and beam foundation in 1972 and subsequent enclosure of the lower garage level for a

bedroom/bathroom addition and lower level garage cantilevered bluff deck. The subject application would authorize the existing unpermitted development identified above.

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. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

H. LOCAL COASTAL PROGRAM

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 to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

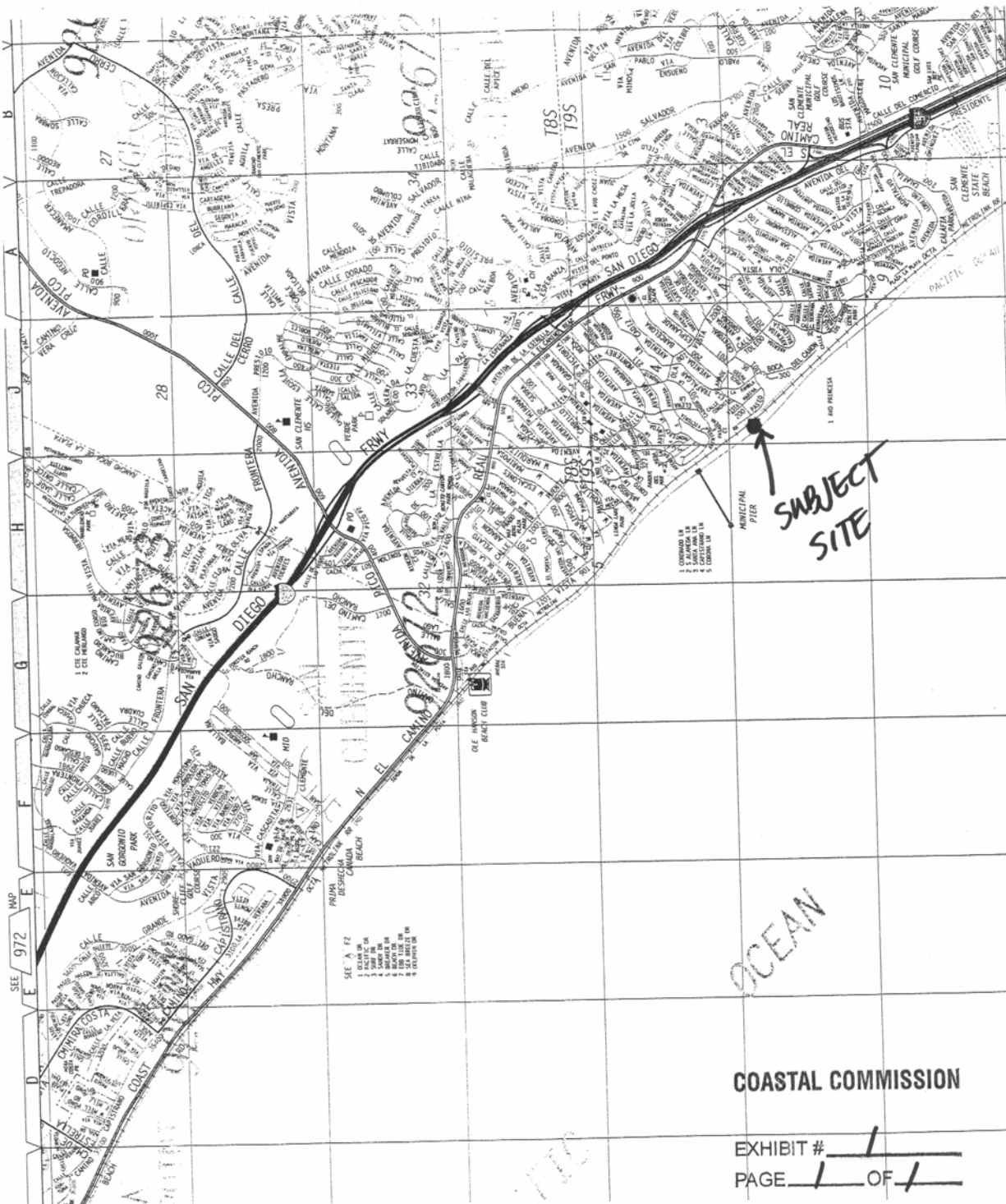
The proposed development, as conditioned, is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

