

CALIFORNIA COASTAL COMMISSION

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



Th 13c

ADDENDUM

May 10, 2010

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th 13c**, COASTAL DEVELOPMENT PERMIT APPLICATION **#5-09-256 (City of Laguna Beach Public Works & James L. Lund)** FOR THE COMMISSION MEETING OF **May 13, 2010**.

Correspondence

Letter from Mr. James L. Lund (co-applicant) dated May 6, 2010 requesting approval of the project as proposed, not as an approval in part and denial in part as recommended by staff. Mr. Lund is not available to attend the hearing and submitted his comments in writing.

Letter from the City of Laguna Beach dated May 10, 2010 noting that the City is not in agreement with all of the staff recommendations and requests a hearing on the item. The City requests approval of the project as proposed, however, should the Commission decline to approve the entire project, the City then requests that the Commission approve the project components with public benefits. The City notes that the co-applicant, Mr. James L. Lund does not support approval of only portions of the project without inclusion of a shoreline protection device. Furthermore, in this addendum staff proposes revisions to the recommended Special Condition 3 and Special Condition 5 in the staff report to address concerns raised by the City in their correspondence regarding the construction phase of the project.

Revisions to Staff Report

Commission staff recommends the following changes to the staff report, deleted language is shown in ~~strike through~~ and new language is in **bold, underlined italic**.

1. Correct a typo in the project description and throughout the entire staff report that refers to the proposed storm drain as a ~~48-inch diameter~~ pipe, in actuality, the proposed underground storm drain pipe is **42-inch diameter**. A 42-inch diameter pipe is correctly depicted on the submitted proposed plans.

2. Correct a typo in Section (2)(e) of Special Condition 2, Revised Landscaping Plan on page 5 of the staff report as follows:

- (e) Landscaping shall be designed and maintained to invite and encourage public use of the publicly owned land. All aspects of the plantings (e.g. plant type, size, location, density of distribution, etc.) shall be designed in a manner that does not obstruct or interfere with public views or public use and enjoyment of **sandy**

beach areas. ~~publicly owned land located around the mainland terminus of the bridge.~~

3. Special Condition 3 provides standard construction phase Best Management Practices (BMPs). The proposed project involves construction on sandy beach areas and will require the use of some machinery on the upper beach, but not in the intertidal zone. Staff recommends modifying the standard language of Special Condition 3 to allow the use of machinery on the beach but maintaining the restriction of no machinery in the intertidal zone to address water quality concerns. Beginning on the bottom of page 5 of the staff report, modify the language of Special Condition 3 as follows:

3. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

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

- a. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave/wind erosion and dispersion;
- b. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- c. No machinery shall be allowed at any time ~~on the beach or~~ in the intertidal zone;
- d. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- e. All excavated beach sand shall be re-deposited on the beach
- f. Concrete trucks and tools used for construction of the approved development shall not be rinsed at the site.

4. Special Condition 5 provides standard construction staging area condition language, however, staff recommends modifying the standard language to allow flexibility to use some on-street parking spaces. Beginning on the bottom of page 6 of the staff report, modify the language of Special Condition 5 as follows:

5. STAGING AREA DURING CONSTRUCTION

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to public access, beach areas or to sensitive habitat areas.

(1) The plan shall demonstrate that:

- a. Construction equipment shall not be stored outside the staging area
- b. Public parking areas shall not be used for staging or storage of equipment **to the maximum extent practicable**

- c. Sandy beach or habitat (vegetated) areas shall not be used for staging or storage of equipment
- d. The staging area for construction of the project shall not obstruct vertical or lateral access to the beach or other recreational facilities.

(2) The plan shall include, at a minimum, the limits of the staging area(s) and location of construction fencing and temporary job trailers, if any.

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. On Page 13, paragraph 2, staff recommends the findings be revised as follows:

SPECIAL CONDITION #5 requires the applicant to provide a staging area plan prior to the issuance of the coastal development permit ensuring that ~~public parking areas and sandy beach or habitat (vegetated) areas are not used as staging areas and that the staging area for construction of the project shall not obstruct vertical or lateral access to the beach.~~ **The Commission typically also prohibits use of public parking for staging areas; however, in this particular case there are no public parking lots within the vicinity, only public on-street parking, and there are no other City-owned lots or areas in close proximity to the site for construction staging. Therefore, construction staging for the project may require use of some on-street parking spaces. SPECIAL CONDITION #5 requires the City to avoid the use of public parking for staging areas to the maximum extent practicable.** Furthermore, **SPECIAL CONDITION #6** requires construction to take place outside of the peak beach season to minimize adverse coastal access impacts **associated with construction activity in general and any potential, unavoidable use of public parking for staging equipment.**

6. On Page 14, paragraph 3, staff recommends the findings be revised as follows:

The applicant is proposing a "Galveston-Style" seawall **(i.e., a curved wall with a large concrete apron buried under sand)** at the toe of the coastal bluff to protect the re-constructed public access beach stairway and the **toe of the bluff below the** adjacent private single-family residence from direct wave attack. The shoreline protective seawall would be approximately 75-foot long and would connect to an adjacent pre-Coastal seawall north of the stairway and adjacent to 299 Crescent Bay Drive and to an existing wood bulkhead located south of the stairway. The proposed concrete seawall has a broad apron that would be embedded into bedrock approximately 10.5 feet seaward of the main vertical wall proposed at the toe of the bluff at approximately the 15' contour elevation and would occupy sandy beach area.

~~The beach at the toe of the bluff at the stairs is publicly owned beach and a privately owned beach at the toe of the bluff in front of 299 Crescent Bay Drive above the Mean High Tide Line. The property line at 299 Crescent Bay Drive is different from the Mean High Tide Line.~~ **The beach immediately seaward of the stairway is part of the City owned parcel and therefore public beach. The portion of the beach inland of the Mean High Tide Line in front of the private parcel at 299 Crescent Bay Drive is in private ownership.** In the 1980's the Commission approved an after-the-fact permit for the construction of a seawall and required the

applicant at that time to offer a public lateral access easement seaward of the seawall. That condition was not met and the permit never issued. According to the applicant, the sandy beach area erodes to cobble during the winter. **In January 1984, the Commission approved with conditions CDP 5-83-892 (City of Laguna Beach) for the 'after-the-fact' installation of pumped concrete around the Circle Way public access stairway and storm drain outfall for erosion protection. The conditions imposed included submittal of revised plans indicating that no part of the proposed development extends seaward of the 12-foot elevation contour, and removal of any portion of the as-built protective device extending beyond the 12-foot elevation contour. The permit was never vested and therefore the violation remains unresolved. In August 1984, the Commission approved with conditions CDP 5-84-205 (Montapert) for the 'after-the-fact' installation of rock/riprap and concrete at the base of the bluff at 299 Crescent Bay, the location of the seawall now proposed as a component of this application. The special conditions included (1) recordation of a public lateral access easement for public access and passive recreational use along the shoreline parallel to the approved rock riprap/concrete seawall and all area from the seaward edge of that wall to the mean high tide line; (2) applicant's assumption of risk and recordation of a deed restriction; (3) submittal of revised plans indicating that no part of the proposed development extends seaward of the 12-foot elevation contour, and removal of any portion of the as-built protective device extending beyond the 12-foot elevation contour. The lateral access easement condition was not met and the permit was never issued.**

Section 30235 of the Coastal Act states that shoreline protective devices like the ones proposed in this case can be permitted "...when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply..."

The applicant must demonstrate that a shoreline protective device is necessary consistent with the terms of Section 30235, that the proposed alternative is the least environmentally damaging feasible alternative and that the proposed alternative will be designed to eliminate or mitigate impacts to local sand supply.

Existing Structure/Danger from Erosion

In 1980, at 299 Crescent Bay Drive, a shear key was constructed at the toe of the slope and is approximately 24' wide by 48' long by 12' deep into Monterey siltstone **(i.e., a deep and wide trench cut excavated through a landslide mass and into intact material below the slide then backfilled with soil to provide a higher shear strength than the original ruptured surface) by a previous property owner without the benefit of a coastal development permit.** The slope was re-graded to provide seacliff stability and a factor of safety of 1.5. However, the toe of the slope remains vulnerable to storm action. Then in 1984 a previous property owner **installed a rock/riprap and concrete seawall at the base of the bluff at 299 Crescent Bay also without the benefit of a coastal development permit. The unpermitted rock revetment is still in place buried under sand during most of the year, but exposed during winter storms.**

The applicant submitted a preliminary geotechnical investigation for 299 Crescent Bay Drive by Bagahi Engineering Inc dated August 22, 2003 providing slope stability computations which conclude that the present slope with key has an adequate factor of safety exceeding 1.5 under static condition. However, for the portion of the slope beyond the key (i.e., between the key and

the beach) the factor of safety ~~the factor of safety~~ is 1.3 which is less than the minimum acceptable value. The report also concludes that beach erosion near the toe of the bluff or a rise in groundwater on the site lowers the computed factors of safety. Although the slope in its entirety possesses an adequate factor of safety under static loading, a portion of the slope seaward of the shear key does not have an adequate factor of safety. The report concludes that failure of this seaward portion of the bluff can result in a domino effect leading to failure of the remaining portion of the slope thereby affecting the existing residence and recommends a slope protection system at the toe of the bluff to "maintain the integrity of the slope." Although the existing residence is currently safe from bluff failure caused by direct wave action, there may be a future need for shoreline protection. At that time, the applicant may submit a request for shoreline protection device at the most landward alignment feasible and designed to minimize adverse impacts on sand supply. **SPECIAL CONDITION #9** clarifies that this permit shall not prejudice the design options for any future shore protection.

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South Coast Region

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CENTURY CITY
1459 SUNSET PLAZA DRIVELOS ANGELES

LOS ANGELES, CALIFORNIA 90069-1341

GENEVA
CALIFORNIA
COASTAL COMMISSIONFACSIMILE TRANSMISSION

FROM: JAMES L. LUND

Tel: 310 - 286-2861
Fax: 310 - 652-0197TO: CALIFORNIA COASTAL COMMISSION
HEADQUARTERS
SOUTH COAST DISTRICT OFFICE
CENTRAL COAST DISTRICT OFFICE
COPY: CITY OF LAGUNA BEACHFax: 415 - 904-5400
Fax: 562 - 590-5084
Fax: 831 - 427-4877
Fax: 949 - 494-1864

Date: 6 May 2010

Time: 20:16:52

Pages: SEVEN

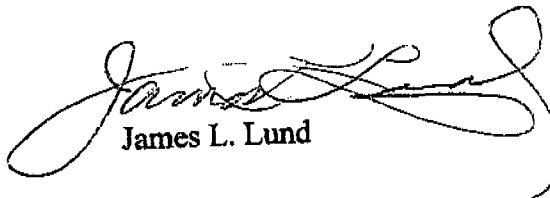
Attachment A) 6 May 2010 Letter to California Coastal Commission (6 pages)

Re: Application Number 5-09-256 - City of Laguna Beach, California
Circle Way Storm Drain Project -
Hearing Date and Place: May 12-14, 2010, Santa Cruz, California

1. Attached hereto for inclusion in subject record is a letter from the undersigned setting forth the reasons subject Application should be approved - as submitted - without deleting the critical Shore Protection Device which was designed as integral component of the Project to prevent slope failure.

