

**CALIFORNIA COASTAL COMMISSION**

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**W21a**

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 Staff Report: 9/22/2011  
 Hearing Date: October 5, 2011  
 Commission Action:

**STAFF REPORT: APPEAL - DE NOVO HEARING**

**LOCAL GOVERNMENT:** City of Rancho Palos Verdes

**LOCAL DECISION:** Approval with Conditions

**APPEAL NUMBER:** A-5-RPV-10-002

**APPLICANTS:** Brian & Jenifer Conroy

**APPELLANTS:** James Huston, Pamela Simes Fleming, Don Fleming, and Coastal Commissioners Mary Shallenberger and Sara Wan

**PROJECT LOCATION:** 24 Seacove Drive, Rancho Palos Verdes, Los Angeles County.

**PROJECT DESCRIPTION:** Construction of a swimming pool, spa and outdoor chimney barbeque in the rear yard area of a bluff top property, and removal of an unpermitted retaining wall, fire pit and fill located on the bluff face and bluff edge in order to restore the bluff top slope to pre-project condition (this is an after-the-fact application).

**SUMMARY OF STAFF RECOMMENDATION**

On June 16, 2011, the Commission found that the appeals raise a substantial issue regarding whether the City-approved development conforms with the Coastal Structure Setback Zone of the City of Rancho Palos Verdes certified LCP, whether the swimming pool threatens the stability of the coastal bluff, and whether restoration of the previously disturbed bluff edge has been adequately carried out. The appellants contend that the development approved by the City does not conform with the City of Rancho Palos Verdes certified Local Coastal Program (LCP) because the development is situated within or seaward of the Coastal Structure Setback Zone. The Coastal Structure Setback Zone, established by the certified LCP, is the area measured 25 feet inland of the Coastal Setback Line (Exhibit #8, p.3). The certified LCP prohibits buildings and other permanent structures within the Coastal Structure Setback Zone.

Staff is recommending that the Commission **APPROVE** a coastal development permit for the proposed pool, spa and outdoor chimney barbeque and the City-required bluff top restoration work with special conditions. The recommended special conditions, which begin on Page Three, require: a) conformance with the geotechnical engineer's recommendations, b) the installation of leak prevention and leak detection devices in the swimming pool and spa, c) restoration of the bluff edge to its prior contours, d) landscaping the bluff top with low-water native plants, e) no future shoreline protective device, f) a future development restriction, g) a waiver of liability, and h) a deed restriction. **See Page Two for the motion to carry out the staff recommendation.**

**SUBSTANTIVE FILE DOCUMENTS:**

1. City of Rancho Palos Verdes Certified Local Coastal Program (LCP), 4/27/83.
2. City of Rancho Palos Verdes Local Coastal Development Permit No. 30 (24 Seacove Dr.).
3. City of Rancho Palos Verdes Local Coastal Development Permit No. ZON2007-00046 (24 Seacove Drive).
4. Geologic Factors Related to a Coastal Set-Back for the City of Rancho Palos Verdes, California, by Earth Sciences Associates, 1976.
5. Preliminary Soils and Geology Investigation (and supplements), 24 Seacove Drive, by Triad Foundation Engineering, Inc., July 16, 1987.
6. Preliminary Engineering Geology Investigation, Proposed Pool and Additions, 24 Seacove Drive, by George DeVries, April 30, 2002.
7. Limited Geotechnical Engineering Investigation Report, Proposed Addition, Deck Extension and New Swimming Pool, 24 Seacove Drive, by Coastline Geotechnical Consultants, Inc., May 13, 2002.
8. Updated Geotechnical Engineering Report, 24 Seacove Drive, by Coastline Geotechnical Consultants, Inc., September 25, 2007.
9. Response to Geotechnical Investigation Report Review Checklist for 24 Seacove Drive, by Coast Geotechnical, Inc., June 9, 2008.
10. Letter regarding 75-year safe life of pool, by Coastline Geotechnical Consultants, Inc., February 4, 2011.
11. Limited Long Term Bluff Retreat Assessment, Existing Swimming Pool, 24 Seacove Drive, Rancho Palos Verdes, Calif., Hamilton & Assoc., Inc., August 29, 2011.

**STAFF RECOMMENDATION:**

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

**MOTION:** *"I move that the Commission approve with special conditions Coastal Development Permit A-5-RPV-10-002 per the staff recommendation."*

The staff recommends a **YES** vote. Passage of the motion will result in **APPROVAL** of the coastal development permit application with special conditions, and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of Commissioners present.

**I. Resolution: Approval with Conditions**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the Certified City of Rancho Palos Verdes Local Coastal Program and the public access and recreation policies of the Coastal Act. 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 on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. Special Conditions

1. Plans Conforming to Geotechnical Engineer's Recommendations

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, final design and construction plans that comply with the recommendations contained in the Updated Geotechnical Engineering Report, 24 Seacove Drive, by Coastline Geotechnical Consultants, Inc., September 25, 2007, and Response to Geotechnical Investigation Report Review Checklist for 24 Seacove Drive, by Coast Geotechnical, Inc., June 9, 2008. All recommendations concerning foundations, pool construction, and drainage shall be incorporated into all final design and construction plans and must be approved by the consultant prior to submittal to the Executive Director. The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, and drainage. The final plans approved by the consultant shall also conform with Special Conditions 2, 3 and 4 of this coastal development permit. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Swimming Pool and Spa Protection

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation for the potential for geologic instability caused by leakage from the proposed pool and spa. At a

minimum, the pool and spa protection plan shall incorporate and identify on the plan the following measures:

- A. Installation of a pool and spa leak detection system such as, but not limited to, a leak detection system/moisture sensor with alarm and/or a separate water meter for the pool and spa which is separate from the water meter for the house to allow for the monitoring of water usage for the pool and spa;
- B. Use of materials and pool/spa design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible; and,
- C. Installation of a sub drain or other equivalent drainage system under the pool and spa that conveys any water leakage to an appropriate drainage outlet.

The applicants shall comply with the final pool plan approved by the Executive Director and shall undertake development in accordance with the approved final plans. 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. Restoration of Bluff Edge and Bluff Face

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall either: A) Submit to the Executive Director, a plan prepared by a certified geotechnical professional to restore the contours of the bluff top and bluff face to the condition it was in prior to the development that commenced in 2006; or B) Provide the Executive Director with documentation, verified by a certified geotechnical professional and the City of Rancho Palos Verdes, that the contour of the top of the slope and bluff face needs no further alteration in order to be restored to the condition it was in prior to the development that commenced in 2006.

Implementation of the approved restoration plan shall commence as soon as possible following the issuance of the coastal development permit, and no later than 120 days from the date of Commission approval of this permit, or within such additional time as the Executive Director may grant for good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

4. Landscaping Plan

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit landscaping and erosion control plan, prepared by a licensed landscape architect or a qualified resource specialist, for the area situated within fifty feet (50') of the edge of the coastal bluff (both landward and seaward sides of the bluff edge). The plan shall include, at a minimum:

- A. A map showing the type, size, and location of all plant materials that will be used in the area situated within fifty feet (50') of the edge of the coastal bluff (both

landward and seaward sides of the bluff edge). The map shall also show the topography of the site and all other landscape features. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.

- B. 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;
- C. No permanent irrigation system shall be allowed; and,
- D. A schedule for the installation of the plants. Planting shall commence immediately following the completion of any grading necessary to restore the contours of the bluff top and bluff face to the condition it was in prior to the development that commenced in 2006, or as soon as possible following the issuance of the coastal development permit if no grading is necessary. All required plantings will be maintained in good growing conditions through-out the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- D. Monitoring. Three years from the date of Commission action on this permit the applicants shall submit to the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the requirements specified in this condition, the applicants, or successors in interest, shall submit, within thirty (30) days of the date of the monitoring report, a revised or supplemental landscape plan, certified by a licensed Landscape Architect or a qualified Resource Specialist, that specifies additional or supplemental landscaping measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. This remedial landscaping plan shall be implemented within thirty (30) days of the date of the final supplemental landscaping plan and remedial measures shall be repeated as necessary to meet the requirements of this condition.

The landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultant’s recommendations. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. No Future Shoreline Protective Device

A. By acceptance of the permit, the applicants/landowners agree, on behalf of themselves and all successors and assignees, that no shoreline protection or bluff retention device(s) shall ever be constructed to protect the development approved pursuant to this coastal development permit including, but not limited to, the construction of the swimming pool, spa, and outdoor chimney barbeque; installation of a drainage system; and restoration of the bluff top slope, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicants/landowners hereby waive, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or the certified Local Coastal Program.

B. By acceptance of this permit, the applicants/landowners further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit including, but not limited to, the swimming pool, spa, and outdoor chimney barbeque if any government agency has ordered that the structures are not to be used or occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

6. Assumption of Risk, Waiver of Liability and Indemnity Agreement

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from geotechnical instability, landsliding and erosion; (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.

7. Future Development Restriction

This permit is only for the development described in Coastal Development Permit A-5-RPV-10-002. Except as provided in Public Resources Code Section 30610 and applicable regulations, any future development as defined in PRC Section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Coastal Development Permit A-5-RPV-10-002 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

8. Deed Restriction

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

9. Condition Compliance

**WITHIN NINETY DAYS OF COMMISSION ACTION ON THIS PERMIT APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicants shall satisfy all requirements specified in the conditions hereto that the applicants are required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. Project Description and History**

This is an after-the-fact application. The proposed development is the construction of a swimming pool, spa and outdoor chimney barbeque in the rear yard area of a bluff top property, and removal of an unpermitted retaining wall, fire pit and fill located on the bluff face and bluff edge in order to restore the bluff top slope to the condition it was in prior to the development that commenced in 2006. The pool, spa and chimney are set back sixty feet from the edge of the bluff (Exhibit #4).

The project site is part of a developed residential neighborhood on the southern shore of the Palos Verdes Peninsula (Exhibit #1). The applicants' property, situated between the first public road (Seacove Drive) and the sea, is the top of a 185-foot high coastal bluff where development approved by the City of Rancho Palos Verdes is appealable to the Coastal Commission (Exhibit #2). The applicants' existing 5,662 square foot single-family residence on the site was constructed in 1988/89 pursuant to City of Rancho Palos Verdes Local Coastal Development Permit No. 30. The house is set back about 75 feet from the bluff edge, 25 feet inland of the Coastal Setback Line established by Local Coastal Development Permit No. 30 (Exhibit #7, p.2).

The proposed project and the appeals involve a dispute over the location of the Coastal Setback Line and whether the proposed development would threaten the stability of the coastal bluff. On December 15, 2009, the City Council of Rancho Palos Verdes, applying the variance provisions in its certified LCP, approved Local Coastal Development Permit No. ZON2007-00046, which permitted the applicants (after the fact) to construct a swimming pool, spa, and outdoor chimney barbeque in the rear yard area of the property. The appellants contend that the development approved by the City does not conform with the City of Rancho Palos Verdes certified Local Coastal Program (LCP) because the proposed development is situated within or seaward of the Coastal Structure Setback Zone (Exhibits #10-12). The Coastal Structure Setback Zone, established by the certified LCP, is the area measured 25 feet inland of the Coastal Setback Line (Exhibit #8, p.3). The certified LCP prohibits buildings and other permanent structures within the Coastal Structure Setback Zone.