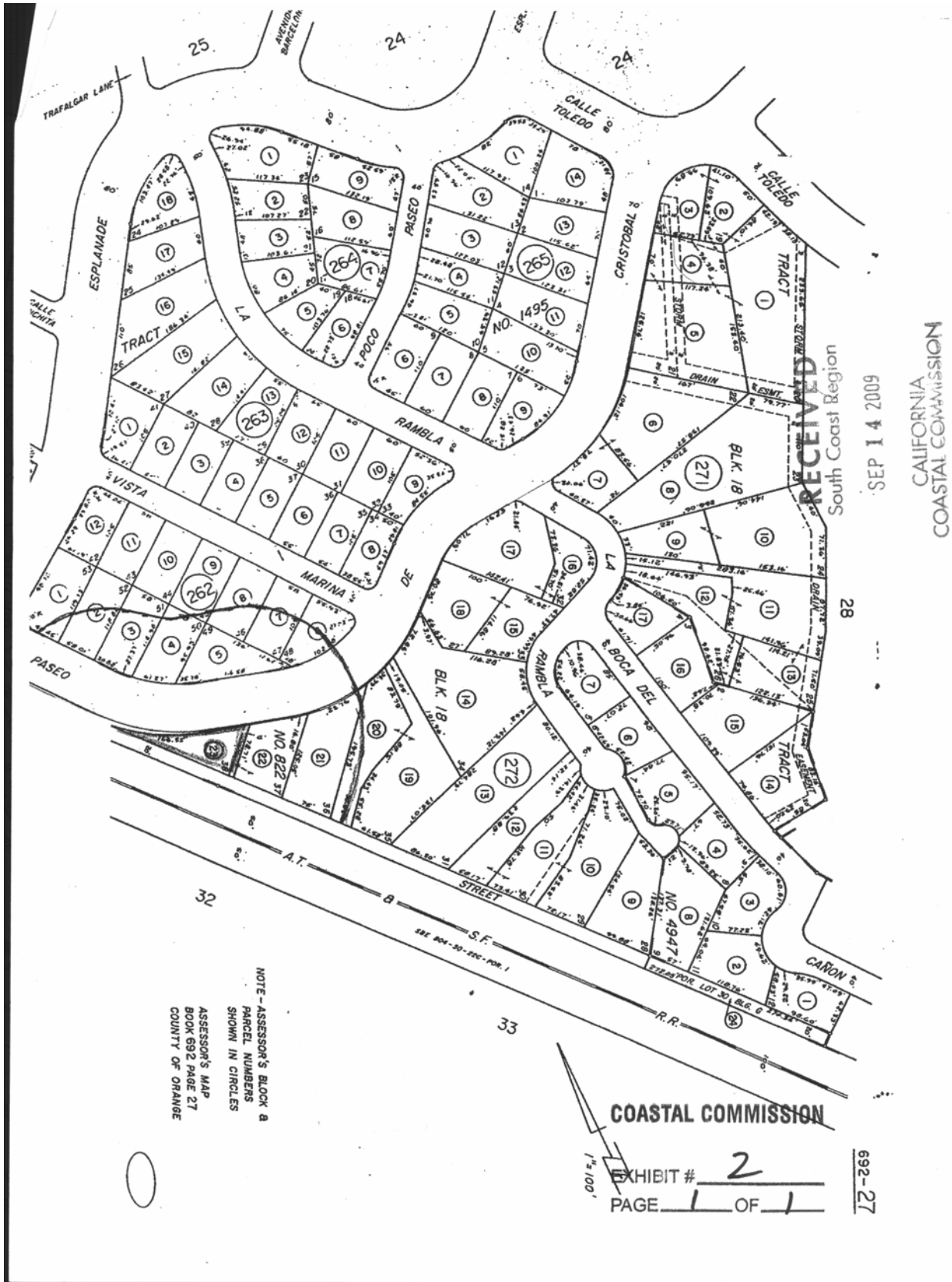
I. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 that the activity may have on the environment.