2. Mr. Steven May, Laguna Beach City Engineer and Director of Public Works will be appearing at the Hearing and will have additional copies of the enclosed for filing.

With kindest regards,


James L. Lund

Attachment A): as described

LUND & LUND
LAW FIRM

GENEVA

LOS ANGELES

CENTURY CITY

1459 SUNSET PLAZA DRIVE • LOS ANGELES, CALIFORNIA 90069-1341
E-MAIL: jimlund@sbcglobal.net FAX: (310) 652-0197 TEL: (310) 286-2861

6 May 2010

California Coastal Commission
45 Fremont Street
San Francisco, California 94106-2219

Re: Application Number 5-09-256 - City of Laguna Beach, California -
Circle Way Storm Drain Project -
Hearing Date and Place: May 12-14, 2010, Santa Cruz, California

Reference: A) California Coastal Commission Staff Report, dated April 21, 2010

Dear Commissioners:

Reference A) has recommended partial approval of the City's Proposed Circle Way Storm Drain Project, but has recommended the deletion of a key engineered component - namely, a shore protection device, which was mandated by the professional engineers to avoid imperiling public safety, property damage, and environmental damage resulting from a future slope failure.

The undersigned, the owner of the land adjacent to the proposed Project, was invited to, and did, become a "Nominal Applicant" to subject Application after the City's professional consulting engineers unanimously concluded that a shore protection device on both properties was an absolute necessity to avoid the additional slope failure potential associated with the construction of the City's Project.

Prior professional commitments preclude my attendance at the May 12-14 Hearing in Santa Cruz; and I therefore respectfully request your indulgence in considering the contents of this letter as the basis for my urging the Commission to accept the Project, as designed, and without the deletion of the mandated Shore Protection Device.

FACTS

1. The undersigned is the owner of the property and residence, known as Lot 33 - 299 Crescent Bay Drive, Laguna Beach, CA 92651.
2. Lot 33 adjoins the City owned Lot "B", the Project Site.
3. Lot 33 suffered a massive landslide some years ago. In an attempt to stabilize the property, the earth was removed and an approved engineered Earthen Key [48 ft. x 24 ft. x 12 ft.] was constructed into the site, the beach face of which extends to the bluff face, which makes it vulnerable to weather and storm damage, and thus lot failure.

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LAW FIRM

4. All four properties to the West of Lot 33 are now protected with approved shore protection devices, which to varying degrees deflect storm waters to both Lot 33 and Lot "B"

THE PROFESSIONAL ENGINEERING FINDINGS

1. That the City's proposed site [Lot "B"] is currently tested as being below accepted U.S. official Seismic and Slope Stability Safety Standards.
2. That my adjoining property [Lot 33] even with the Earthen Key is currently tested as being below accepted U.S. official Seismic and Slope Stability Safety Standards.

THE PROFESSIONAL ENGINEERS CONCLUSIONS

[Quoted from attached Tetra Tech, Inc August 3, 2001 Letter to City of Laguna Beach]

"---- leaving either Lot 33 or Lot B unprotected, after constructing the proposed storm drain and stairs improvements, would result in significant property damage, and probably slope failure, to both Lot 33 and the City owned Lot B (and its improvements - sewer, storm drain, stairs, etc.) -----"

[Please Note: As a result of an inadequate City Storm System, my property [Lot 33] and others have suffered massive floodings [1997/98, 2005, 2010] each of which has further destabilized my property and has caused hundreds of thousands of dollars of damage - all verifiable. The City of Laguna Beach and the property owners urgently need this Project to correct this situation.

THE PROPOSED SHORE PROTECTION DEVICE

The City's professional engineering consultants adopted a Corps of Engineers proven "Stepped Structure and Curved Face Device" which meets the following criteria established for such devices:

1. Provides "0" ft. of beach encroachment above the winter high tide mark
[note: depending on the exact location of the high tide mark, the subterranean foundation of the device [below the sand and cobble level] might intrude but it would be unseen and far below the cobble level even during winter season]
2. Has a Wave Reflection Coefficient less than all other devices and approximately equal to the existing sea bluff
3. Has no negative consequences of discontinuance protection
4. Produces insignificant reduction to sea cliff sand contribution
5. Creates no negative aesthetic intrusion [please refer to City's photo markups]
6. Is easiest to construct
7. Has least on-site construction time.

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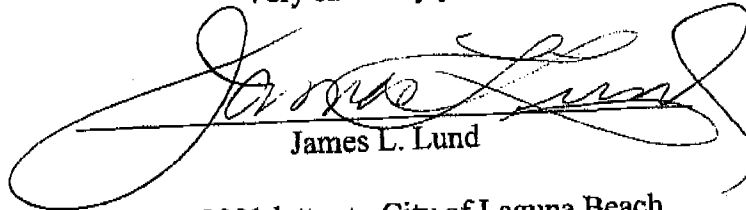
LAW FIRM

**REASONS FOR APPROVING THE PROJECT AS DESIGNED
WITH THE MANDATED SHORE PROTECTION DEVICE**

1. Both the undersigned's Lot 33 and the City's Lot "B" are rated as unsafe and subject to slope failure in their current condition
2. The construction of the Project will compound and add to the probability of slope failure.
3. For lack of a shore protection device, a slope failure of either or both of the Lots presents a scenario of damage/destruction to my residence, the concrete stairs, the water lines, the storm drain lines, and the sewer lines, any or all of which will imperil the public safety and wreak environmental damage to the public beach.

Your approval of the Project, as designed, is respectfully requested. With thanks and sincere appreciation for considering my heartfelt concerns, I am,

Very sincerely yours,


James L. Lund

Encl: Tetra Tech, Inc. August 3, 2001 letter to City of Laguna Beach

Copy to:

1. Eric James Lund, Esq.
2. Ken Frank, City Manager, City of Laguna Beach
3. Steven May, City Engineer, Director of Public Works, City of Laguna Beach
4. Philip D. Kohn, Esq., City Attorney, City of Laguna Beach Attorney

5. California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, California 90802-4416
Fax: 562 - 590-5071
Attention: Liliana Roman

6. California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060
Fax: 831 - 427-4877

**TETRA TECH, INC.**

348 West Hospitality Lane, Suite 300
San Bernardino CA 92408-3216
Telephone (909) 381-1674
FAX (909) 889-1391

August 3, 2001

Mr. Steve May, P.E.
Director of Engineering
City of Laguna Beach
505 Forest Ave.
Laguna Beach, CA 92651

**Subject: Circle Way Stairs and Storm Drain Project -- Phase II
Request for Status of Project**

Dear Mr. May,

I am following up on the submitted plans and specifications for the Circle Way Stairs and Storm Drain Project. A status update on the project would be greatly appreciated. Will the project be scheduled for the Design Review Board (DRB) soon? If so, please inform me of the DRB date and I would be happy to attend and assist you in any way you feel appropriate.

In addition, I have listed below a brief synopsis of some of the history and highlights relative to the previous DRB and City Council approvals of the same Shore Defense System for Lot 33 and adjoining properties. I hope this information will be helpful in addressing the DRB and City Council.

1. Prior to 1990, the City had approved seawall protection for two of the seven lots on the west end of the City owned Lot B.
2. The City Council adopted the standards set forth in the 1988 Guidelines For Shoreline Protection as the City's criteria for approving shoreline and seacliff protection. The design report submitted follows these guidelines
3. Certain owners of unprotected lots along Crescent Bay thereafter applied for shoreline protection under the above criteria, and in doing so, undertook an extensive and exhaustive two year effort, at a cost of approximately \$80,000.00, to arrive at an engineering and construction solution to protecting the shore, the above lots and the City owned Lot B.
4. The results of those extensive efforts are contained in the report, Crescent Bay Shoreline Defense and Seacliff Stabilization, which received the unanimous approval of the City Staff, the City's retained coastal and geotechnical consultants (Lawrence and Noble), Tetra Tech,

Mr. Steve May
August 3, 2001
Page 2

Inc., Scripps Institution of Oceanography, geotechnical engineer Kenneth Baghahi, Ph.D., geologist Fred Praley, Rock and Waterscape Systems, Inc. and Erickson Enterprises, Inc.

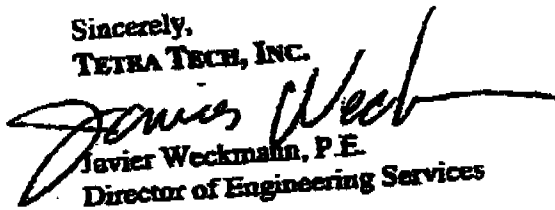
5. The City's Staff, in its unqualified recommendation to the City Council to approve the applications, documented the unsafe slope conditions and the previous slope failures (four of the five (unprotected) properties do not meet the accepted factors of safety against slope failure/landsliding of 1.5 to 1, and all are exposed to varying degrees of landslide hazard...."), assigned a "Negative Declaration", and characterized the Project as

"...the most exhaustive investigative effort in Laguna Beach to date in terms of coastal engineering/geotechnical investigations and analysis...."

6. The applications received the unanimous approval of the Design Review Board and the approval of the City Council.
7. Since that approval, two of the owners (Lots 30 and 31) initiated separate applications for enhanced slope protection and seawalls, which received approval and which were constructed within the last two years.
8. The current (August 2001) situation is that the following west end lots have shoreline protection devices protecting their properties: Lots 29, 30, 31, 32, leaving Lot 33 and City Lot B unprotected.
9. The current engineering for the Circle Way Storm Drain and Stair Project incorporates the previously approved engineer and geotechnical design, as described in paragraphs 4 through 6, above.
10. It is Tetra Tech's professional opinion that in leaving either Lot 33 or Lot B unprotected, after constructing the proposed storm drain and stairs improvements, would result in significant property damage, and probably slope failure, to both Lot 33 and the City owned Lot B (and its improvements - sewer, storm drain, stairs, etc.) during the next series of significant storm events. Therefore, shoreline protection is required for this project.

Should you wish to discuss these items further or require additional information, please call me at (909) 381-1674 at your convenience.

Sincerely,
TETRA TECH, INC.