This is the history of the project:

- In 2006, several improvements were constructed in the applicants' rear yard without benefit of the required coastal development permit. The unpermitted development included a swimming pool, spa, chimney barbeque, trellis, grading on the bluff, and an eight-foot tall retaining wall at the top of the bluff to accommodate a viewing area and fire pit.
- On January 29, 2007, subsequent to issuance of several "Stop Work" orders by the City, the property owners submitted applications to the City for a variance, grading permit, and an after-the-fact coastal development permit (Case No. ZON2007-00046).

- On May 24, 2007, the applicants requested an Interpretation Procedure (Case No. ZON2007-00253) in order to challenge the City's interpretation of the location of the Coastal Setback Line in the rear yard of the property.
- On June 21, 2007, the City Director of Planning, Building and Code Enforcement issued a formal Interpretation regarding the location of the Coastal Setback Line in the rear yard of the property. The Director's Interpretation, based on maps prepared in 1976 for the LCP by Earth Sciences Associates (ESA), establishes the Coastal Setback Line in the rear yard of the property at a location 150 feet from the front (Seacove Drive) property line.
- On July 3, 2007, the attorney representing the applicants submitted an appeal of the Director's Interpretation. The applicants later requested that the appeal be held in abeyance while Case No. ZON2007-00046 was processed to legalize and approve the development (after the fact) pursuant to a variance. The City's administrative record states that, "the Conroys notified staff that they would like to exercise their option of accepting staff's determination of the Coastal Setback Line and continue to pursue their variance and coastal permit applications in an attempt to legalize the after-the fact construction, and requested that their Interpretation Procedure Appeal be held in abeyance" (Exhibit #9, p.4).
- On October 9, 2008, the City Geologist conditionally approved the geology report for the proposed swimming pool, spa and chimney barbecue. The City Geologist's conditional approval requires the applicants to prepare an "as-built" geotechnical report with conclusions and recommendations regarding slope stability, erosion control, etc.
- On December 11, 2008, the Planning Commission opened a public hearing for Case No. ZON2007-00046, then continued the hearing to February 24, 2009. On February 24, 2009, the Planning Commission conditionally approved the local coastal development permit, variance, and grading permit for the development (Exhibit #9, p.5). Relying on the ESA maps, the Planning Commission found that the pool and other improvements did not comply with the LCP requirement to be set back beyond the Coastal Structure Setback Zone, but approved the development by granting the variance because of an "exceptional circumstance". The Planning Commission's approval included a requirement to remove the unpermitted development at the bluff edge and bluff face (view deck, fire pit, fill and retaining wall). The Planning Commission tabled the Interpretation Procedure Appeal regarding the location of the Coastal Setback Line at the request of the applicants (Exhibit #16, p.2).
- On March 11, 2009, Ms. Pamela Simes Fleming filed an appeal requesting that the City Council overturn the Planning Commission's approval of Case No. ZON2007-00046.
- On June 2, 2009, the City of Rancho Palos Verdes City Council held a public hearing for the appeal, but took no action.
- On September 8, 2009, the Planning Commission revised the Director's Interpretation and determined that the location of the Coastal Setback Line on properties shall be based on a site-specific geology study and the Coastal Specific

Land Use Map (Exhibit #16, p.3). On September 23, 2009, Ms. Pamela Simes Fleming filed an appeal requesting that the City Council overturn the Planning Commission's revised interpretation.

- On December 3, 2009, the City issued the applicants an after-the-fact building permit for: grading to restore bluff edge, demolish unpermitted walls and fire pit, install sump pump and drain lines for yard drainage.
- On December 15, 2009, the City Council held another public hearing for the appeal of the Planning Commission's after-the fact approval of the development. After hearing both sides of the appeal, the City Council denied the appellant's (Ms. Simes) appeal and upheld the Planning Commission's after-the fact approval of the variance for the development finding that there is an exceptional circumstance applicable to the property due to the development pattern of other residences in the area (Exhibit #9, p.5). The City Council found that the only location to build the proposed improvements is in the rear yard, which is within the Coastal Structure Setback Zone (25 feet from the Coastal Setback Line), and that the development is similar to other bluff top development in the rear yards of other nearby properties (Exhibit #9, ps.5-8: City Council Resolution No. 2009-93 adopted December 15, 2009).
- On December 17, 2009, the City's Notice of Final Local Action for Local Coastal Development Permit No. ZON2007-00046 was received in the Commission's South Coast District office. The Commission's ten working-day appeal period was established on December 18, 2009.
- On January 4, 2010, Commission staff received appeals from James Huston, Pamela Simes Fleming and Don Fleming, and Coastal Commissioners Mary Shallenberger and Sara Wan. The appeal period ended at 5 p.m. on January 4, 2010 with no other appeals received.
- On January 5, 2010, City Council adopted City Council Resolution No. 2010-01 finding that that the location of the Coastal Setback Line on properties shall be based on the City's official zoning map, instead of the Coastal Specific Land Use Map or the ESA maps contained in the certified LCP (Exhibit #16). The resolution revised the previous Director's Interpretation which determined that the Coastal Setback Line was in the same location on the site where it had previously been established when the house was permitted. The City's new method for identifying the Coastal Setback Line using the official zoning map, which was adopted three weeks after the approval of the applicants' proposed swimming pool pursuant to the variance and Local Coastal Development Permit No. ZON2007-00046, identifies the location of the Coastal Setback Line about 25 feet further seaward than the location of the line shown on the ESA maps referenced in the LCP. The new location of the Coastal Setback Line (as interpreted by the City Council) puts the proposed swimming pool landward of the Coastal Structure Setback Zone where structures are prohibited.
- In February 2010, at the request of the City, the applicants removed the unpermitted retaining wall, fire pit and fill from the site. New drainage pipes and a sump pump were installed in the area near the bluff edge, and the disturbed area has been landscaped with lawn, flowers, olive trees, stone pathways, and a sixteen-inch high stone garden wall.

- On June 16, 2011, the Commission found that the Appeal A-5-RPV-10-002 raises a substantial issue regarding whether the City-approved development conforms with the Coastal Structure Setback Zone of the City of Rancho Palos Verdes certified LCP, whether the swimming pool threatens the stability of the coastal bluff, and whether restoration of the previously disturbed bluff edge has been adequately carried out. The Commission's finding of substantial issue voided the entire local coastal development permit action that is the subject of the appeals.

## **B. Development – Setback From Bluff Edge**

The applicants are seeking after-the-fact approval for the construction of a pool, spa and outdoor chimney barbeque sited between their existing house and the top of a coastal bluff on their property. The house is set back about 75 feet from the bluff edge, and the proposed pool, spa and chimney are set back sixty feet from the edge of the bluff (Exhibit #4).

Section 17.72.040B (Uses and Developments Permitted - Coastal Setback Zone) of the City of Rancho Palos Verdes Municipal Code states:

Uses and Developments Permitted in the Coastal Structure Setback Zone. Any new permanent structures in this zone are prohibited, including, but not limited to, pools, spas, vertical support members and chimneys. Minor structures and equipment, such as trash enclosures, storage sheds of less than one hundred twenty square feet, doghouses, enclosed water heaters, barbecues, garden walls, air conditioners, pool filters, vents and other minor structures and/or equipment may be allowed. In addition, decks, walkways or similar ground surfacing less than six inches in height, as measured from adjacent existing grade, shall be allowed.

This permit application involves a dispute over the location of the Coastal Setback Line, from which the Coastal Structure Setback Zone is measured. The Coastal Structure Setback Zone is 25 feet inland of the Coastal Setback Line. See Exhibit #8, p.3 for the relative locations of the Coastal Setback Zone, the Coastal Setback Line, Coastal Structure Setback Zone, and the Coastal Structure Setback Line (Exhibit #8, p.3).

The interpretation procedure at issue concerns the methodology used to determine the Coastal Setback Line on individual coastal bluff properties. Depending on which City map is used to plot the Coastal Setback Line on the applicants' property, either all or a portion of the proposed development (pool, spa and chimney) falls within the prohibited Coastal Structure Setback Zone. The proposed development is within the Coastal Structure Setback Zone if the Coastal Setback Line drawn on the ESA maps is used, but safely inland of prohibited area if the setback line on the enlarged zoning map is used.

The Coastal Setback Line was established along the City's bluffs on the basis of a report and maps prepared in 1976 by Earth Sciences Associates (ESA) [Geologic Factors Related to a Coastal Set-Back for the City of Rancho Palos Verdes, California, 1976]. The Coastal Structure Setback Zone extends 25 feet inland of the Coastal Setback Line (Exhibit #8, p.3). Using the maps prepared in 1976 for the LCP by ESA, the Coastal Setback Line is in the rear yard of the property at a location 150 feet from the front (Seacove Drive) property line (Exhibit #6). The applicants' preferred alternate method for determining the location of the Coastal

Setback Line is to use an enlarged zoning map that purports to show the Coastal Setback Line (Exhibit #8, p.1). Using an enlarged zoning map, as the applicants argue, the Coastal Setback Line would be located at a location approximately 175 feet from the front (Seacove Drive) property line (Exhibit #4).

The City Council approved the local coastal development permit that is the subject of this appeal pursuant to a variance, then subsequent to its hearing on the subject coastal development permit, voted to identify the Coastal Setback Line using the City's official zoning map rather than its past method of using the LCP geologic study map (ESA Map) for the purpose of determining appropriate coastal bluff setbacks. The official zoning map, which is produced at a smaller scale than the LCP geologic study map, indicates that the Coastal Setback Line is in a more seaward location on the subject property. By using the official zoning map, the previously constructed swimming pool would no longer be located within the Coastal Structure Setback Zone. The administrative record for the local coastal development permit, however, indicates that the development subject to this appeal does not conform to the bluff-top setback requirement of the certified LCP unless the official zoning map is used to identify the Coastal Setback Line (instead of the ESA Map contained in the certified LCP).

The appellants contend that the development approved by the City (pursuant to the City's variance process) does not conform with the City of Rancho Palos Verdes certified LCP because the development is situated within or seaward of the Coastal Structure Setback Zone (Exhibits #10-12). The Coastal Structure Setback Zone, established by the certified LCP, is the area measured 25 feet inland of the Coastal Setback Line (Exhibit #8, p.3). The certified LCP prohibits buildings and other permanent structures within the Coastal Structure Setback Zone.

Section 17.34.060B (Coastal Setback Zone) of the City of Rancho Palos Verdes Coastal Specific Plan (certified LCP) states:

The coastal setback zone comprises an area in which new development is prohibited. Residential density credit will be granted only for areas proven to the city's satisfaction to be stable. No new permanent structures shall be allowed closer than twenty-five feet to the coastal setback zone.