The City of San Clemente is the lead agency for purposes of CEQA compliance. The City determined that the project is categorically exempt from CEQA under Categorical Exemption Class 1 Item C1. However, the Commission adopts additional mitigation measures including: special conditions requiring 1) storage of construction materials, mechanized equipment and removal of construction debris; 2) submittal of final drainage plan; 3) bird strike prevention treatment; 4) conformance to geotechnical report; 5) landscaping; 6) future caisson, grade beam, retaining wall exposure plans; 7) assumption of risk, waiver of liability and indemnity; 8) future improvements come back to the Commission for review; and 9) deed restriction. As conditioned, the proposed project is found consistent with the water quality, biological, visual resource protection, and geologic hazard policies of the Coastal Act and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned 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.





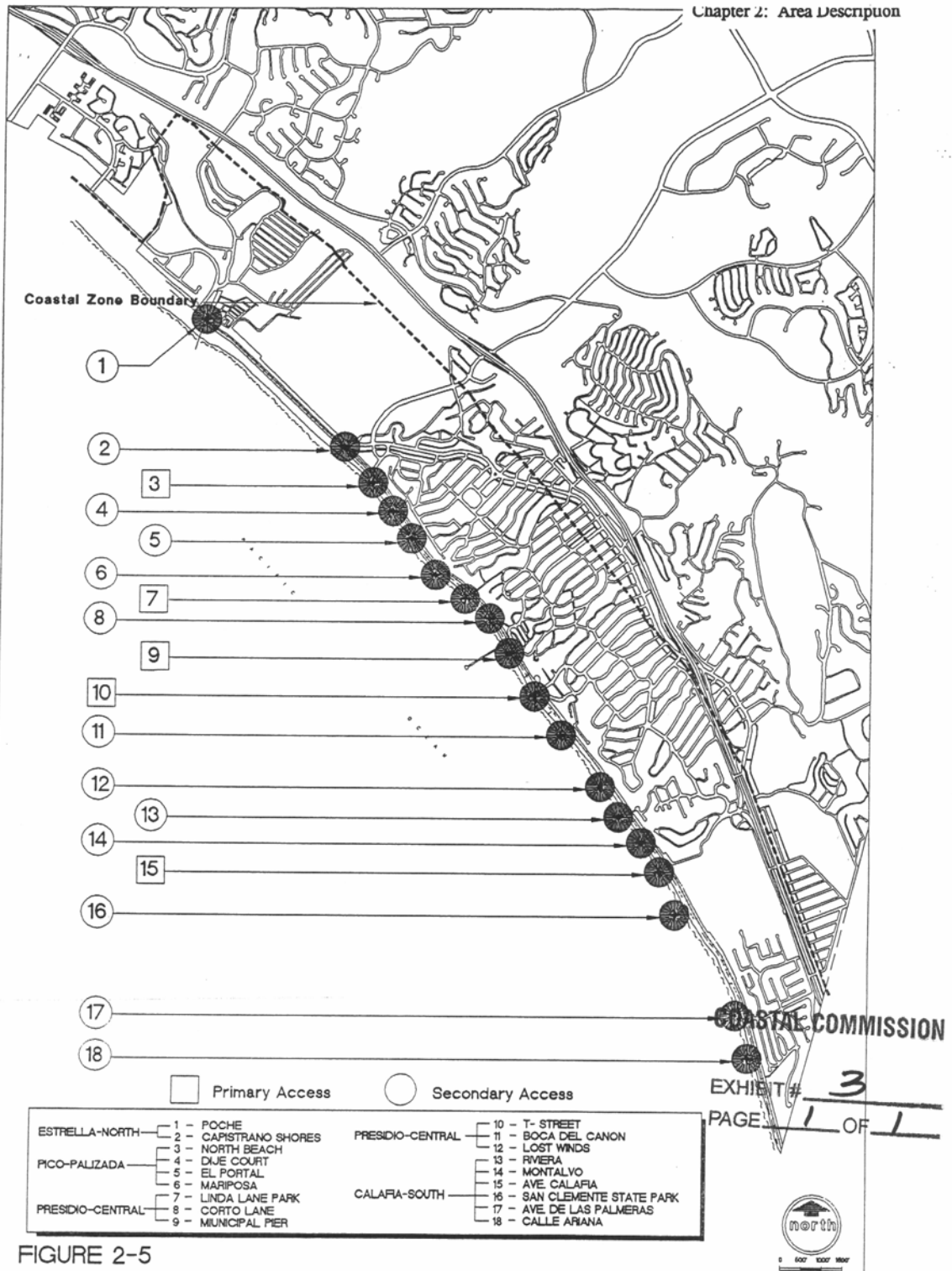


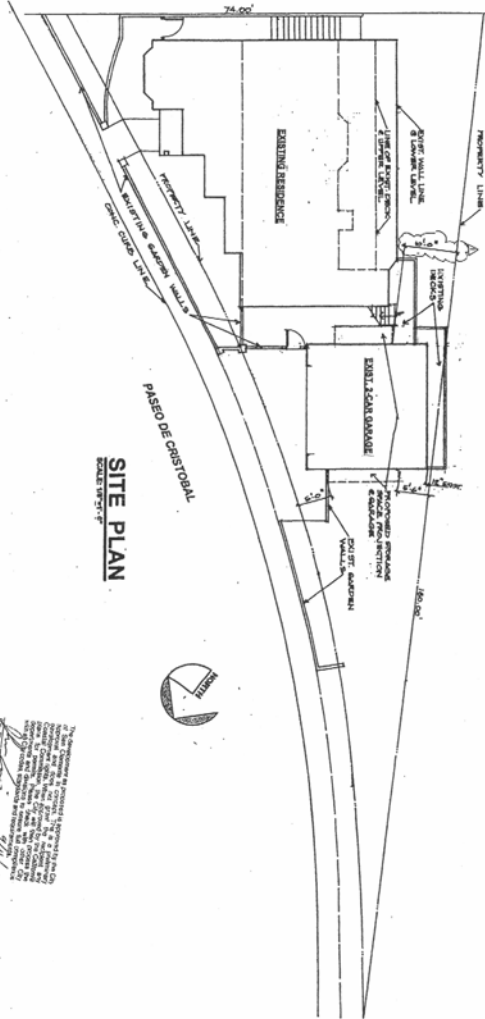
FIGURE 2-5

CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS

COASTAL COMMISSION

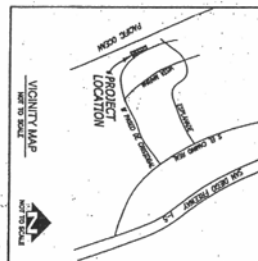
EXHIBIT # 4
PAGE 1 OF 6

REMODEL & ADDITION
FOR
MR & MRS DON DOWNS
333 PASEO DE CRISTOBAL
SAN CLEMENTE, CALIF.



SITE PLAN

7/1/84



SHEET INDEX

1. TITLE & SITE PLAN
2. FOUNDATION PLAN / LOWER /
3. UPPER FLOOR PLAN / FIRST FLOOR
4. ELEVATION & RAILING DETAIL
5. EXTENSION ELEVATIONS
6. GENERAL NOTES & REQUIREMENTS
7. SPECIAL INSTRUCTIONS
- 8.1-2 STRUCTURAL DETAILS & NOTES
- 8.3-4 STRUCTURAL DETAILS & NOTES
- 8.5-6 STRUCTURAL DETAILS