Javier Weckmann, P.E.
Director of Engineering Services

cc: James Lund
Leif Erickson

TABLE 2
SUMMARY OF ALTERNATIVE
EVALUATION

Evaluation Criteria	Alternative		
	Stone Revetment	Vertical Seawall	Stepped with Curved-Faced Structure
Beach Encroachment	20-30 feet	0 feet	0 feet
Wave Reflection Coefficient	Smaller than existing bluff 0.4-0.6	Greater than existing bluff 0.9-1	Approx. equal to existing sea-cliff 0.6-0.8
Discontinuous Protection (Return wall)	Required, but difficult to construct	Required, but affects adjacent property the most.	Required, easy to implement.
Reduction in Seac Cliff Sand Contribution	Insignificant	Insignificant	Insignificant
Aesthetics	The most massive of the alternatives	Highest and most visible	Low and least visible, especially during summer months.
Construct-ability	Requires large equipment and space	Heavy forming/anchorage required. In-port of back-fill.	Some parts pre-fabbed and set as much forming required.
Logistics	Stockpile area for store required, access problem for delivery	Longer const. time of all alternatives	Should require the least on-site time to const., and least disruptive



Hearing Date: 5/13/10

Item #: Th 13 (c)

By: Steve May

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South Coast Region

May 10, 2010

MAY 10 2010

California Coastal Commission
c/o Liliana Roman, Coastal Program Analyst
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

CALIFORNIA
COASTAL COMMISSION

Subject: Application 05-09-256 (299 Crescent Bay Drive and public access stairway to the beach)

Dear Ladies and Gentlemen:

The City of Laguna Beach, as co-applicant with James Lund for the subject project, wishes to provide the following comments regarding the project and the Commission's staff report for the Commission meeting on 5/13/10.

1. The City does not agree with all of the staff recommendations, and therefore requests a Commission hearing on the item.
2. The City requests approval of the project in its entirety as submitted, with the incorporation of the staff's Special Condition III-2-A-(1) that "no landscaping is authorized on the sandy beach area." In the event that the Commission declines to approve the entire project, then the City requests that the Commission approve as many of the components of the project as the Commission deems appropriate inasmuch as each of the components provides public benefits. It is the City's understanding that the co-applicant, James Lund, does not support approval of only portions of the project without inclusion of a shoreline protective device.
3. There are two Special Conditions that would make performance of the project nearly impossible as follows:
 - a. Special Condition III-3-(c) indicates "No machinery . . . on the beach . . ." It would be nearly impossible to do some of the work without some equipment on the beach. It is requested that this condition be eliminated or modified.
 - b. Special Condition III-5-A-(1)-b indicates that "Public parking areas shall not be used for staging or storage of equipment. There is nowhere in the project vicinity to park or stage equipment other than public parking spaces. During the time of year when the City would intend to do the project there is rarely an absence of public parking in the area. It is requested that this condition be eliminated.

May 10, 2010

California Coastal Commission


"Application 05-09-256 (299 Crescent Bay Drive . . .)"

Page 2 of 2

4. As a final note, some consideration should be given to the lack of any public opposition to the project. The public hearings on this project began in August 2008. Since that time, the City is not aware of a single comment from the public in opposition to the project. Two public hearings on the project were conducted by the City. For those two public hearings, notices were mailed to property owners and residents in the vicinity of the project and notices were posted at the project site. For this pending Coastal Development Permit, the site has been posted with notices for over one year and notices were again mailed to property owners and residents in the vicinity of the project.

The Coastal Commission's thoughtful consideration of this project is appreciated.

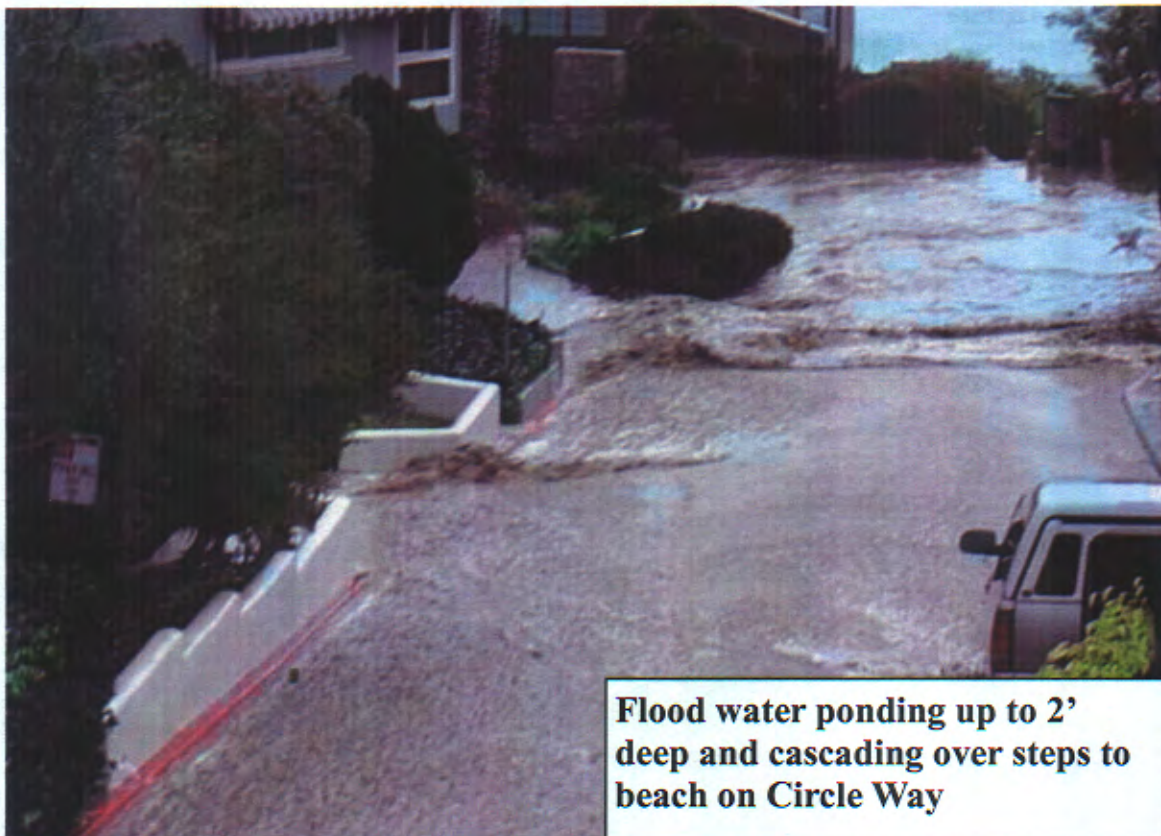
Sincerely,



Steve W. May

Director of Public Works/City Engineer

Cc: James Lund, Co-applicant
Philip D. Kohn, City Attorney
Kenneth Frank, City Manager



Crescent Bay Steps Flooding 1-18-10

CALIFORNIA COASTAL COMMISSION

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

Filed: December 11, 2009
49th Day: January 29, 2010
180th Day: June 9, 2010
Staff: Liliana Roman-LB
Staff Report: April 21, 2010
Hearing Date: May 12-14, 2010
Commission Action:



Item Th13c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-09-256

APPLICANTS: City of Laguna Beach
Mr. James L. Lund

PROJECT LOCATION: 299 Crescent Bay Drive and the public access stairway to the beach at the end of Circle Way

PROJECT DESCRIPTION: Demolition and re-construction of an existing public concrete stairway to the beach from the street-end of Circle Way, re-construction of water line and sewer line from the end of Circle Way down to beach, enlargement of an existing 18" diameter storm drain to a 48" diameter storm drain from the end of Circle Way down to the beach, enlargement of the storm drain outlet at the beach from 18" to 60" diameter with a faux rockscape hinged cover to open when storm flows occur, construction of a new water filtration device and nuisance flow diversion to the sewer system, construction of a concrete seawall with a faux rock finish treatment along the frontage of street-end stairway and along the frontage of the adjacent private property at 299 Crescent Bay Drive, and landscaping along the re-constructed stairway and along the seawall for screening purposes.

LOCAL APPROVALS RECEIVED: Final Mitigated Negative Declaration SCH# 2008081073 Circle Way Shoreline Protection, Stairway and Storm Drain Replacement, City of Laguna Beach, Orange County, CA prepared by SFC Consultants dated November 12, 2008.

SUBSTANTIVE FILE DOCUMENTS: *City of Laguna Beach Hydrology/Hydraulic Report for the Circle Way Storm Drain Project* prepared by Willdan dated June 2000; *Preliminary Geotechnical Investigation Project 131m-231-00, 299 Crescent Bay Drive, Laguna Beach, CA*, prepared by Bagahi Engineering Inc. dated August 22, 2003; *Geotechnical Investigation for Storm Drain Outfall and Replacement of the Circle Way Beach Access Stairs* prepared by Geofirm dated September 3, 2004; *Design Report Crescent Bay Shoreline Defense System, Laguna Beach, CA for City of Laguna Beach, CA*, prepared by Tetra Tech dated October 1988, revised December 1989; *Circle Way Shoreline Protection, Stairway and Storm Drain Rehabilitation Project, Laguna Beach, CA (Project) CCC Application #5-09-034, Response to July 14, 2009 Conference Call*, prepared by Tetra Tech dated September 29, 2009; and *Circle Way Shoreline Protection, Stairway and Storm Drain Rehabilitation Project, Laguna Beach, CA (Project) CCC Application #5-09-034*, letter report prepared by Tetra Tech dated December 7, 2009.

SUMMARY OF STAFF RECOMMENDATION:

The proposed City of Laguna Beach public works project proposes replacing a deteriorated public beach access stairway in the same location and configuration, constructing a new seawall at the base of the sea cliff adjacent to the public stairway and along the adjacent private residential lot at 299 Crescent Bay Drive and enlarging an existing storm drain from 18" to 60". The proposed storm drain outlet and seawall are subject to tidal action and at times to direct wave attack due to its beach location approximately 6 to 10 feet above Mean Sea Level (MSL). The major issues before the Commission relate to hazards associated with the development, public access and recreation and water quality. Additionally, the proposed seawall has not been shown to be needed to protect the existing residential structure or the public beach and is not consistent with Section 30235 of the Coastal Act.

Staff recommends that the Commission **DENY** the proposed shoreline protective device (seawall) since the development is not designed to eliminate or mitigate adverse impacts on local shoreline sand supply and due to adverse recreational impacts if approved in the proposed configuration. Staff recommends that the Commission **APPROVE** the replacement of the existing public access beach stairway and replacement/enlargement of the existing storm drain structures with **NINE (9) Special Conditions** pertaining to: **1)** revised final project plans/deletion of shoreline-blufftop protection device(seawall); **2)** revised final landscaping plans; **3)** construction responsibilities and debris removal; **4)** location of debris disposal site; **5)** construction staging area; **6)** timing of construction; **7)** assumption of risk, waiver of liability and indemnity agreement; **8)** future development restriction; **9)** design of any future shoreline/blufftop protection device(seawall)

A portion of the project is within the Commission's original jurisdiction. The applicants have submitted a consolidated coastal development permit application for the entire project. Therefore, pursuant to Section 30601.3, 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.