The Coastal Structure Setback Zone has been mapped on the project site in 1987 and 2002 as part of site-specific geologic studies (Exhibit #7). Based on these studies, the Coastal Setback Line in the rear yard of the property is 150 feet from the front (Seacove Drive) property line, which is consistent with the 1976 ESA map on which the site-specific geologic studies relied. On June 21, 2007, the City Director of Planning, Building and Code Enforcement determined that the Coastal Setback Line on the project site is consistent with the 1987 and 2002 geology report maps (and the ESA map). Thus, under this setback determination, the Coastal Structure Setback Zone extends 25 feet landward from the Coastal Setback Line, setting its landward extent 125 feet from the front (Seacove Drive) property line. Given that the proposed development is sited in the Coastal Structure Setback Zone, then the project would be inconsistent with Section 17.72.040B. Therefore, given this inconsistency, the City chose to invoke its variance provision to approve the proposed development. The staff report will address the City's grounds for its variance approval, below.

## Method for Mapping the Coastal Setback Line

As previously stated, the interpretation procedure at issue concerns the methodology used to determine the City's Coastal Setback Line on individual coastal bluff properties. Using the City's established method of utilizing the ESA maps for interpreting the certified LCP and determining the location of the Coastal Setback Line, all of the proposed development is situated within or seaward of the Coastal Structure Setback Zone, and therefore does not conform with the certified LCP (Exhibits #6&7). The Director's Interpretation, based on maps prepared in 1976 for the LCP by Earth Sciences Associates (ESA), establishes the Coastal Setback Line in the rear yard of the property at a location 150 feet from the front (Seacove Drive) property line. The Coastal Structure Setback Zone extends 25 feet inland of the Coastal Setback Line. The existing single-family residence extends to the landward edge of the Coastal Structure Setback Zone (Exhibit #7). On December 15, 2009, the City approved a variance and an after-the-fact local coastal development permit to permit the pool, spa and chimney structure to be located within 25 feet of the Coastal Setback Line (i.e., within the Coastal Structure Setback Zone) that is mapped on the ESA maps contained in the certified LCP.

The purpose of the Coastal Setback Line is to identify areas along the bluff edge that have geologic concerns. The location of the Coastal Setback Line along the City's entire coastline was determined as a result of a comprehensive geologic study of the City's coastal zone to address potential slope erosion and other geologic concerns. The study is contained in the report entitled Geologic Factors Related to a Coastal Set-Back for the City of Rancho Palos Verdes, California (1976) by Earth Sciences Associates (ESA). The 1976 ESA report and its associated maps are referenced in the appendix of the City's Coastal Specific Plan, which comprises part of the City's certified LCP. The ESA maps show the precise location of the Coastal Setback Line on each individual coastal bluff property (Exhibit #6). Other maps in the Coastal Specific Plan include depictions of the approximate location of the Coastal Setback Line (Exhibit #8). Presumably, all of the City's maps depicting the location of the Coastal Setback Line are all based on the same geology report: the 1976 report (and maps) by ESA. Since the ESA maps are of the largest scale and are the most precise, the City has historically used these maps to identify the location of the Coastal Setback Line. The other City maps have not previously been used to determine the setback line because their small scale makes it impractical.

The ESA geology maps and report were used to develop a four-category classification system that is set forth in the certified LCP (Coastal Specific Plan). The ESA report identifies coastal erosion and landslides, and streambed erosion as significant geologic hazards on the coastal bluffs. The LCP states that, "the following four-category system is comprehensive and also sufficiently detailed to be used as a basis for land use planning."

The four geologic categories mapped on the ESA maps (Exhibit #6) are:

- Category 1: Areas unsuited for any permanent structure. 1A – Potentially hazardous for human passage. 1B – In general, safe for human passage.
- Category 2: Areas suitable for light, non-residential structures not requiring significant excavation or grading.

Category 3: Areas in which existing geologic information is not sufficiently detailed to establish suitability for construction purposes.

Category 4: Areas that appear to be suitable for permanent tract-type residential structures and supporting facilities in light of existing geologic information.

On the basis of the ESA report and maps, the Coastal Setback Line was established in 1978. The Coastal Setback Line on the ESA maps runs along the seaward extent of the Category 4 developable areas (Exhibit #6). The Coastal Structure Setback Zone extends 25 feet inland of the Coastal Setback Line (Exhibit #8, p.3). The Coastal Setback Zone, where new development is prohibited pursuant to Section 17.34.060B, includes all land areas within Categories 1, 2 and 3. The applicants' house is situated in the portion of the lot that is Category 4 on the ESA map (Exhibit #6). Regarding the Coastal Setback Line on the project site, the City's Director of Planning, Building and Code Enforcement issued a formal interpretation (based upon the ESA maps) in 2007 that places the Coastal Setback Line a distance of 150 feet measured seaward of the front property line, in the same location as shown on the ESA maps and the site-specific geology 1987 and 2002 maps (Exhibit #7).

When uncertainties arise, the LCP identifies a method for the City to determine boundaries of zoning districts (i.e., the Coastal Setback Zone).

Section 17.72.030 of the certified LCP, states, in part:<sup>1</sup>

#### District Boundaries – Zoning Map

A. Where indicated district boundaries are approximately street, alley or lot lines, said lines are determined to be the boundaries of the district. Otherwise, the boundaries shall be determined by dimensions shown on the official zoning map. In the absence of a dimension, the boundary shall be determined by the scale shown on said map.

D. Where uncertainties exist, the commission shall, by written decision, determine the location of the district boundary.

E. Where physical or cultural features, including but not limited to degree of slope, geologic stability, vegetation, and historic resources, existing or in the ground at the effective date of the ordinance codified in this title are at variance with those shown on the official zoning map, or in other circumstances not covered in this section, the planning director, with appeal to the planning commission, shall determine the location of the boundary.

This apparently was the process that commenced on June 21, 2007 with the City's Director of Planning, Building and Code Enforcement issuing a formal interpretation (based upon the ESA maps), and had apparently ended when the applicants notified the City that they would like to exercise their option of accepting staff's determination of the Coastal Setback Line and pursue the variance.

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<sup>1</sup> The City has repealed and replaced this section (and others) from the municipal code at some point since certification of the LCP. The City has adopted certain revisions to the zoning code without submitting such revisions to the Coastal Commission for certification.

### **Alternate Method for Mapping the Coastal Setback Line**

The applicants' preferred alternate method for determining the Coastal Setback Line is to use an enlarged zoning map that purports to show the setback line (Exhibit #8, p.1). The applicants assert that the City Council on December 15, 2009, in addition to approving the variance for the applicants' proposed development, adopted a determination that the Coastal Setback Line is approximately 175 feet from the front property line, instead of 150 feet. Such a delineation would result in the pool, spa and chimney being situated immediately inland and outside of the Coastal Structure Setback Zone (Exhibit #5). A more seaward (25 feet) location of the Coastal Setback Line would be based on the precedent of using an enlarged zoning map (Exhibit #8) instead of the ESA maps (Exhibit #6) to determine the location of the Coastal Setback Line. The official City record for the December 15, 2009 hearing, however, does not include any reference to the use of the enlarged zoning map to determine the location of the Coastal Setback Line.

Notwithstanding the inapplicability to this project of the City's resolution adopting the enlarged zoning map as the map to be used for determining Coastal Setback Line, the Commission will address the issue with using the zoning map for these determinations. One problem with using the official zoning map is that it is unclear where the Coastal Setback Line would be on the project site because the line indicated on the official zoning map would be about thirty feet wide once the map was enlarged to the scale needed for the site plan.<sup>2</sup> Even so, the applicants assert that the center of the line would be located exactly 25 feet seaward of the pool, thus putting the pool just inland of the Coastal Structure Setback Zone where development is prohibited (Exhibit #5).

The City staff acknowledges that the Planning Commission and City Council did express some concern about the staff's setback line interpretation and the staff's use of the ESA maps that the City has historically used to determine the appropriate setback line. The concern is based on the applicants' claim that the municipal code does not explicitly state that the ESA maps shall be used to determine the appropriate setback line. The applicants assert that Sections 17.88.030 and/or 17.88.050 of the City's zoning code require that the official zoning maps, not the ESA maps, be used to determine the Coastal Setback Line, but these sections are not part of the certified LCP's implementing ordinances (LIP). The City has adopted certain revisions to the zoning code without submitting such revisions to the Coastal Commission for certification. The applicants and the City cannot rely on uncertified sections of City code to support an approval of a local coastal development permit.

Even if the applicant and the City think that the zoning map sufficiently delineates the setback line on the site, there is a dispute as to the accuracy of that line given the issue with the scale of the zoning map. In a case where "degree of slope, geologic stability, vegetation, and historic resources, existing or in the ground at the effective date of the ordinance codified in this title are at variance with those shown on the official zoning map", Section 17.72.030(E) of the LCP requires that the Planning Commission determine the location of the boundary. Such a determination to set the proper coastal setback line (to avoid development in geologically hazardous areas) should be based on site-specific geology, and not based on a small-scale zoning map.

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<sup>2</sup> The ESA maps have a scale of 1:2,400 (1 inch = 200 feet), and the zoning map has a scale of 1:19,200 (1 inch = 1,600 feet).

Commission staff has been aware since 2009 that the City Planning Commission was discussing the alternate methods for determining the appropriate setback line. Commission staff recommended that the City resolve the issue through an LCP amendment (Exhibit #14). Commission staff is supportive of a process to amend the LCP to include updated maps and requirements for determining the appropriate geologic bluff-top setbacks to assure geologic stability and safety for new coastal development in the City. In considering a future LCP amendment, as well as applications for new development on coastal bluffs, the setback lines from coastal bluff edges should, at the minimum, be established to assure a geologic factor of safety of 1.5 (static) and 1.1 (pseudostatic) for the economic life of the development (assumed for most development to be 75 years); such a level of stability must be maintained during future bluff retreat, and should consider the acceleration of bluff retreat due to continued and accelerated sea level rise.

The City states that it does not intend to amend the LCP. Notwithstanding the City's stated intention, the City Council on January 5, 2010 adopted Resolution No. 2010-01 stating that the official zoning map shall now be used to determine the Coastal Setback Line (Exhibit #16), even though it previously adopted yet another conflicting Section 17.90.030(C) of the municipal code (uncertified) to determine the same setback line, which provides:

17.90.030 - Basis of interpretation (in part)

- C. In the case of an interpretation involving the location of an open space hazard zoning **district** or coastal specific plan setback zone **boundary** line, consideration shall be based on geotechnical and/or soils reports. (Ord. 320 § 7 (part), 1997)

In sum, the City does not have a certified method for determining Coastal Setback Lines, thus the Commission cannot agree to implement the applicant's preferred alternate method for determining this setback line. Since the site-specific geologic study indicates that the Coastal Setback Line is consistent with the ESA map, the City's Coastal Setback Line determination is accurate even though it relied on an uncertified methodology to make its Coastal Setback Line determination. Finally, given that most bluff-top parcels in the City are within the Commission's appellate jurisdiction, it is highly advisable that the City amends its LCP in an attempt to prevent this type of dispute in the future, incorporating Section 17.90.030(C) and language that details the minimum geologic factors of safety, noted above, in its LCP amendment application.

**Variance Procedure**

Notwithstanding the disagreement over the location of the Coastal Setback Line, the City approved some of the proposed development (pool, spa and chimney) using a variance procedure. The City determined that the approved development is sufficiently set back from the bluff edge (sixty feet) and geologically safe. The Commission's staff geologist concurs that this determination is supported by the conclusions of the geologist's reports. The retaining wall, fire pit and fill that was not sufficiently set back from the bluff edge was not approved, and the City required the applicants to remove it and restore the bluff edge.