OWNER & JOB ADDRESS
MR & MRS DON DOWNS
333 PASEO DE CRISTOBAL
SAN CLEMENTE, CA 92672
(949) 484-7114

LEGAL DESCRIPTION
CITY OF SAN CLEMENTE
COUNTY OF ORANGE

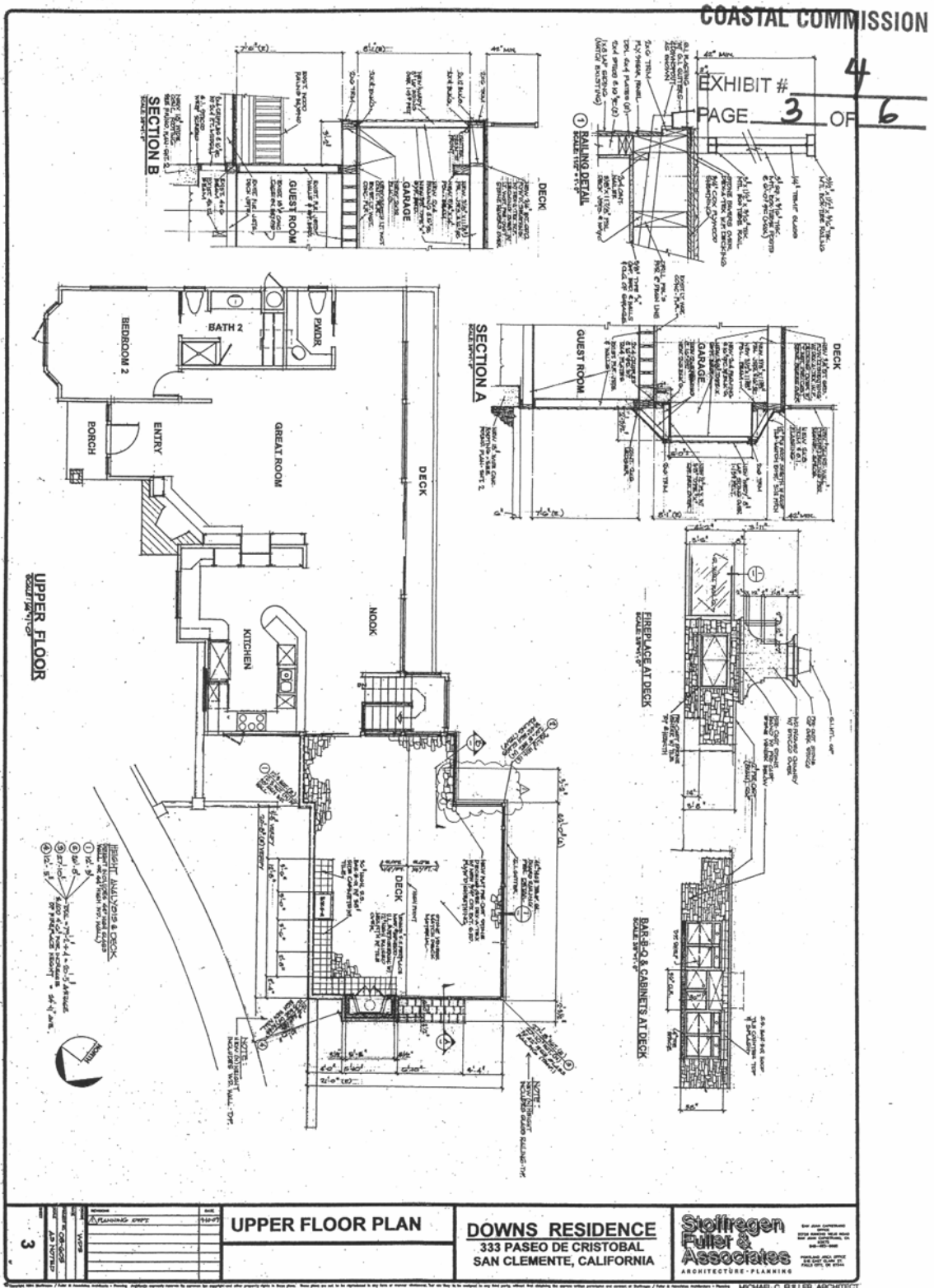
SQUARE FOOTAGES
EXISTING RESIDENCE 1,000 SQ. FT.
NEW ADDITION 1,000 SQ. FT.
TOTAL 2,000 SQ. FT.