LIST OF EXHIBITS

1. Vicinity Map
 2. Assessor's Parcel Map
 3. Project Plans
 4. Landscaping Plan
 5. Visual Simulations of Proposed Improvements
-

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. 5-09-256, 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 demolition and replacement of the existing public access beach stairway, landscaping along the re-constructed stairway, re-construction of water line and sewer line from the end of Circle Way down to beach, enlargement of an existing 18” diameter storm drain to a 48” diameter storm drain from the end of Circle Way down to the beach, enlargement of the storm drain outlet at the beach from 18” to 60” diameter with a faux rockscape hinged cover to open when storm flows occur, construction of a new water filtration device and minor nuisance flow diversion to the sewer system 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 seawall shoreline/bluff protection device at the toe of the bluff adjacent to the public access beach stairway and 299 Crescent Bay Drive and proposed landscaping in front of the seawall, 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. 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 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. **REVISED FINAL PROJECT PLANS/DELETION OF SHORELINE/BLUFFTOP PROTECTION DEVICE (SEAWALL)**

- 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, elevations, cross-sections, grading, foundation, structural, etc.) revised to delete the shoreline/blufftop protection device (seawall) portion of the project recommended for denial to be consistent with the recommendation and revised to comply with all conditions of this permit. Further, the revised plans shall include certification by a licensed civil engineer that the approved development has been designed in a manner that does not rely on the construction of a shoreline protection device for structural stability.
- 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.

2. **REVISED LANDSCAPING 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 revised final landscaping plans prepared by an appropriately licensed professional which demonstrates the following:
 - (1) Landscaping for the public access beach stairway portion of the project only, no landscaping is authorized on the sandy beach area at the toe of the coastal bluff in front of the proposed seawall at 299 Crescent Bay Drive.
 - (2) The plan shall demonstrate that:
 - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;

- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
 - (c) Landscaped areas not occupied by hardscape within the project limits shall be planted and maintained for erosion control, water quality protection, and public use and enjoyment of publicly owned lands. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native and/or drought tolerant non-invasive plant species. 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>). Any existing landscaping within the project limits that does not meet the above requirements shall be removed.
 - (d) Irrigation to allow the establishment of plantings is allowed and only use of a drip irrigation system with automatic controller and backflow device is allowed for permanent plant maintenance.
 - (e) Landscaping shall be designed and maintained to invite and encourage public use of the publicly owned land. All aspects of the plantings (e.g. plant type, size, location, density of distribution, etc.) shall be designed in a manner that does not obstruct or interfere with public views or public use and enjoyment of the publicly owned land located around the mainland terminus of the bridge.
- (3) The plan shall include, at a minimum, the following components:
- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
 - (b) a schedule for installation of plants.
- B.** The permittees 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 required.

3. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

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

- a. No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wave/wind erosion and dispersion;

- b. Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- c. No machinery shall be allowed at any time on the beach or in the intertidal zone;
- d. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;
- e. All excavated beach sand shall be re-deposited on the beach
- f. Concrete trucks and tools used for construction of the approved development shall not be rinsed at the site.

4. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the construction debris resulting from the proposed project. Disposal of construction debris shall occur at the approved disposal site. If the disposal site for the construction debris is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

5. STAGING AREA DURING CONSTRUCTION

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to public access, beach areas or to sensitive habitat areas.

(1) The plan shall demonstrate that:

- a. Construction equipment shall not be stored outside the staging area
- b. Public parking areas shall not be used for staging or storage of equipment
- c. Sandy beach or habitat (vegetated) areas shall not be used for staging or storage of equipment
- d. The staging area for construction of the project shall not obstruct vertical or lateral access to the beach or other recreational facilities.

(2) The plan shall include, at a minimum, the limits of the staging area(s) and location of construction fencing and temporary job trailers, if any.

- 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. TIMING OF CONSTRUCTION

To avoid adverse impacts to public beach access, construction activities authorized pursuant to Coastal Development Permit No. 5-09-256 shall not obstruct public access to Crescent Bay during the peak use season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. Construction shall take place during the off-peak season to the most practicable extent possible.

7. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and coastal bluff collapse; (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 RESTRICTION

- A. This permit is only for the development described in coastal development permit No. 5-09-256. 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 the coastal development permit No. 5-09-256. Accordingly, any future improvements to the structure 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. 5-09-256 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. DESIGN OF ANY FUTURE SHORELINE/BLUFFTOP PROTECTION DEVICE (SEAWALL)

This permit shall not prejudice the design options for any future adjacent upcoast shore protection. In the event that, at a future date, it can be demonstrated that shoreline protection device(s) are needed to protect the public beach or existing development at the subject site(s), the public stairway/storm drain or the adjacent private property located at 299 Crescent Bay Drive, the City shall agree to any necessary, engineered modifications to the permitted development that will allow for the least environmentally damaging feasible alternative shoreline protective device. This approval shall not constitute approval of any future shoreline protective device or prejudice the siting and design of any shoreline protection device that might be approved by the Commission in the future.

FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

1. Project Location

The project location is the southwesterly terminus of Circle Way in the City of Laguna Beach, Orange County (Exhibit 1). Circle Way is a circular residential street with a public beach access concrete stairway located at the southwest terminus at a public beach area known as Crescent Bay. The site consists of a City owned public access stairway extending approximately 125 feet to the beach down a coastal bluff. An existing 18" diameter storm drain outlets onto the beach immediately to the west of the bottom of the concrete stairway at the base of a natural coastal bluff. A water line and sewer line also run adjacent to the storm drain. The coastal bluffs in this area of Crescent Bay are about 40 to 70 feet high and have slopes of 30 to 70 degrees with the steeper slopes normally at the base of the bluff. The base of the bluff ranges from 6 to 10 feet above Mean Sea Level (MSL). There is no public parking lot associated with the public beach. The City of Laguna Beach Local Coastal Plan (LCP) designates use of the site as Open Space. Single-family residential uses surround the site. Only non-native habitat and landscaping will be impacted by the proposed project.

2. Project Description

The applicants propose demolition and re-construction of an existing public concrete stairway to the beach from the street-end of Circle Way, re-construction of the water line and sewer line from the end of Circle Way down to beach, enlargement of an existing 18" diameter storm drain to a 48" diameter storm drain from the end of Circle Way down to the beach, enlargement of the storm drain outlet at the beach from 18" to 60" diameter with a faux rockscape hinged cover to open when storm flows occur, construction of a new water filtration device and nuisance flow diversion to the sewer system, construction of a concrete seawall with a faux rock finish treatment along the frontage of street-end stairway and along the frontage of the adjacent private property at 299 Crescent Bay Drive, and landscaping along the re-constructed stairway and along the seawall for screening purposes.

Public Access Beach Stairway Demolition and Re-Construction and Re-Landscaping

- An existing 125-linear feet long concrete public access beach stairway and metal railing is proposed to be completely demolished and re-constructed in-kind.

Enlargement of Storm Drain Pipe and Outlet/Construction of New Storm Water Filtration Device and Minor Flow Diversion System

- Replacement of an existing undersized 18-inch storm drain from Circle Way to the beach with a 48-inch storm drain that enlarges to 60-inch with velocity rings for the last 50-feet for energy dissipation to prevent scouring of the beach at the outlet. The 60-inch outlet at the beach is proposed to be covered with a metal plate/fiberglass hinged lid with a faux rock finish to conceal the opening but designed to open when storm flows occur. The bottom 18" will have a steel grate opening to allow daily low flows onto the beach. Nuisance flows will be diverted at the top of the stairs to the existing sewer system within Circle Way. The

relocation of approximately 430 feet of a 6" waterline and 412 feet of an 8" sewer line will be required as part of the storm drain re-design.

Construction of New Concrete Seawall at the Toe of the Reconstructed Stairway and along the Bluff at 299 Crescent Bay Drive (Private Property)

- An approximately 75-foot long shoreline protective seawall is proposed with a broad apron that will be embedded into bedrock approximately 10.5 feet seaward of the main vertical wall proposed at the toe of the bluff.

Landscaping

- Landscaping along both sides of the stairway and directly in front of the proposed vertical seawall at approximately the 9'-10' contour line of the sandy beach. Drought tolerant non-invasive plants such as sea lavender, pride of madeira, tree aloe, agave, and century plant are proposed with a drip irrigation system with automatic controller and backflow device.

Portions of the project are located within the Commission's original permit jurisdiction and portions are within the City's coastal development permit jurisdiction. The applicants have submitted a consolidated permit application for the entire project to the Commission. Pursuant to Section 30601.3, the Commission may review the entirety of a project that is located partially within the Commission's jurisdiction and partially within a local government's jurisdiction if the applicants, the local government, and the Commission agree. The Chapter 3 policies of the Coastal Act are the standard of review for consolidated permit applications. The applicants, including the City, and the Commission all agree to process this application as a consolidated permit.

3. Prior Permit History

In January 1984, the Commission approved with conditions CDP 5-83-892 (City of Laguna Beach) for the 'after-the-fact' installation of pumped concrete around the Circle Way public access stairway and storm drain outfall for erosion protection. The conditions imposed included submittal of revised plans indicating that no part of the proposed development extends seaward of the 12-foot elevation contour, and removal of any portion of the as-built protective device extending beyond the 12-foot elevation contour.

Additionally at the time, as a result of heavy rains in 1982-83 several other erosion protection devices which encroached onto sandy beach were constructed without coastal development permits. In late 1983, the South Coast District office received a number of violation reports that various protective devices were being constructed near the base of the bluff in the Crescent Bay area of Laguna Beach. Staff conducted a thorough investigation and study of the overall problems in order to develop consistent guidelines for the resolution of the violations. The primary concerns of the study were (a) geologic stability provided by the shoreline protective devices; (b) placement of the device to minimize beach encroachment; (c) public lateral access along the beach; (d) maintenance of the appearance of the sandy beach. Staff found that previously constructed devices were for the most part constructed near the 12-foot elevation line, thus creating an established line of seaward encroachment relatively consistent with the crescent-shaped contour of the cove. Consistent with the Commission's prior actions on permit applications on surrounding properties, to resolve the pending Coastal Act violations and to bring the projects into compliance with the Coastal Act, staff recommended that all pending coastal development permit applications comply with the 12-foot elevation contour line for placement of shoreline protection devices in

Crescent Bay to minimize seaward encroachment and include offers to dedicate an access easement seaward of this line to maximize public lateral access. Seawalls and the requirement for public offers to dedicate an access easement seaward of the seawalls were approved for 279 Crescent Bay Drive (CDP 5-85-423, Parry) and 287 Crescent Bay Drive (CDP 5-84-825, McNaughton).

In August 1984, the Commission approved with conditions CDP 5-84-205 (Montapert) for the 'after-the-fact' installation of rock/riprap and concrete at the base of the bluff at 299 Crescent Bay, the location of the seawall now proposed as a component of this application. The special conditions included (1) recordation of a public lateral access easement for public access and passive recreational use along the shoreline parallel to the approved seawall and all area from the seaward edge of that wall to the mean high tide line; (2) applicant's assumption of risk and recordation of a deed restriction; (3) submittal of revised plans indicating that no part of the proposed development extends seaward of the 12-foot elevation contour, and removal of any portion of the as-built protective device extending beyond the 12-foot elevation contour. However, it appears that the special conditions were not met and the permit was not issued.