The most important factor for new development on coastal bluffs and other areas of high geologic hazard is that the development minimizes risks to life and property.

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; and 2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...

The standard generally used by the Commission to determine consistency with Section 30253 is that the setback from the coastal bluff edge, at the minimum, assures a geologic factor of safety of 1.5 (static) and 1.1 (pseudostatic) for the economic life of the development (assumed for most development to be 75 years). Such a level of stability must be maintained during future bluff retreat, and should consider the acceleration of bluff retreat due to continued and accelerated sea level rise.

The applicants have provided a geotechnical analysis that demonstrates that the swimming pool, spa and outdoor chimney barbeque, which are set back sixty feet from the edge of the bluff, will be safe from geologic failure for more than 75 years [Limited Long Term Bluff Retreat Assessment, Existing Swimming Pool, 24 Seacove Drive, Rancho Palos Verdes, Calif., Hamilton & Assoc., Inc., August 29, 2011]. The rate of bluff retreat was estimated to be 4.5 inches per year, which would amount to about 28 feet of bluff retreat over a period of 75 years. The Commission's staff geologist has reviewed the a geotechnical analysis and agrees with its conclusions.

There are grounds in this case to use the variance process, which is part of the certified LCP (Section 17.60.020), to approve accessory structures (e.g., swimming pool, spa and barbecue) within the Coastal Structure Setback Zone, but only if the project meets the following four conditions:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, which do not apply generally to other property in the same zoning district;
2. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the same zoning district;
3. That the granting of the variance will not be materially detrimental to the public welfare or injurious to property and improvements in the area in which the property is located;
4. That the granting of such a variance will not be contrary to the objectives of the original plan.

The City made findings that there are exceptional or extraordinary circumstances applicable to the property and that the variance is necessary for the preservation and enjoyment of a substantial property right that is also possessed by other property owners under like conditions in the same zoning district (Exhibit #9, ps.5-7). The City also made findings that the variance will not be materially detrimental to the public welfare, and that the granting of such a variance will not be contrary to the objectives of the original plan. In this case, the Commission concurs

that there are exceptional or extraordinary circumstances applicable to the property which do not apply generally to other property in the same zoning district. Specifically, the property is a bluff top parcel, which is much more geologically constrained than the majority of nearby parcels located landward of Seacove Drive. Given the subject parcel's geological constraints, the residence's footprint and relevant setback requirements, the rear yard of the property is the only location where the proposed pool and spa could be built. The Commission also concurs with the City in its finding that the variance enables the applicants to enjoy the same kind of accessory as similarly situated properties on the seaward side of Seacove Drive. The existing house extends to the Coastal Structure Setback Line, so any additional rear yard accessory structures would be located within or seaward of the Coastal Structure Setback Zone.

The City's findings acknowledge that other properties located on the seaward side of Seacove Drive, all within the same zoning district under like conditions (bluff top parcels), that have pools and other accessory structures in their rear yards existed prior to the City's incorporation. The granting of the variance to allow a pool and spa and chimney barbeque within twenty feet of the house and sixty feet back from the coastal bluff edge will not be contrary to the objectives of the original plan—the relevant LCP provisions—if the development is safe and not detrimental to the public welfare or injurious to property and improvements in the area. The permit can be conditioned to ensure that the development meet this standard of the variance procedure.

While the proposed development is within the Coastal Structure Setback Zone, the geologic stability is such that the development will likely not be endangered by geologic hazards. The geotechnical reports prepared for the project site by Coastline Geotechnical Consultants, Inc. state that the pool site is safe from landsliding, and that the pool construction is beneficial because it results in a net reduction in load on the bluff top. The Slope Stability Analysis for the proposed project shows a Static Factor of Safety of 1.59 (Exhibit #13). The proposed pool, spa and chimney barbeque, according to the City, are located in the Category 2 geologic category mapped on the ESA maps (Exhibit #6). The LCP states that Category 2 is suitable for light, non-residential structures not requiring significant excavation or grading. As stated above, the Long Term Bluff Retreat Assessment by Hamilton & Assoc., Inc. demonstrates that the swimming pool, spa and outdoor chimney barbeque will be safe from geologic failure for more than 75 years. Therefore, the granting of the variance will not be materially detrimental to the public welfare or injurious to property and improvements in the area in which the property is located.

The Coastal Commission imposes Special Conditions One through Six on the permit in order to ensure that the development will not be detrimental to the public welfare or injurious to the property. Special Condition One requires the applicants to comply with the recommendations contained in their geotechnical consultant's reports.

Special Condition Two requires that a plan be submitted for the installation of leak prevention and detection devices in the swimming pool. The proposed project includes a new pool and spa on the bluff top terrace, seaward of the residence. If water from the proposed pool and spa is not properly controlled there is a potential for bluff failure due to the infiltration of water into the bluff. The applicants' geotechnical consultant's review of the proposed project include placement of a pool and spa, but no recommendations for leak prevention are addressed. There is a clear need to minimize the potential for the infiltration of water into the bluff. With regard to pools, spas and other water features, this can be achieved by various methods,

including having the pool, spa and water features double lined to prevent leakage, installing appropriate drainage under these various water bodies to capture any water that could leak despite preventative efforts, and installing a leak detection system so that leaks can be identified and addressed. Therefore, Special Condition Two requires that prior to the issuance of this permit, the applicants must submit a pool protection plan for review and approval by the Executive Director. The plan must incorporate mitigation for the potential for geologic instability caused by leakage from the proposed pool.

Special Condition Three requires that the bluff edge be restored to its prior contours where it was disturbed by unpermitted development (installation and removal of the retaining wall, fire pit and fill), or provide the Executive Director with documentation, verified by a certified geotechnical professional and the City of Rancho Palos Verdes, that the contour of the top of the slope needs no further alteration in order to be restored to the condition it was in prior to the development that commenced in 2006. Special Condition Four requires that a landscaping plan shall be submitted so that the portion of the bluff top within fifty feet of the edge (fifty feet above and fifty feet below the edge of the bluff) is landscaped with low-water native plants, and monitoring of the landscaping for three years to ensure its success. The use of low water plants near the bluff edge is necessary to eliminate the need for irrigation so that overwatering will not result in bluff failure due to the infiltration of irrigation water into the bluff.

As conditioned, the proposed project will not 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. Special Condition Five requires that the applicants/landowners agree, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this coastal development permit including, but not limited to, the construction of the swimming pool, spa, and outdoor chimney barbeque; installation of a drainage system; and restoration of the bluff top slope, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future.

As conditioned, the proposed project will minimize risks to life and property and will not significantly contribute to erosion or destruction of the area. However, no development on the site and near the shoreline can be guaranteed to be safe from hazard. All development located on a bluff near the ocean has the potential for damage caused by landslides, wave energy, floods, seismic events, storms and erosion. The project area is susceptible to natural hazards. Special Condition Six requires that the applicants assume the risks of the potential hazards associated with development, and indemnifies the Commission against liability with respect to the approval of the proposed project.

Additionally, the Commission requires the applicants to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property. This deed restriction is required by Special Condition Seven. The Commission finds that, as conditioned, the project is consistent with the variance requirements of the certified LCP.

**C. Recreation and Public Access**

Because of its location between the nearest public road and the sea, the proposed project must conform with the following Coastal Act policies which protect public access and encourage recreational use of coastal areas.

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:

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 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221 of the Coastal Act states:

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.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not

overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The project site is fenced and provides no public access to or along the shoreline or public recreation at this time. It is not an oceanfront lot, as there is another property situated between the project site and the sea (Exhibit #2). The lowest elevation of the subject lot is situated about one hundred feet inland of the shoreline at the bottom of the bluff (Exhibit #3). As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. The proposed development will not affect the public's ability to gain access to the sea, or to make use of, the coast and nearby recreational facilities. Therefore, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **D. Unpermitted Development**

The development subject to this permit application occurred without the required coastal development permit. The unpermitted development includes: grading the site and construction of a retaining wall, swimming pool, spa, outdoor chimney barbeque, and fire pit. Additional unpermitted development occurred when the retaining wall, fire pit and fill were removed from the site and drainage pipes, a sump pump, and a garden wall were installed when the applicant purportedly restored the bluff top slope to the condition it was in before the first phase of unpermitted development occurred. Graded trails on the bluff face may also be unpermitted.

To ensure that the matter of unpermitted development is resolved in a timely manner, Special Condition Nine requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within ninety days of Commission action, or within such additional time as the Executive Director may grant for good cause. Implementation of the approved bluff top restoration plan required by Special Condition Three shall commence as soon as possible following the issuance of the coastal development permit, and no later than 120 days from the date of Commission approval of this permit, or within such additional time as the Executive Director may grant for good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Although development has taken place prior to Commission action on this permit application, consideration of the application by the Commission is based solely upon the policies contained in the certified LCP or, where applicable, Chapter 3 policies of the Coastal Act. Commission action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment.

#### **E. Deed Restriction**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this coastal development permit, the Commission imposes one additional condition requiring that the property owner to record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as

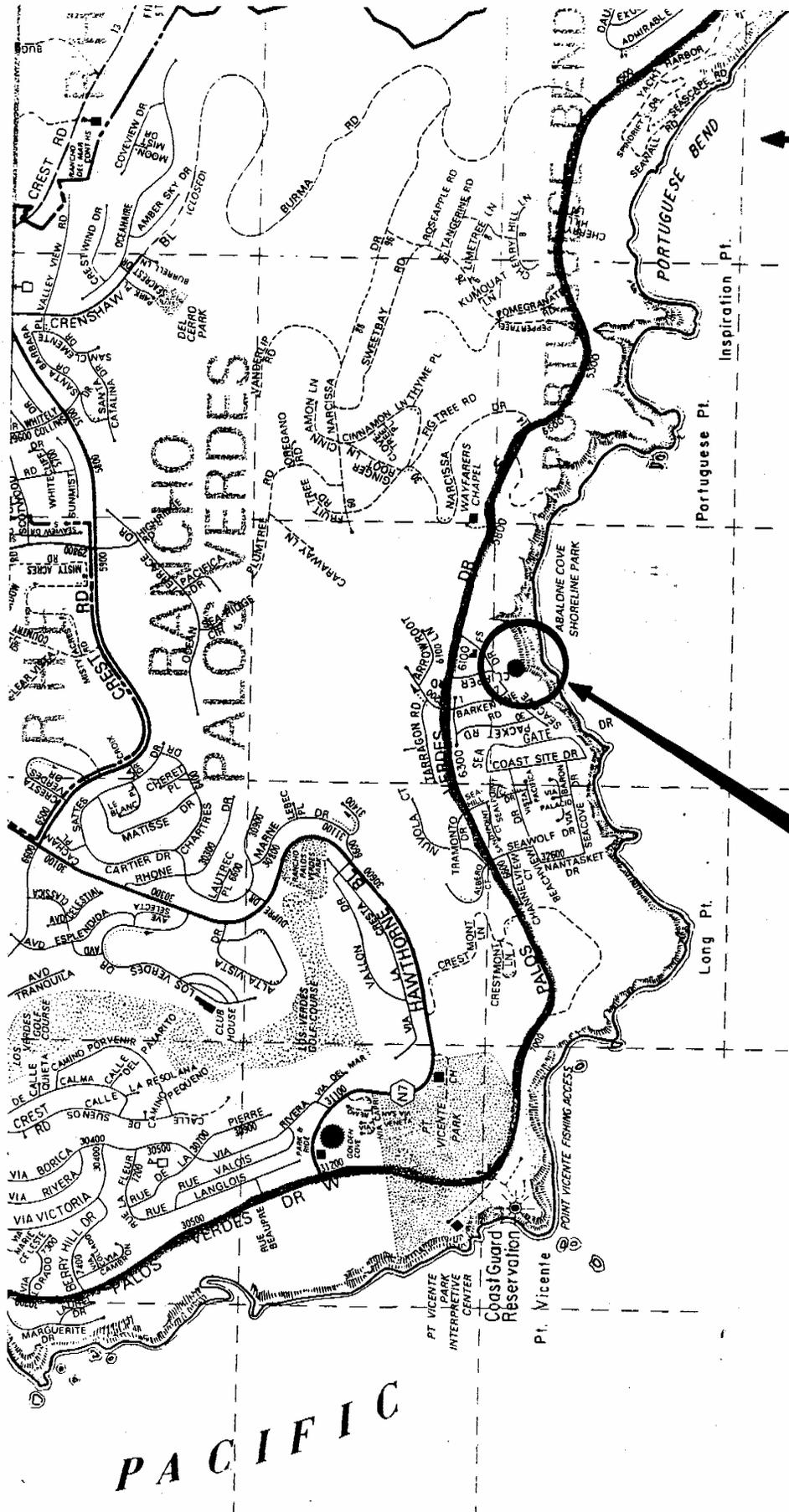
covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