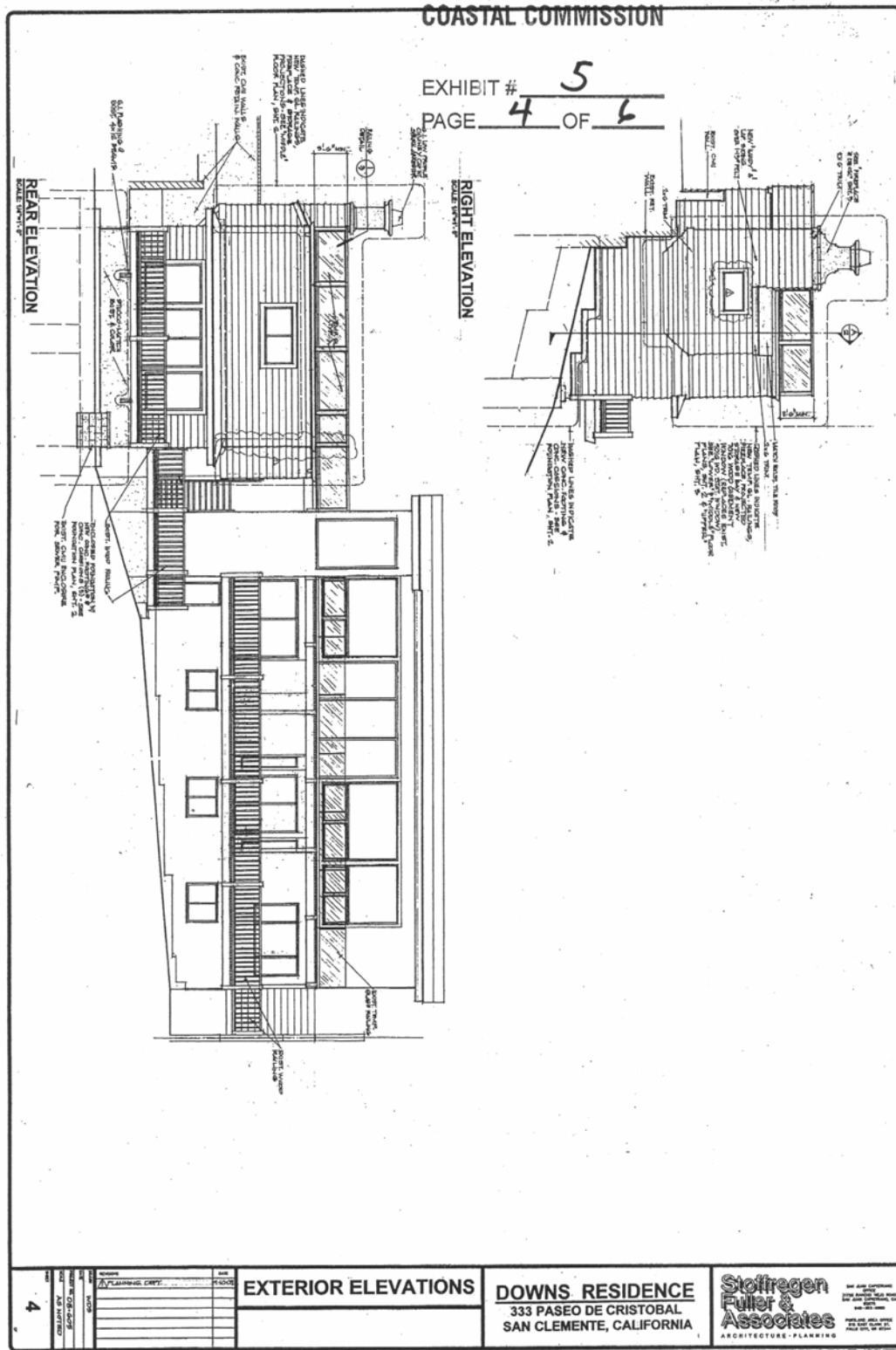
TITLE SHEET
SITE PLAN

DOWNS RESIDENCE
333 PASEO DE CRISTOBAL
SAN CLEMENTE, CALIFORNIA

**Stoffregen
Fuller &
Associates**
ARCHITECTURE - PLANNING

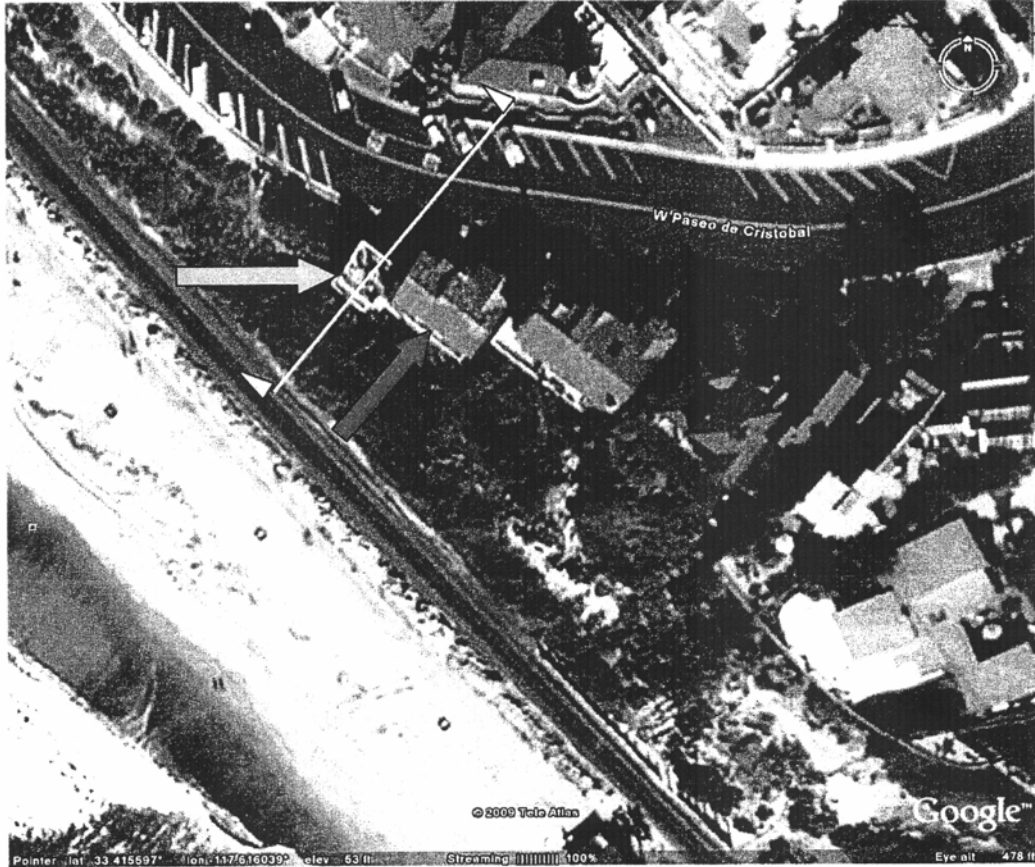
MICHAEL C. FULLER, ARCHITECT





COASTAL COMMISSION

EXHIBIT # 5
586



Google Earth photograph of the Downs Residence (red arrow) and the slope, RR tracks, beach and Pacific Ocean area. The area of the residence to receive the improvements is identified by the green arrow. The typical steep, bedrock-exposed portion of the bluff does not occur in the northeasterly slope area until the 3rd house to the southwest of the Downs residence. The location of Cross Section A-A' is shown.

DOWNS, San Clemente, CA
GANA Project No. 6556-04.1
Oct. 6, 2009



COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 2



COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2