B. APPROVAL FINDINGS AND DECLARATIONS

1. MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Landscaping

Only non-native bluff landscaping will be impacted with the proposed stairway and storm drain replacement project. No habitats of concern, special-status plants, or special-status species occur within the project area. The bluffs along Crescent Bay are all landscaped with ornamental plants.

As proposed, the submitted landscaping plan includes drought tolerant, non-invasive plants to minimize the use of water and runoff due to irrigation on the bluff slope along the alignment of the re-constructed stairway. 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>. **Special Condition 2** is being imposed to require that the applicant carry out the landscaping plan as proposed and to require the deletion of proposed landscaping at 299 Crescent Bay Drive that was to screen the proposed seawall since the seawall is being denied.

Impacts to Water Quality

The Coastal Act policies identified above are intended to protect the water quality and biological productivity of coastal water resources. Construction of any kind adjacent to coastal waters has the potential to impact marine environment. The adjacent public beach provides an opportunity for water oriented recreational activities and also serves as marine habitat. Because of the coastal recreational activities and the sensitivity of the ocean habitat, water quality issues are essential in review of this project.

The proposed project includes the replacement of an 18-inch storm drain pipe from Circle Way to the beach with a 48-inch storm drain that enlarges to 60-inch with velocity rings for the last 50-feet for energy dissipation.

The existing storm drain alignment runs north from the beach at Crescent Bay adjacent to the existing public access beach stairway, then continues along a City easement to and across Pacific Coast Highway and up San Joaquin Street. Approximately 14 acres of the residential neighborhood are tributary to the proposed storm drain. Drainage from Circle Way currently flows southerly toward the existing 18" storm drain. Storm flows follow the drain and exit on the beach. Storm flows that exceed the current capacity of the existing storm drain presently flow down the south side of the stairway in an existing concrete ditch. The proposed new 48" pipe diameter size is at the upper limit of appropriate size. The hydrology/hydraulics study shows the need for a 30" pipe diameter for the 100-year flood event. The project proposes a larger 48" pipe diameter to accommodate future growth of upland areas. As proposed, the project includes construction of a nuisance water filtration device and diversion system to the sewer system. The diversion will divert minor nuisance flows away from the beach and to the sewer system. During rain events, up to three cubic feet per second of storm flows will be filtered through a screen to remove sediment and debris. The pipe expands to 60" in diameter before it reaches the beach in order to reduce the velocity of discharges and minimize scouring of the beach. As designed, the storm drain pipe will minimize the discharge of pollutants and is consistent with the water quality requirements of the Coastal Act.

Water Quality – Construction Impacts

Due to the proposed project's proximity to the water, demolition and construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. The applicants have

stated that they intend to implement best management practices (BMPs) to reduce impacts to water quality and biological resources during construction. These measures include: sediment erosion controls, proper containment of stockpiles, removal of debris and waste materials on a daily basis. In order to avoid adverse construction-related impacts upon marine resources, **SPECIAL CONDITION #3** requires additional construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Since the applicants have not identified a disposal site for either the construction debris, in order to prevent impacts to coastal waters from construction debris re-entering coastal waters, the Commission imposes **SPECIAL CONDITION #4**, requiring all construction debris disposed of at a legal site approved by the Executive Director. Construction debris disposal within the coastal zone shall require an amendment to this permit or a new coastal development permit.

As conditioned the project complies with the water quality and marine resource protection policies of the Coastal Act.

2. PUBLIC ACCESS AND 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 of the Coastal Act states, in part:

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 30212 of the Coastal Act states, in part:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (2) Adequate access exists nearby, or,*

Section 30221 of the Coastal Act states, in part:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Public Access Beach Stairway

A portion of the project (i.e., stairs and storm drain) is located entirely within a City owned parcel. The public stairway proposed to be re-constructed provides vertical access to a City owned beach parcel and to sandy beach areas adjacent to private residential property. The area is known as Crescent Beach, Exhibit #1, page 2 provides an aerial photograph of site. Vertical public access is also available approximately 160 feet downcoast from the Circle Way stairway at the Barranca Way ramp.

Due to age and corrosion caused by the marine environment, the City commonly replaces coastal access stairways in Laguna Beach. The stairway at the subject site is deteriorated beyond its useful life to the point that complete replacement is required as it poses a public safety hazard. The foundation of the stairs is eroded, exposing loose unsupported concrete and corroded reinforcing steel. The handrails are discontinuous and loose at the base of the stairs. This beach accessway is heavily utilized by the public to access Crescent Bay beach. The proposed project will improve access and use of the beach by replacing the existing deteriorated concrete stairway. The beach will remain open during construction. Adequate public access exists nearby from the Barranca Way ramp.

SPECIAL CONDITION #5 requires the applicant to provide a staging area plan prior to the issuance of the coastal development permit ensuring that public parking areas and sandy beach or habitat (vegetated) areas are not used as staging areas and that the staging area for construction of the project shall not obstruct vertical or lateral access to the beach. Furthermore, **SPECIAL CONDITION #6** requires construction to take place outside of the peak beach season to minimize adverse coastal access impacts.

Therefore, the Commission finds that the proposed development as conditioned would be consistent with Sections 30210, 30211, 30212 and 30221 of the Coastal Act regarding public access and recreation.

3. **DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the 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. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act with respect to public access, hazards, water quality and marine life, the Commission imposes **SPECIAL CONDITION #8**, a future development restriction that requires the applicant return to the Commission for review of future development on the site, including improvements to the stairway and storm drain. Repair and maintenance activities that would normally require a permit pursuant to Section 30610(d) and Section 13252 of the Commission's regulations will also require a permit. Other repair and maintenance activities, however, would not require a permit. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

C. **DENIAL FINDINGS AND DECLARATIONS**

1. **SHORELINE/BLUFF PROTECTIVE DEVICES**

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.*

Section 30235 of the Coastal Act states:

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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

The applicant is proposing a "Galveston-Style" seawall at the toe of the coastal bluff to protect the re-constructed public access beach stairway and the adjacent private single-family residence from direct wave attack. The shoreline protective seawall would be approximately 75-foot long and would connect to an adjacent pre-Coastal seawall north of the stairway and adjacent to 299 Crescent Bay Drive and to an existing wood bulkhead located south of the stairway. The proposed concrete seawall has a broad apron that would be embedded into bedrock approximately 10.5 feet seaward of the main vertical wall proposed at the toe of the bluff at approximately the 15' contour elevation and would occupy sandy beach area.

The beach at the toe of the bluff at the stairs is publicly owned beach and a privately owned beach at the toe of the bluff in front of 299 Crescent Bay Drive above the Mean High Tide Line. The property line at 299 Crescent Bay Drive is different from the Mean High Tide Line. In the 1980's the Commission approved an after-the-fact permit for the construction of a seawall and required the applicant at that time to offer a public lateral access easement seaward of the seawall. That condition was not met and the permit never issued. According to the applicant, the sandy beach area erodes to cobble during the winter.

Section 30235 of the Coastal Act states that shoreline protective devices like the ones proposed in this case can be permitted "...when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...".

The applicant must demonstrate that a shoreline protective device is necessary consistent with the terms of Section 30235, that the proposed alternative is the least environmentally damaging feasible alternative and that the proposed alternative will be designed to eliminate or mitigate impacts to local sand supply.

Existing Structure / Danger from Erosion

In 1980, at 299 Crescent Bay Drive, a shear key was constructed at the toe of the slope and is approximately 24' wide by 48' long by 12' deep into Monterey siltstone. The slope was regraded to provide seacliff stability and a factor of safety of 1.5. However, the toe of the slope remains vulnerable to storm action.

The applicant submitted a preliminary geotechnical investigation for 299 Crescent Bay Drive by Bagahi Engineering Inc dated August 22, 2003 providing slope stability computations which conclude that the present slope with key has an adequate factor of safety exceeding 1.5 under static condition. However, for the portion of the slope beyond the key (i.e., between the key and the beach) the factor of safety the factor of safety is 1.3 which is less than the minimum acceptable value. The report also concludes that beach erosion near the toe of the bluff or a rise in

groundwater on the site lowers the computed factors of safety. Although the slope in its entirety possesses an adequate factor of safety under static loading, a portion of the slope seaward of the shear key does not have an adequate factor of safety. The report concludes that failure of this seaward portion of the bluff can result in a domino effect leading to failure of the remaining portion of the slope thereby affecting the existing residence and recommends a slope protection system at the toe of the bluff to "maintain the integrity of the slope." Although the existing residence is currently safe from bluff failure caused by direct wave action, there may be a future need for shoreline protection. At that time, the applicant may submit a request for shoreline protection device at the most landward alignment feasible and designed to minimize adverse impacts on sand supply. **SPECIAL CONDITION #9** clarifies that this permit shall not prejudice the design options for any future shore protection.

Additionally, the stability of the bluff of the private residence at 299 Crescent Bay Drive was evaluated in a 7 February 2007 geotechnical report by Geofirm. That report found that the bluff had a static factor of safety of 1.49 and a pseudostatic factor of safety of 1.04. These values are very near the industry standards for new development of 1.5 and 1.1 respectively. They indicate a stability far in excess of what the Commission has generally found to require the approval of a shoreline protective device pursuant to Coastal Act section 30235. The report goes on to indicate that erosion of the beach, or failure of the toe of the bluff would compromise slope stability, but those conditions do not now exist. Accordingly, the proposed seawall device is not necessary to protect either the residential structure or a public beach from erosion.

A 2004 Geofirm geotechnical investigation undertaken to relate geotechnical conditions for the proposed replacement of the storm drain and public beach access stairway at the end of Circle Way. The report identifies a 1.4 factor of safety under static conditions and 0.8 (less than 1) factor of safety under seismic conditions, both are below the normally accepted criteria and concludes that that the gross and surficial stability of the existing condition and the proposed design do not meet normally accepted criteria. However, the factor-of-safety- may be increased by including tiebacks.

Coastal Act Section 30235 acknowledges that seawalls 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. While the Coastal Act does not identify the types of structures that can merit shore protection, the Commission has generally limited consideration of shore protection structures to principal structures, rather than to ancillary structures, gazebos or patios that can be easily relocated or removed. The Commission must always consider the specifics of each individual project, but under the standards established by Section 30235, prefers alternatives that avoid impacts to beach access and recreation, land form alteration, visual character and coastal resources. If any shore protection must be considered, the preferred alternatives will avoid or minimize impacts to the above mentioned coastal resources as well as avoid or mitigate adverse impacts to shoreline sand supply.