**F. California Environmental Quality Act (CEQA)**

Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application 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 Rancho Palos Verdes is the lead agency for the purposes of CEQA review and has determined that the proposed project is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines (Class 1 – Existing Facilities).

As explained in the findings above, the proposed project has been conditioned in order to be found consistent with the certified LCP and the public access and recreation policies of the Coastal Act. As conditioned, the approved project is the environmentally preferable alternative. Mitigation measures, in the form of special conditions, provide requirements for restoration and re-vegetation of the previously graded area of the site. As conditioned, 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 complies with the applicable requirements of the Coastal Act to conform to CEQA.



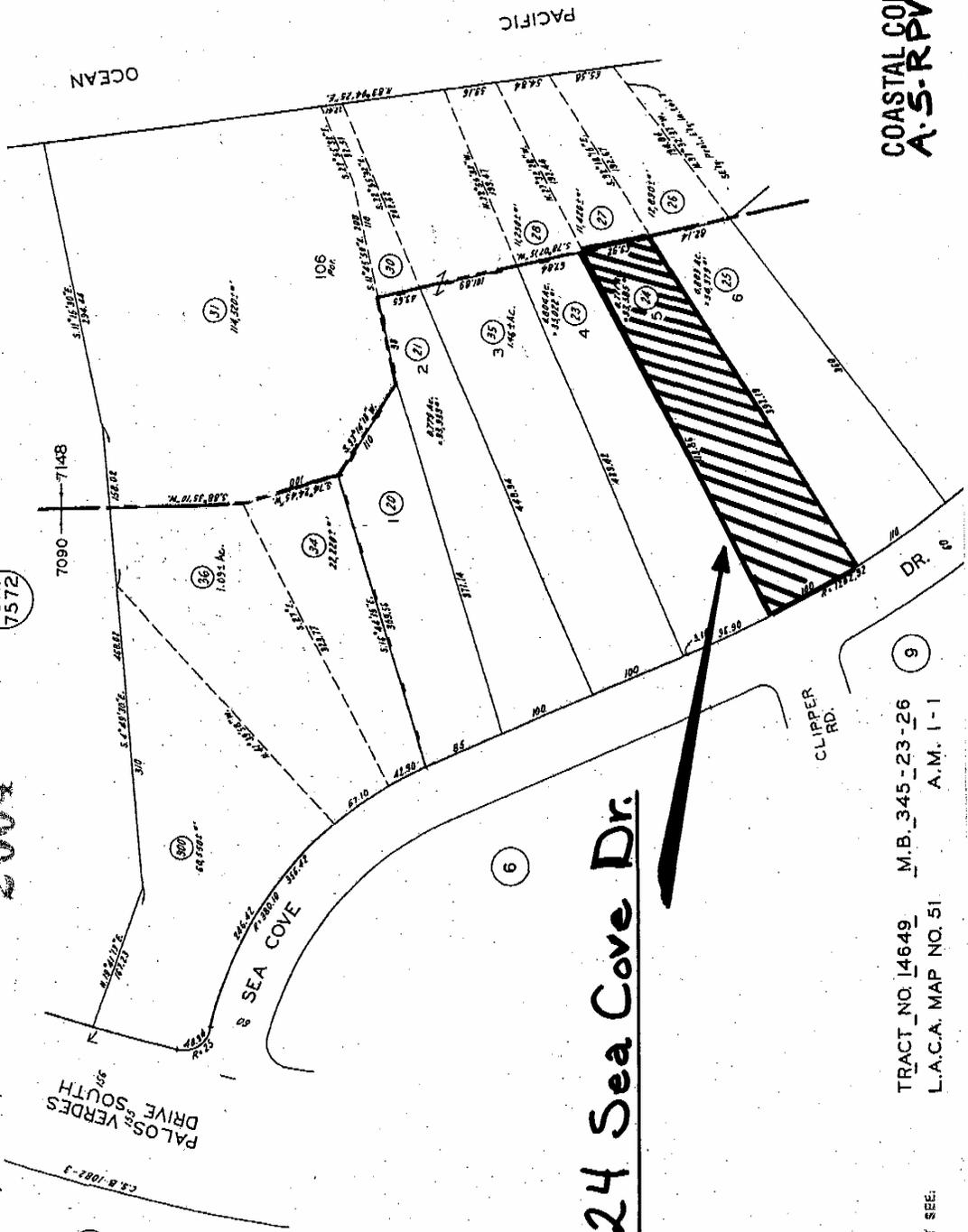
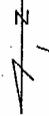
O C E A N

Site: 24 Sea Cove Dr.

7573 | 7  
SCALE 1" = 100'

2004

BK. 7572



Site: 24 Sea Cove Dr.

CORNER  
7090  
7148

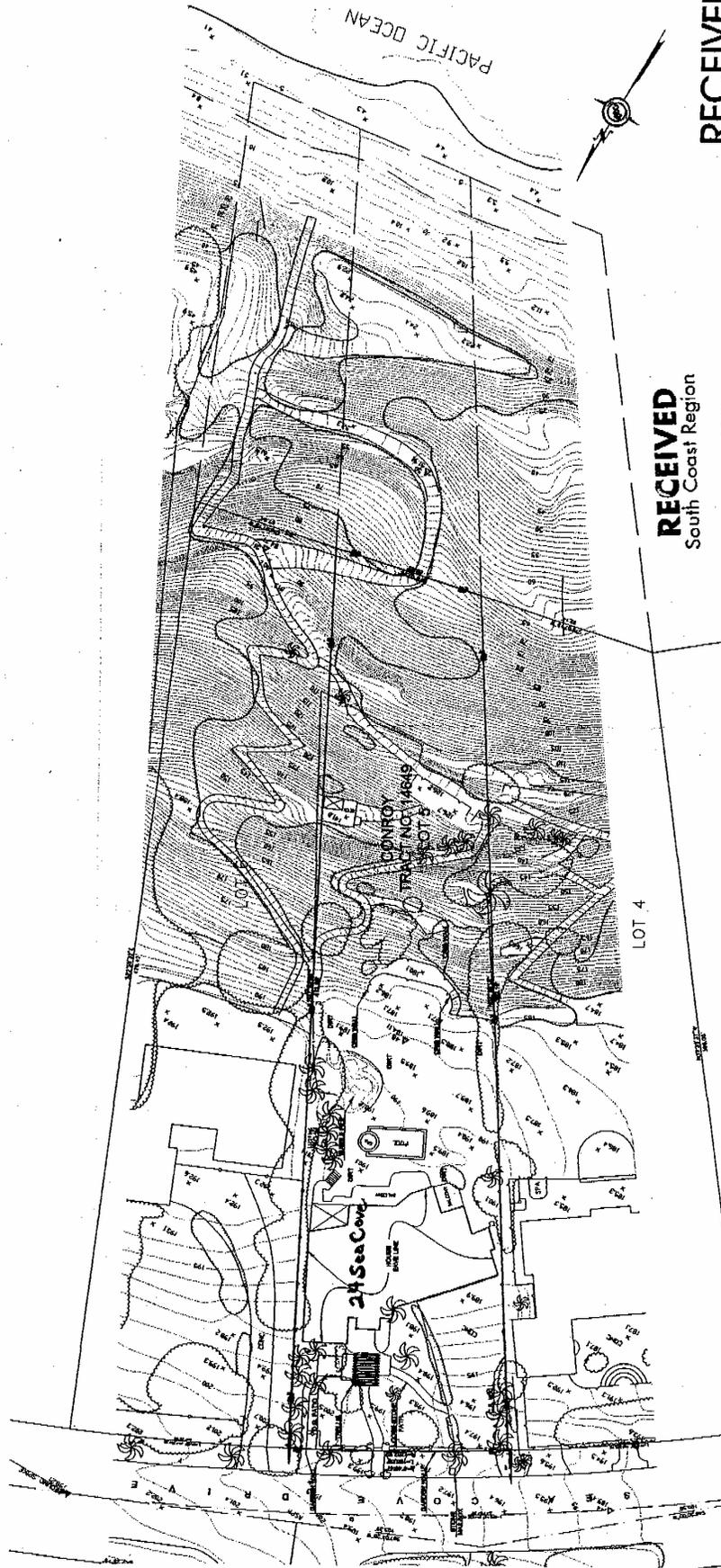
TRACT NO. 14649 M.B. 345-23-26 9  
L.A.C.A. MAP NO. 51 A.M. 1-1

FOR PREV. ASSM'T SEE:  
7573 - 21

COASTAL COMMISSION  
A-5-RPV-10-002

EXHIBIT # 2  
PAGE 1 OF 1

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**RECEIVED**  
South Coast Region

JAN 1 2 2010

CALIFORNIA  
COASTAL COMMISSION

**RECEIVED**

DEC 0 2 2008

PLANNING, BUILDING AND  
CODE ENFORCEMENT

Site Plan

0 100'

Scale

Width of lot at street is 100'