The Commission staff geologist reviewed the geotechnical reports and proposed seawall design and determined that the proposed seawall would mainly protect the backyard of the residence and not the residential structure itself. Additionally, the Commission staff coastal engineer has determined that, if, in the future, some shore protection were necessary, the proposed seawall design may not be the least environmentally damaging structural alternative due to encroachment, fixing the back of the beach, denial of sediment to the littoral cell, visual character, and impacts to the beach area and recreational uses. Other structural options should be studied such as but not limited to the soil-nail alternative caisson support for the upper bluff, maintenance and enhancement of drainage improvements and maintenance and enhancement of protective vegetation on the bluff top and bluff face. In addition, future alternatives for shore protection should be designed and sited to minimize or eliminate adverse impacts to local sand supply, visual character, beach use and recreational value, habitat and other coastal resources.

Conclusion

Thus, the proposed seawall component of the project cannot be found consistent with Sections 30231, 30233 or 30235 of the Coastal Act and must be denied.

2. PUBLIC ACCESS AND 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 30212 of the Coastal Act states, in part:

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 30212 of the Coastal Act states, in part:

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

(2) Adequate access exists nearby, or,

Section 30221 of the Coastal Act states, in part:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The proposed seawall and apron will be founded into the elevated bedrock platform (at about +3 ft. MSL) and will encroach onto beach that has been used regularly by the public and will impact the continued public use of this beach area. The Commission's previous action at this and adjacent

site was to require that approved seawall encroach onto the beach no further than the 12' elevation contour. The co-applicant at 299 Crescent Bay Drive does not provide information as to whether there is an opportunity to improve public access to the beach area a more landward position of the proposed shore protection or through an offer-to-dedicate, in-kind mitigation or some type of in-lieu mitigation to address the loss of beach sediment and recreational impacts caused by the proposed seawall.

Thus, the proposed seawall component of the project cannot be found consistent with Sections 30212 or 30221 of the Coastal Act and must be denied.

3. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit, including installation of pumped concrete around the existing public stairway and storm drain outfall in 1983 by the City of Laguna Beach and installation of rock rip-rap/concrete seawall at the base of the bluff at 299 Crescent Bay Drive also in 1983 by a previous property owner. The work that was undertaken is considered "unpermitted development" as it constitutes development that requires a coastal development permit application by virtue of its location on the canyon slope.

Consideration of the 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. 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 admission as to the legality of any development undertaken on the subject site without a coastal development permit.

4. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time. The Commission's action to approve the application in part and deny it in part is consistent with the LCP.

5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's 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

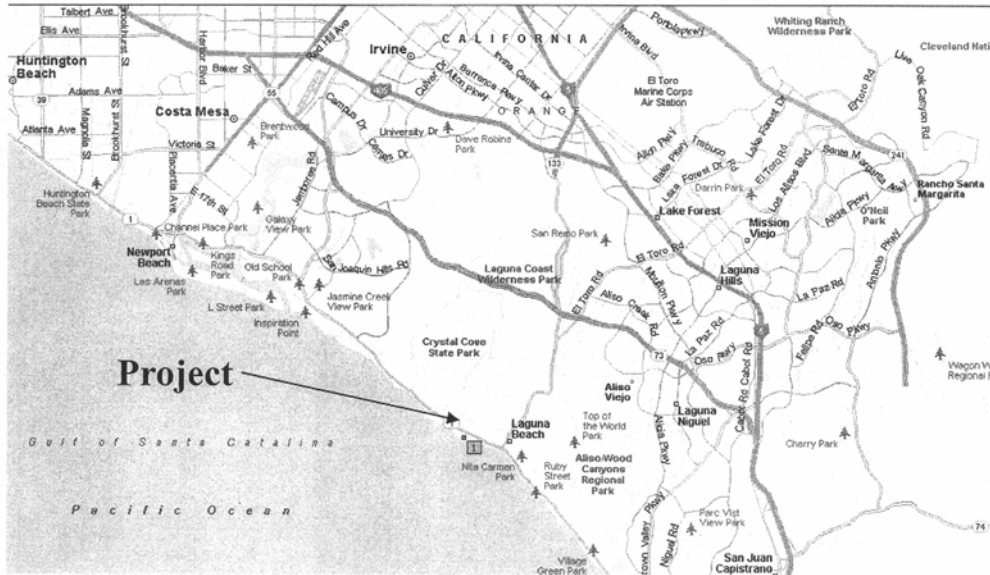
measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Laguna Beach is the lead agency for California Environmental Quality Act (CEQA) purposes. In November 2008, the City adopted a Final Mitigated Negative Declaration SCH#2008081073 in compliance with CEQA Guidelines. Mitigation measures to protect air quality, water quality and aesthetics were required with approval of this CEQA document. The Coastal Commission adopts additional mitigation measures, found below, to ensure that the proposed project will conform with the requirements of the Coastal Act.

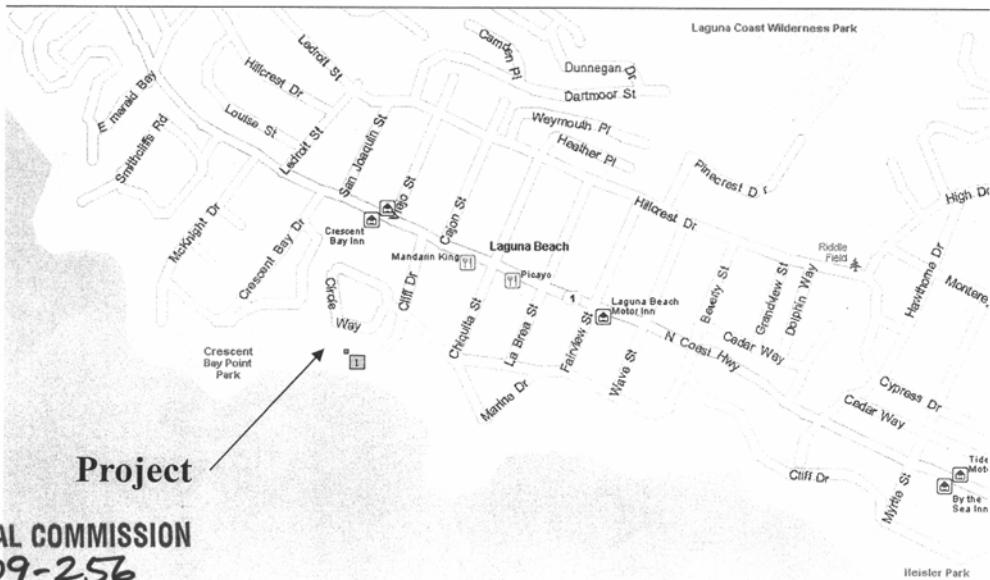
The project is located on the beach in an urbanized area. Development already exists on the subject site. Mitigation is provided for project impacts to water quality therefore, the impacts arising from the proposed project will be minimal. In addition, the proposed development has been conditioned, as follows: **1)** revised final project plans/deletion of shoreline-blufftop protection device(seawall); **2)** revised final landscaping plans; **3)** construction responsibilities and debris removal; **4)** location of debris disposal site; **5)** construction staging area; **6)** timing of construction; **7)** assumption of risk, waiver of liability and indemnity agreement; **8)** future development restriction; **9)** design of any future shoreline/blufftop protection device(seawall). The Commission is denying the proposed seawall because the applicants have not established that the proposed design is the environmentally preferable alternative and because of unmitigated sand supply impacts.

As conditioned and modified, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned and modified to exclude the proposed seawall, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.

Vicinity and Location Maps
Circle Way Steps and Shoreline Protective Device
Laguna Beach



Regional Vicinity Map



Location Map

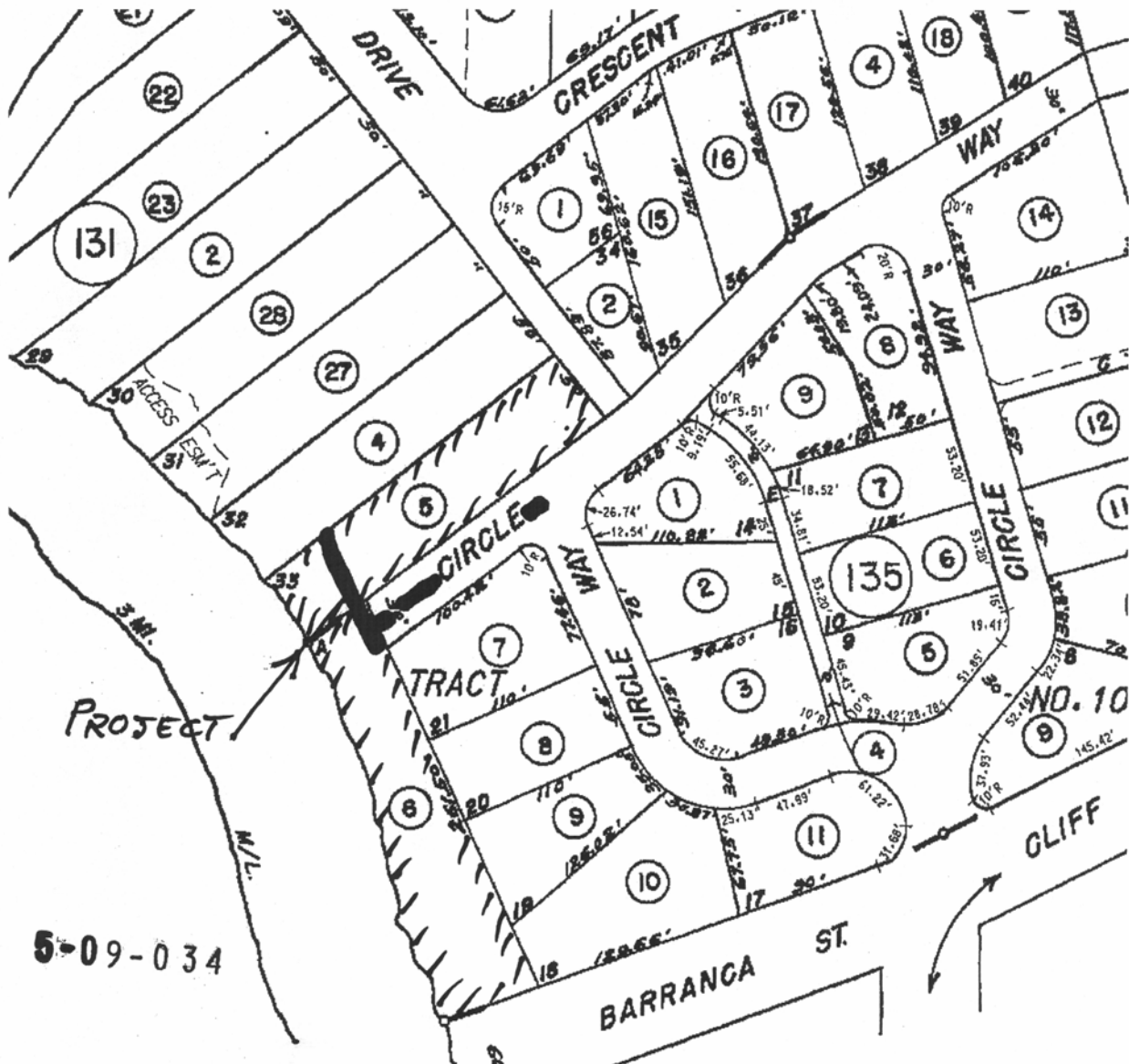
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Existing Circle Way Public Access Stairs