COASTAL COMMISSION  
**A-5-RPV-10-002**

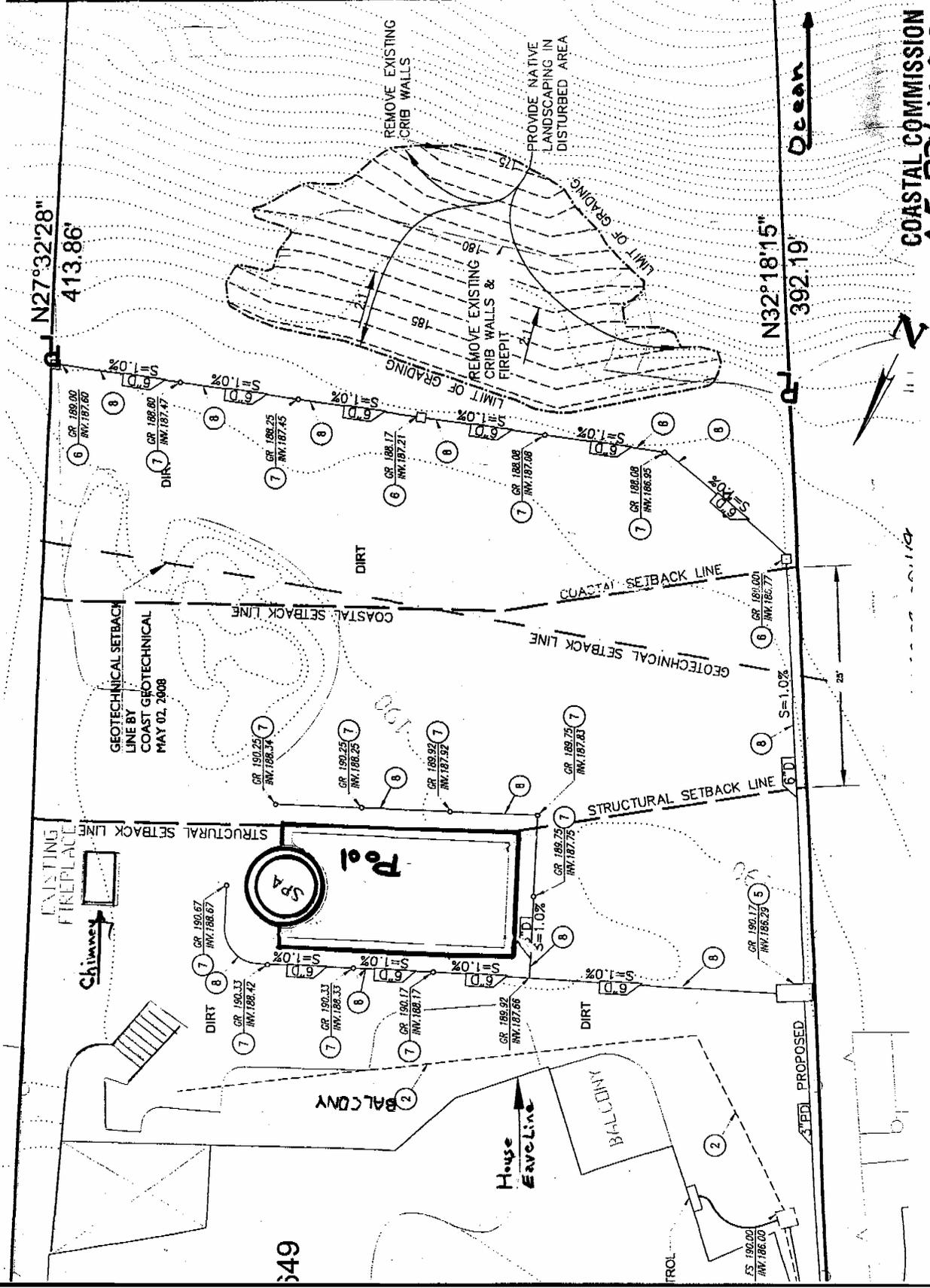
EXHIBIT # 3

PAGE 1 OF 1

Bolton Engineering Corp.  
 Civil Engineering & Surveying  
 25834 Nardone Avenue Suite 210  
 Loma, CA 90117  
 (310) 322-5560



ENCE  
 DRIVE  
 VERDES CA 90274



COASTAL COMMISSION  
 A-5-RPV-10-002

EXHIBIT # 4  
 PAGE 1 OF 1

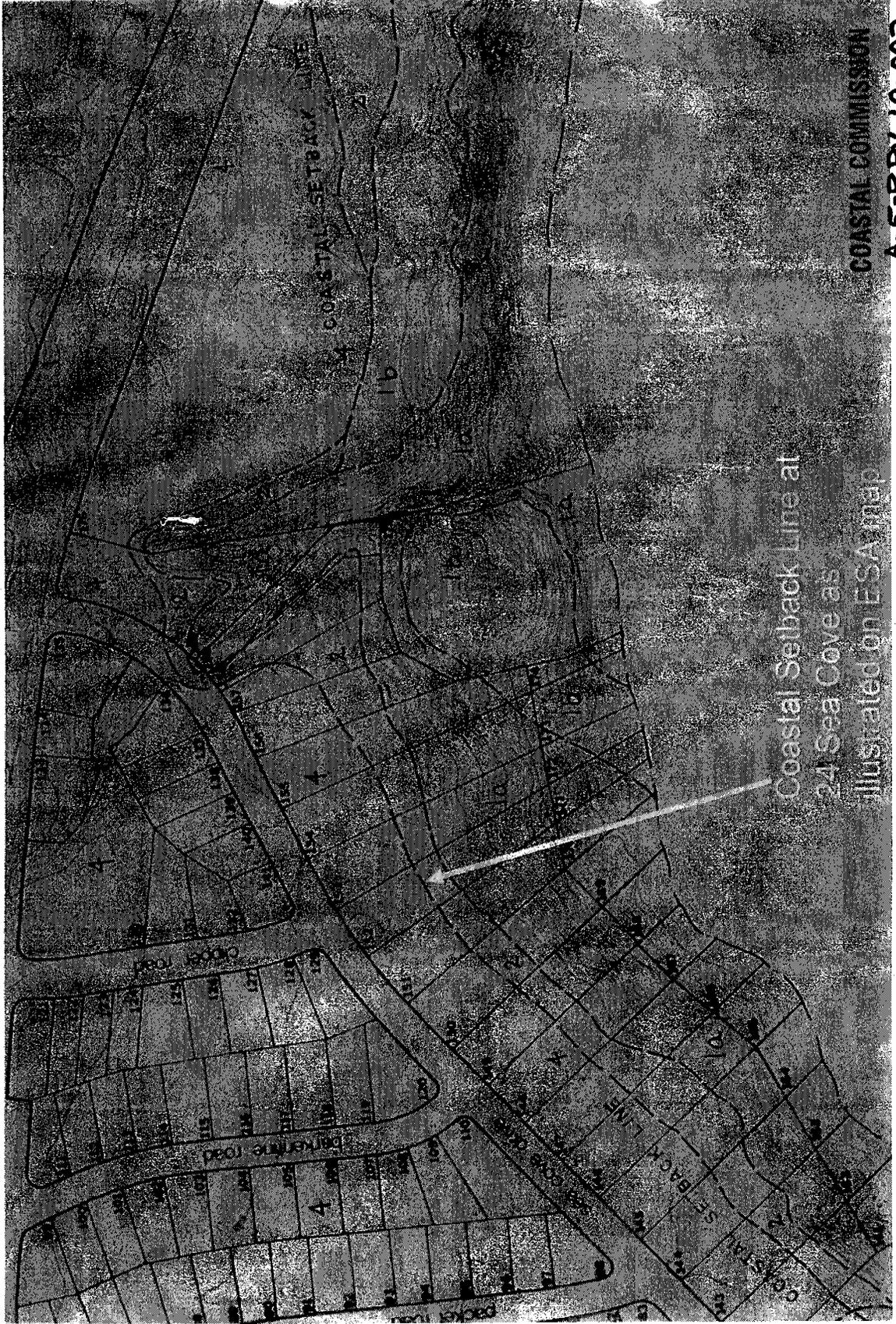
*Restoration Plan - Bluff Edge*

349



← Sea Cove Drive →

Applicants Exhibit - Setbacks



Coastal Setback Line at  
24 Sea Cove as  
illustrated on ESA map

COASTAL COMMISSION

A-5-RPV-10-002

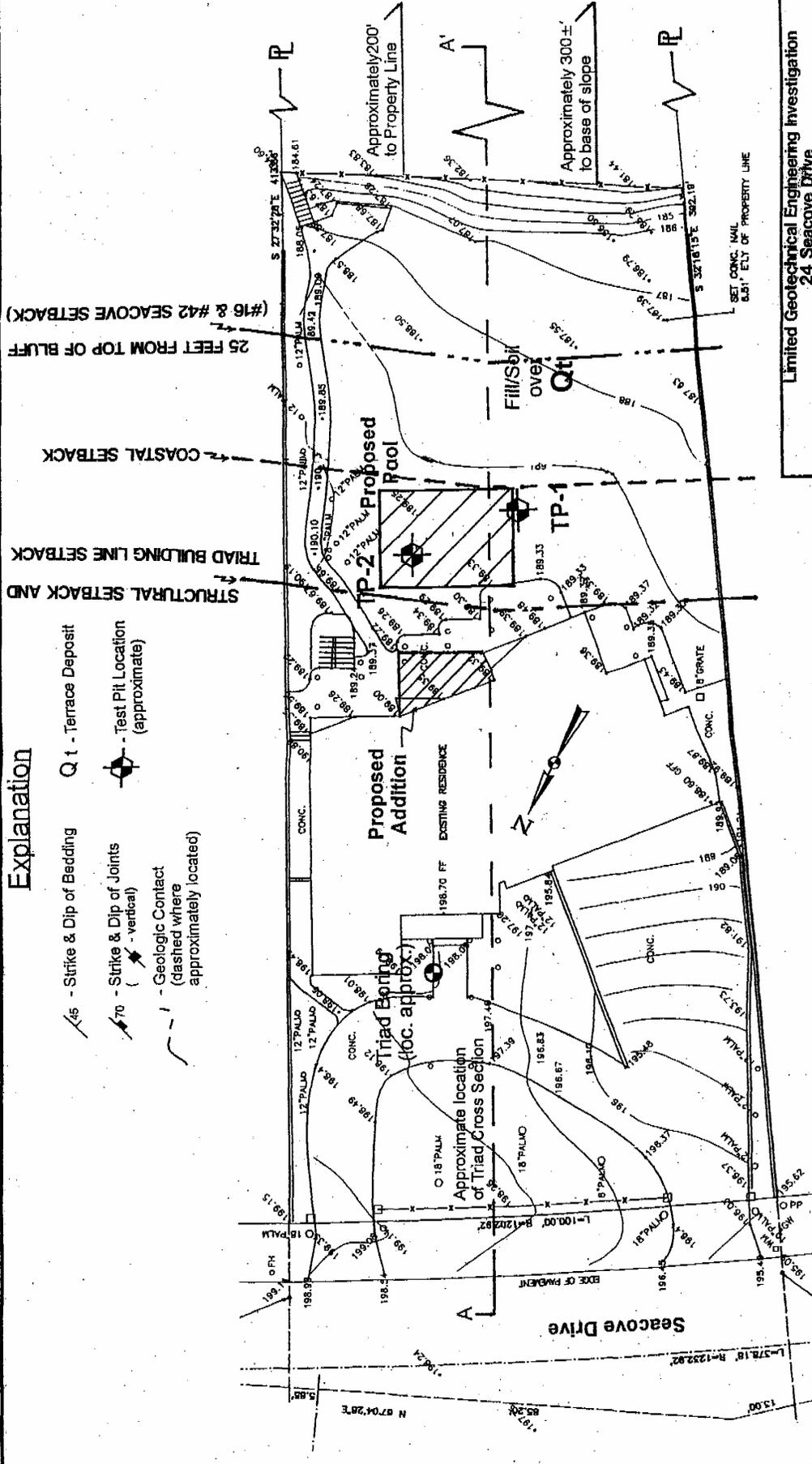
EXHIBIT # 6

PAGE 1 OF 1

ESA Map 4/7

**Explanation**

- Strike & Dip of Bedding
- Strike & Dip of Joints (vertical)
- Geologic Contact (dashed where approximately located)
- Terrace Deposit
- Test Pit Location (approximate)