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EXHIBIT # 1
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053-13



5-09-034

M.M. 28-20
M.M. 35-13
P.M. 344-05

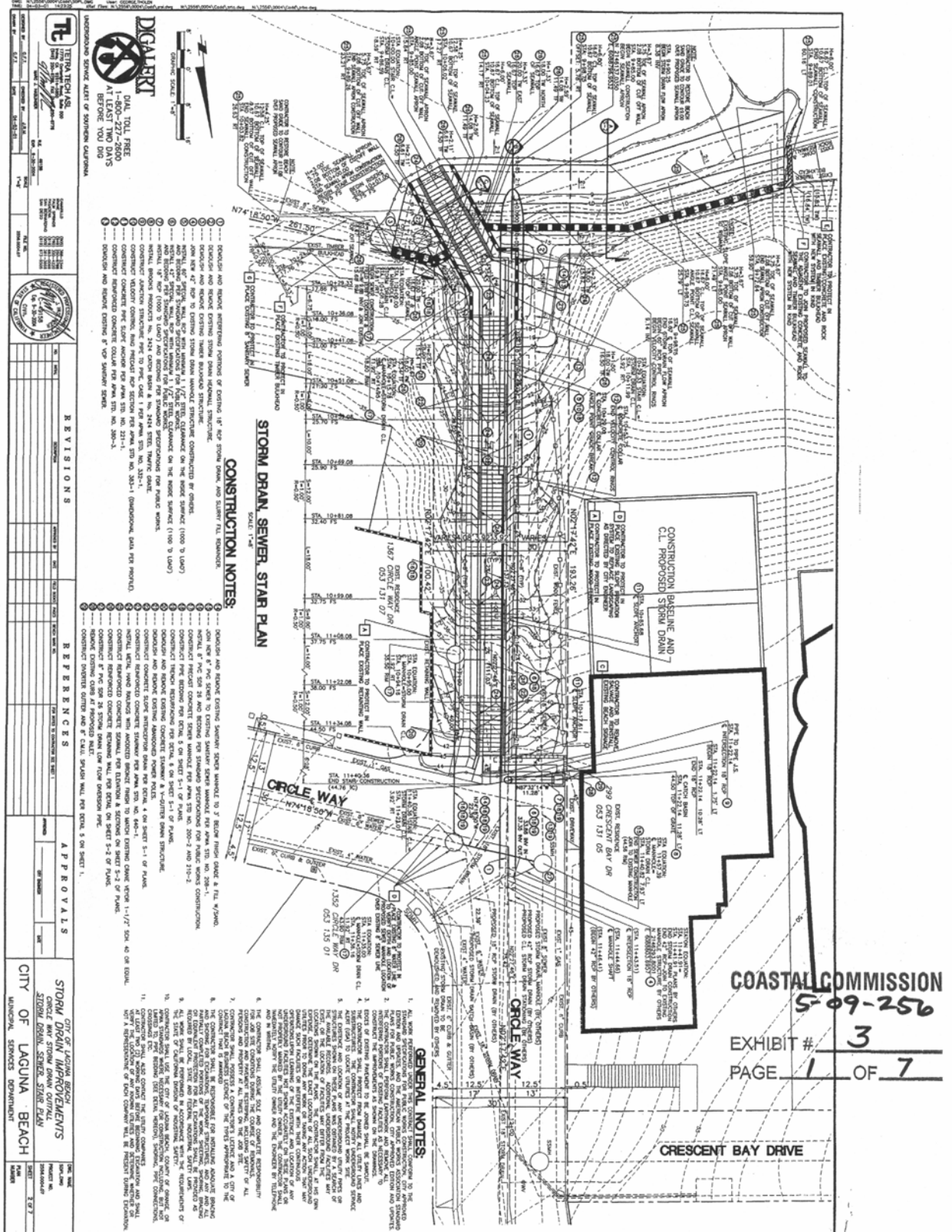
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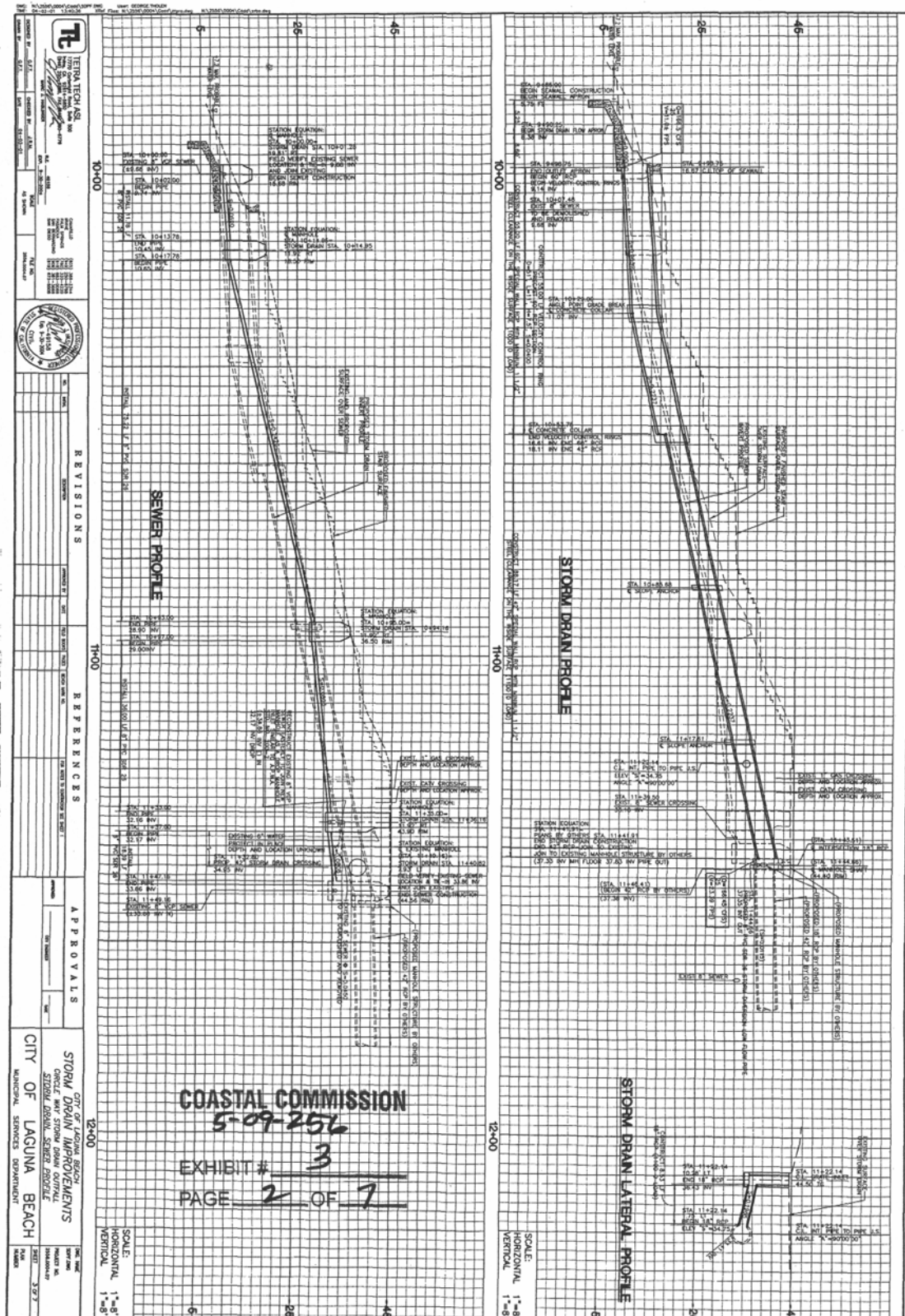
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PAGE 1 OF 1

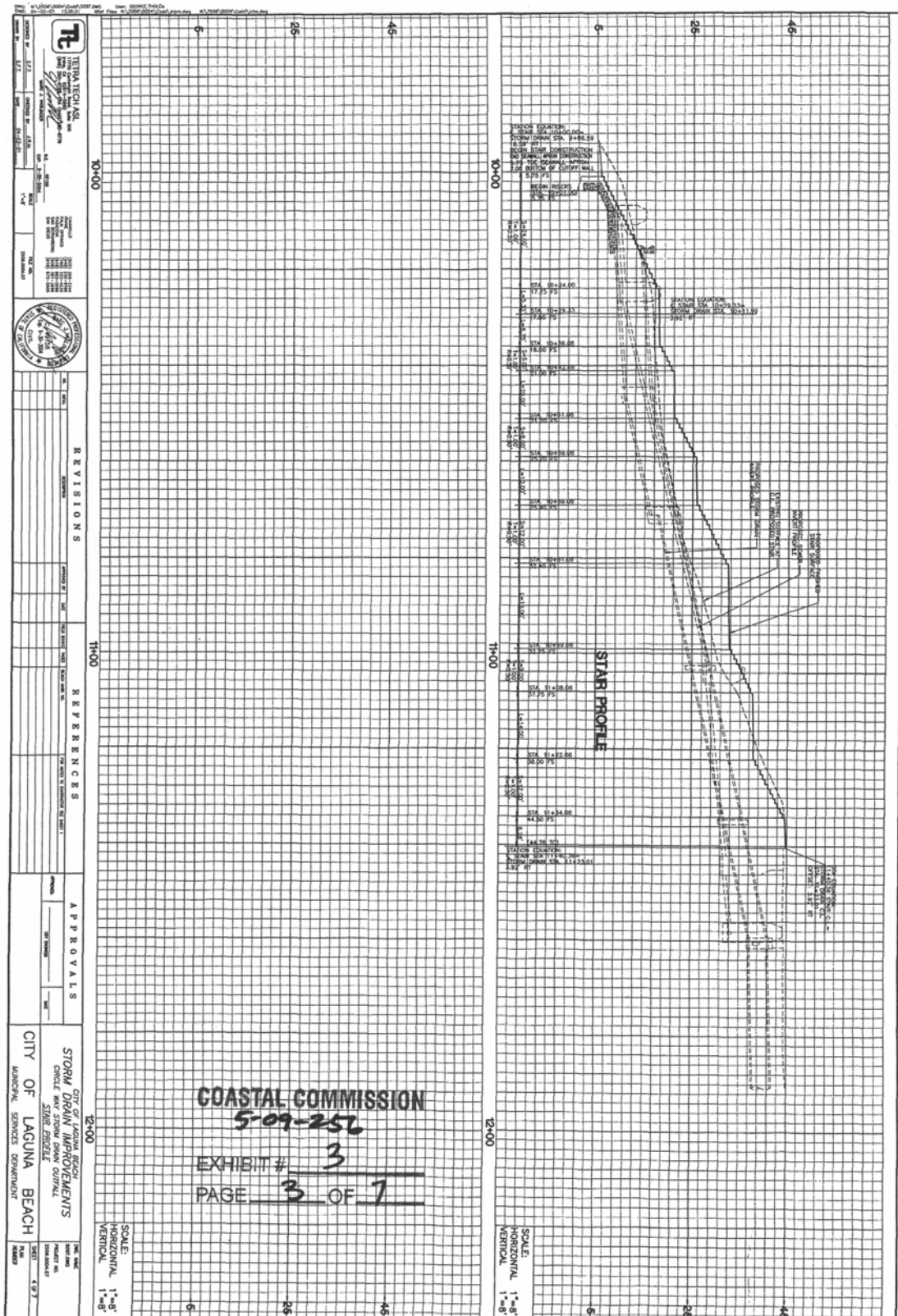
NOTE - ASSESSOR'S BLOCK
PARCEL NUMBERS
SHOWN IN CIRCLE

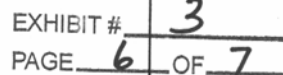
16

1"=80'









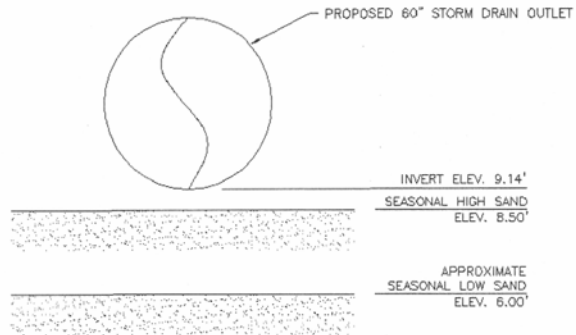


Figure 1. Pipe Outlet Elevation

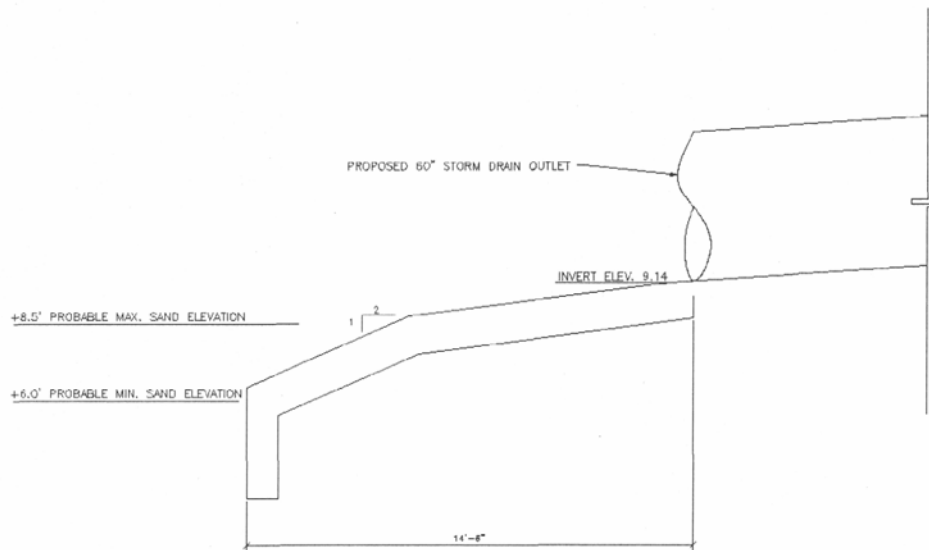
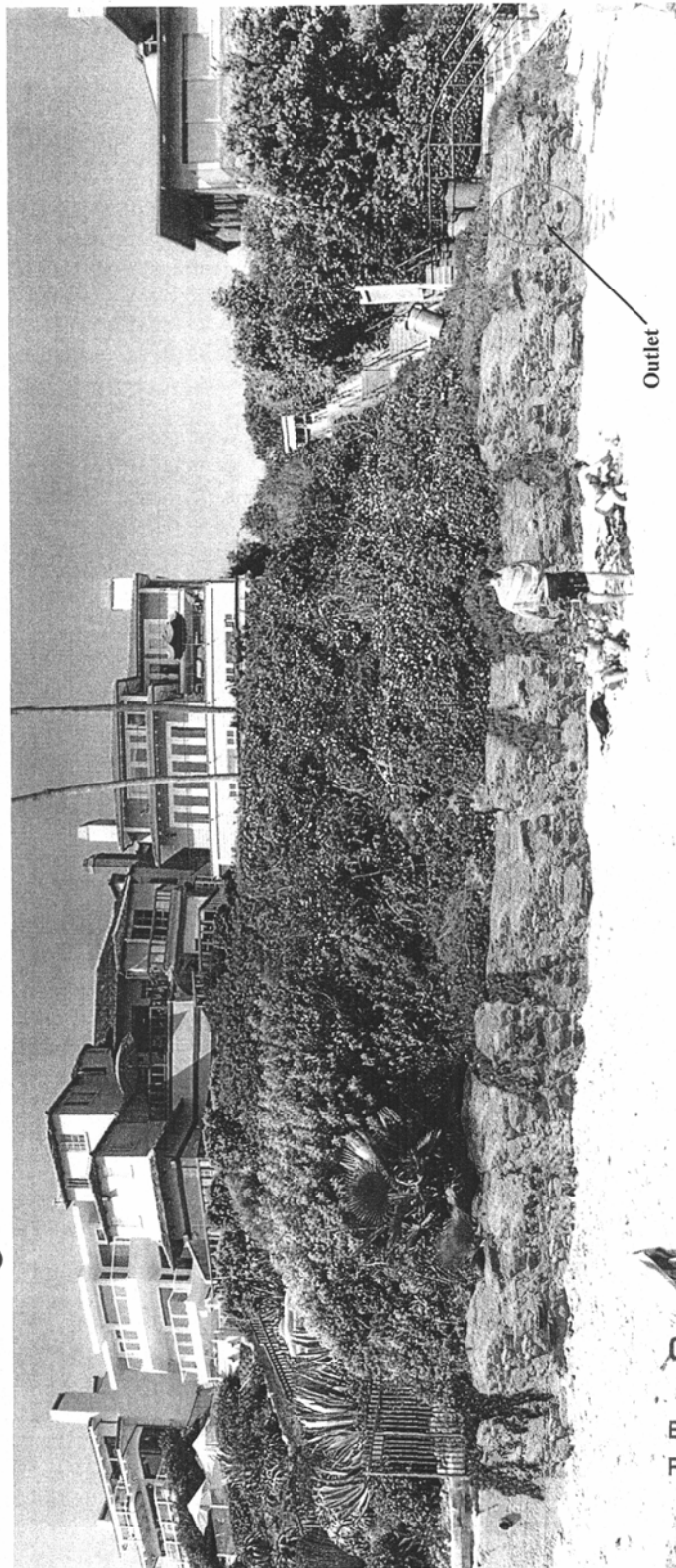


Figure 2. Simplified Pipe Outlet Cross-Section..

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Visual Rendering of Proposed Faux Rock Colored & Textured Seawall & Storm Drain Cover

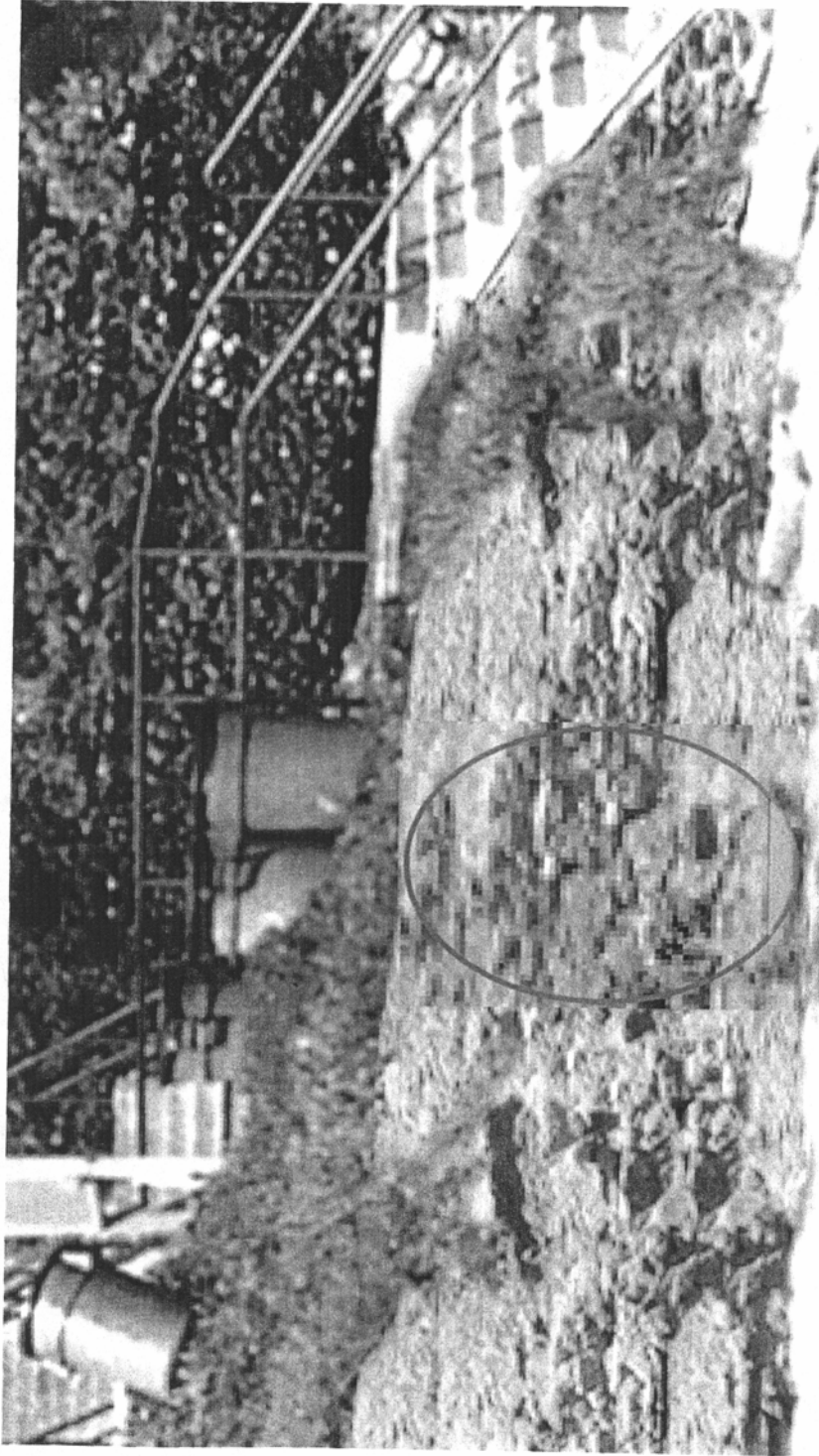


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EXHIBIT # 5

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Outlet Area Rendering
close up

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