From: Plan dated 5/8/01 by bk concepts - Architect

Limited Geotechnical Engineering Investigation 24 Seacove Drive Rancho Palos Verdes, California	
SCALE: T = 20'	DRAWN BY: ACL
DATE: May 02	REVISED:
Coastline Geotechnical Consultants, Inc.	
Project No. 1773C-101	DRAWING NUMBER: 2 R

COASTAL COMMISSION  
A-5-RPV-10-002

EXHIBIT # 7  
PAGE 1 OF 2

# GEOLOGIC MAP

Qaf - COMPACTED FILL    Qls - LANDSLIDE    Qt - TERRACE DEPOSITS    TMSH - MONTEREY FM

— STRIKE & DIP OF BEDDING    ● BORING

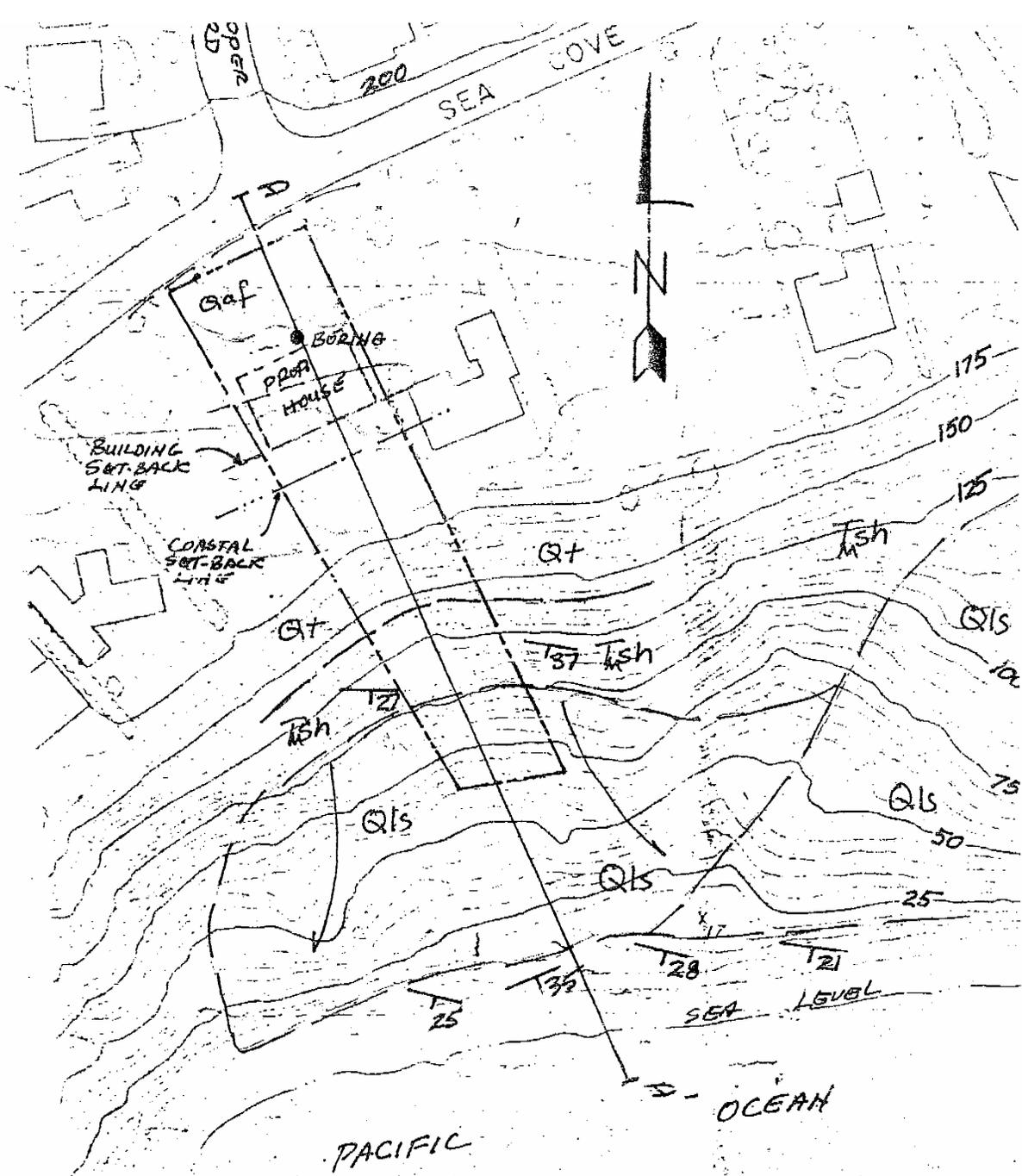


PLATE A

	TRIAD FOUNDATION ENGINEERING, Inc.
Consulting Geologists - Soils Engineering	
Job no: 86-126	Date: 12-29-87    Scale: 1"=100'    By: LLL

EXHIBIT # 7  
PAGE 2 OF 2



recreational  
 general

cemetery  
 cem

institutional  
 I

open space  
 hazard  
 recreational  
 OH  
 OR

special districts  
 equestrian  
 specific plan  
 agricultural  
 residential planned development  
 RPD

overlay control districts  
 natural  
 socio/cultural  
 urban  
 special setbacks  
 coastal setback zone

REVISION 6/17/86  
 ZONE CHANGE NO. 12  
*J. Luvell, City Clerk*

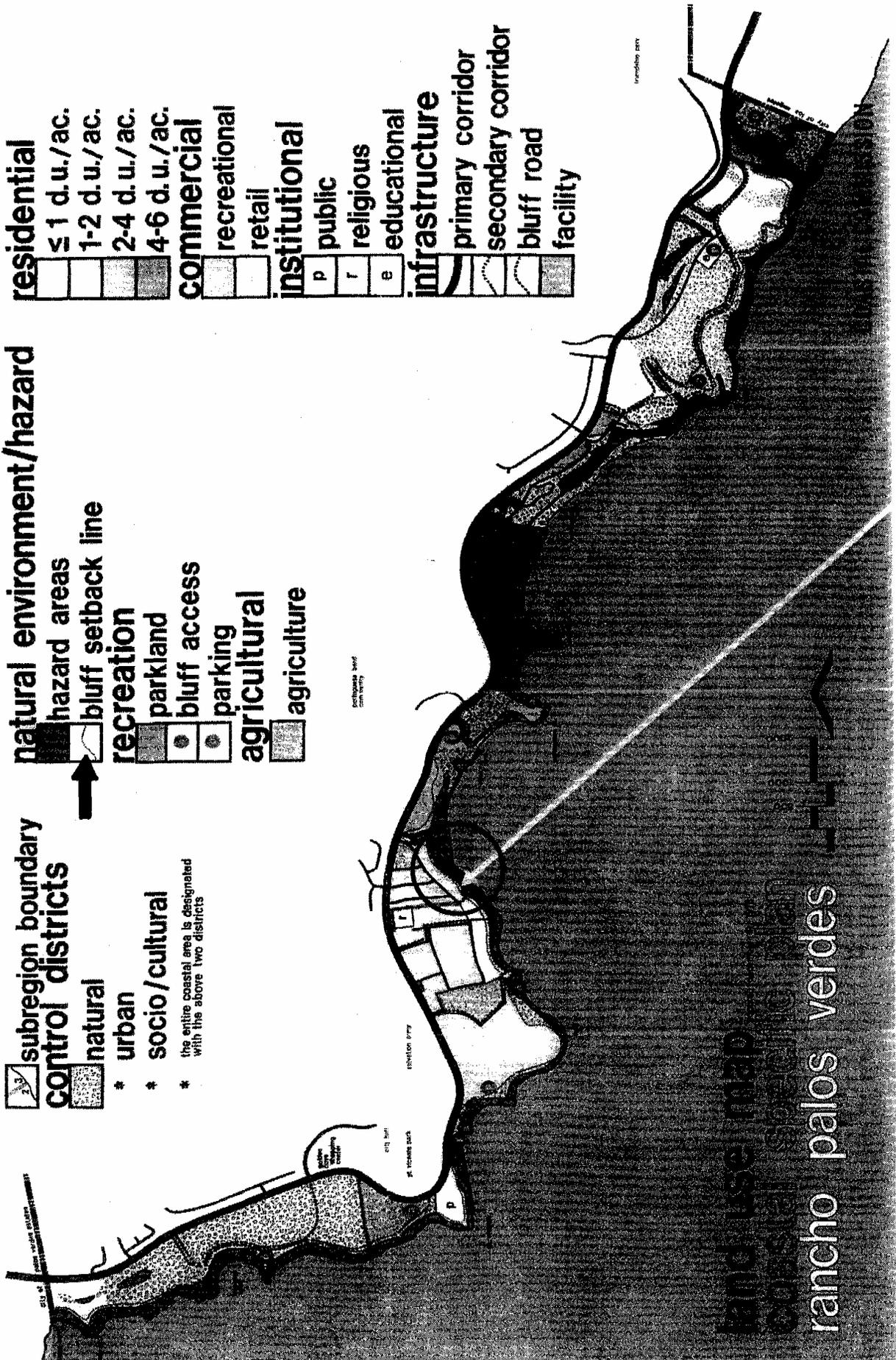
A-5-RPV-10-002

This is to certify that this is the Official Zoning Map of the City of Rancho Palms, Ventura, Calif.

Date	Submitting Authority	Notes
1976	City of Rancho Palms	Zone Change No. 1
1977	City of Rancho Palms	Zone Change No. 2
1978	City of Rancho Palms	Zone Change No. 3
1979	City of Rancho Palms	Zone Change No. 4
1980	City of Rancho Palms	Zone Change No. 5
1981	City of Rancho Palms	Zone Change No. 6
1982	City of Rancho Palms	Zone Change No. 7
1983	City of Rancho Palms	Zone Change No. 8
1984	City of Rancho Palms	Zone Change No. 9
1985	City of Rancho Palms	Zone Change No. 10
1986	City of Rancho Palms	Zone Change No. 11
1987	City of Rancho Palms	Zone Change No. 12

COASTAL COMMISSION

Coastal Setback Line  
 Illustrated on Zoning  
 Map



subregion boundary  
**control districts**  
 \* natural  
 \* urban  
 \* socio/cultural  
 \* the entire coastal area is designated with the above two districts

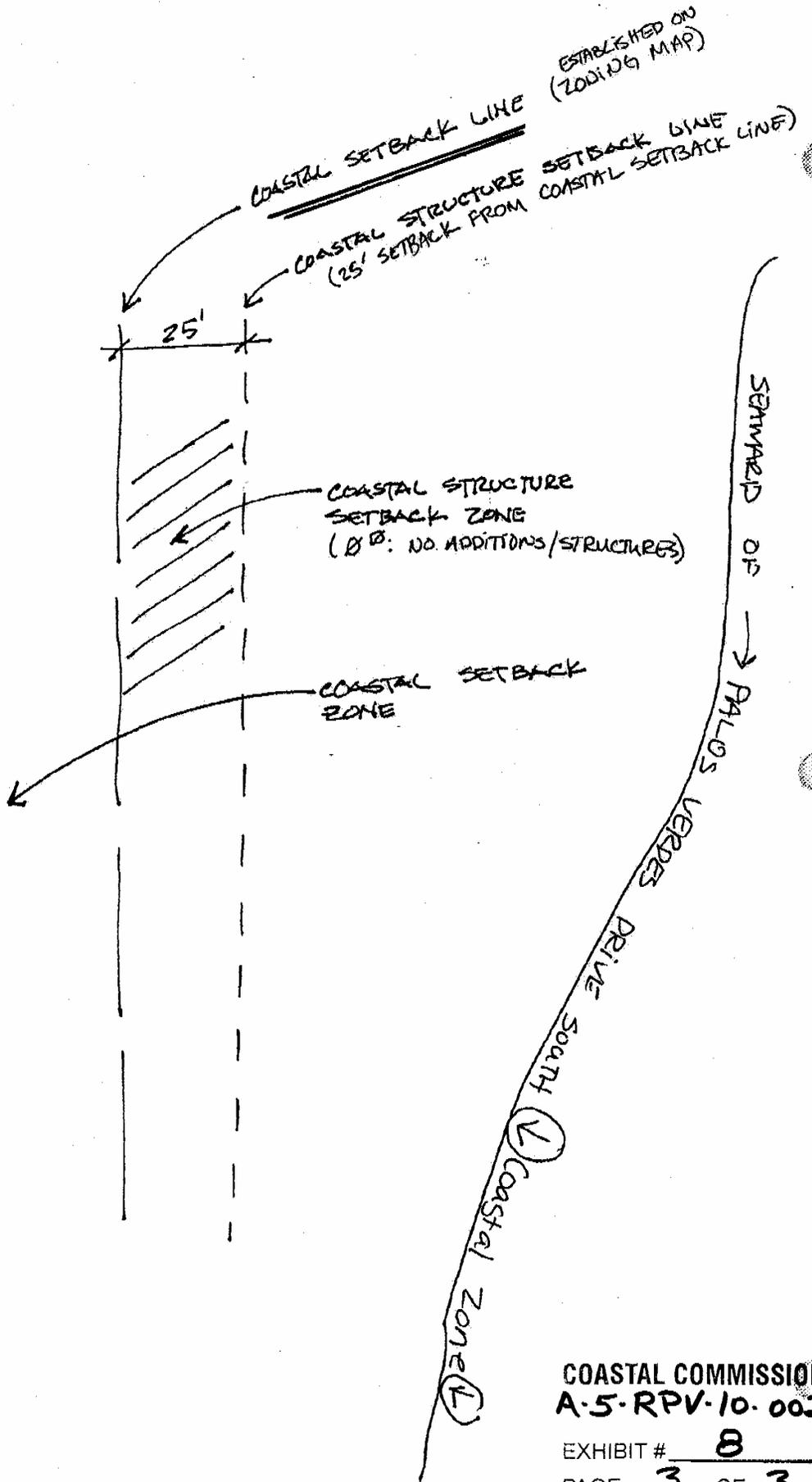
**natural environment/hazard**  
 hazard areas  
 bluff setback line  
**recreation**  
 parkland  
 bluff access  
 parking  
**agricultural**  
 agriculture

**residential**  
 ≤ 1 d.u./ac.  
 1-2 d.u./ac.  
 2-4 d.u./ac.  
 4-6 d.u./ac.  
**commercial**  
 recreational  
 retail  
**institutional**  
 p public  
 r religious  
 e educational  
**infrastructure**  
 primary corridor  
 secondary corridor  
 bluff road  
 facility

LUP: Bluff Setback Line

rancho palos verdes

OCEAN



December 16, 2009

**NOTICE OF FINAL DECISION**

NOTICE IS HEREBY GIVEN that on December 15, 2009, the City Council of the City of Rancho Palos Verdes denied an appeal and upheld the Planning Commission's approval of Case No. ZON2007-00046 for a Variance and Coastal Permit:

Appellant: Pamela Simes.

Applicant: Brian & Jenifer Conroy.

Landowner: Brian & Jenifer Conroy.

Location: 24 Sea Cove Drive, Rancho Palos Verdes, CA 90275.

**RECEIVED**  
South Coast Region

DEC 17 2009

CALIFORNIA  
COASTAL COMMISSION

Said approval is for an after-the-fact pool, spa and outdoor chimney barbecue in the rear yard area of a bluff top property located at 24 Sea Cove Drive.

In Granting the Coastal Permit, the following findings were made:

1. That the proposed development is in conformance with the coastal specific plan. The subject property is located within Subregion 4 of the City's coastal zone, as established by the Rancho Palos Verdes Coastal Specific Plan, and is designated for residential development. Subregion 4 is predominantly developed with single family residences, and is identified by a strong and unified character, adjacent land uses of different types, and active homeowners association, creating a homogeneity that establishes it as a distinct neighborhood. The after-the-fact accessory structures do not affect these characteristics.
2. The subject property is located between the sea and the first public road (i.e., Sea Cove Drive). The public access policies of the Coastal Act (Chapter 3, Article 2) generally require the provision of public coastal access as a condition of new development. However, the subject property is a developed private property within a developed neighborhood and does not contain any public trails from the street to the shoreline below or along the top of the bluff, nor could coastal access be obtained since the subject property and the adjacent properties are developed with single-family residences. Further, the site does not provide access because of the extreme slope that exists between the top and toe of the bluff, and as such, does not currently provide, nor will ever provide, public access to the sea.

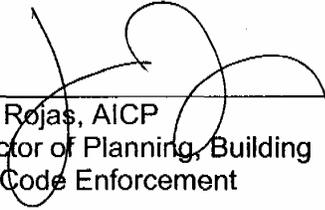
**COASTAL COMMISSION**  
**A-5-RPV-10-002**

EXHIBIT # 9  
PAGE 1 OF 10

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Since the project is located in an **Appealable Area** of the City's Coastal District, this decision may be appealed to the California Coastal Commission.

If you have any questions regarding this permit, please contact Senior Planner Eduardo Schonborn, AICP, at (310) 544-5228 or via e-mail at [eduardos@rpv.com](mailto:eduardos@rpv.com).



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Joel Rojas, AICP  
Director of Planning, Building  
and Code Enforcement

**COASTAL COMMISSION**

EXHIBIT # 9  
PAGE 2 OF 10

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DEC 17 2009

**RESOLUTION NO. 2009-93**

CALIFORNIA  
COASTAL COMMISSION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO CONDITIONALLY APPROVE CASE NO. ZON2007-00046 FOR A VARIANCE AND COASTAL PERMIT TO ALLOW AN AFTER-THE-FACT POOL, SPA, AND OUTDOOR CHIMNEY BARBECUE WITHIN THE COASTAL STRUCTURE SETBACK ZONE ON PROPERTY LOCATED AT 24 SEA COVE DRIVE.**

WHEREAS, during 2006 and 2007, the property owner (Brian Conroy) constructed several improvements in the rear yard of his property without the benefit of permits, which included a pool and spa, a barbecue and chimney, trellis, grading, and an 8-foot tall retaining wall at the bluff top that accommodates a viewing area and fire pit; and,

WHEREAS, the City's Code Enforcement Division and Building and Safety Division issued several "STOP WORK" orders, and directed the property owner to either remove the improvements or apply for the appropriate entitlements to commence legalization of the after-the-fact improvements; and,

WHEREAS, on January 29, 2007, the property owners, Brian and Jenifer Conroy, submitted Case No. ZON2007-00046, consisting of Variance, Grading Permit and Coastal Permit applications for after-the-fact improvements in the rear yard area of 24 Sea Cove Drive; and,

WHEREAS, on February 27, 2007, the property owner requested that the applications be put on hold pending the determination of the Coastal Setback Line; and,

WHEREAS, on May 24, 2007, the property owner submitted a request for an Interpretation Procedure (Case No. ZON2007-00253), challenging Staff's interpretation of the location of the Coastal Setback Line for his property at 24 Sea Cove Drive and on properties within the City's Coastal Zone; and,

WHEREAS, on June 21, 2007, within the prescribed 30 days of initiating a request for an Interpretation, the Director of Planning, Building and Code Enforcement issued a formal Interpretation regarding the issue of the Coastal Setback Line. In summary, the Director established that the Coastal Setback Line for property at 24 Sea Cove Drive is located at 150-feet from the front property line based upon the maps prepared by Earth Sciences Associates (ESA), the firm that compiled the geotechnical information for the City's Coastal Plan. The ESA maps that establish the Coastal Setback Line on individual properties within the Coastal Zone, accompany a report titled, "Geologic Factors Related to a Coastal Set-Back Zone for the City of Rancho Palos Verdes, California", which was also prepared by ESA in 1976, and are also referenced in the appendix of the City of Rancho Palos Verdes Coastal Specific Plan; and,

**COASTAL COMMISSION**

EXHIBIT # 9  
PAGE 3 OF 10

WHEREAS, on July 3, 2007, Scott Campbell, the attorney representing the property owners of 24 Sea Cove Drive, submitted an appeal of the Director's formal Interpretation and requested that the appeal hearing be conducted at the August 14, 2007 Planning Commission meeting, thereby relinquishing their right to a hearing within 30 days of their appeal; and,

WHEREAS, after the hearing was duly noticed, the Conroy's notified Staff that they would like to exercise their option of accepting Staff's determination of the Coastal Setback Line and continue to pursue their Variance and Coastal Permit applications (ZON2007-00046) in an attempt to legalize the after-the-fact construction, and requested that their Interpretation Procedure appeal be held in abeyance; and,

WHEREAS, on August 14, 2007 the Planning Commission tabled the appeal hearing to allow the property owner time to process the applications associated with Case No. ZON2007-00046; and,

WHEREAS, since the City's Development Code requires that geology reports be submitted and approved by the City Geologist, the property owner worked on obtaining approval of the reports for the after-the-fact pool, spa, chimney, barbecue, and trellis on the subject property, and on October 9, 2008, the City Geologist approved the geology report; and,

WHEREAS, after review of the information the project was deemed generally complete by Staff on October 25, 2008; and,

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 *et. seq.* ("CEQA"), the State's CEQA Guidelines, California Code of Regulation, Title 14, Section 15000 *et. seq.*, the City's Local CEQA Guidelines, and Government Code Section 65962.5(f) (Hazardous Waste and Substances Statement), Staff found no evidence that Case No. ZON2007-00046 would have a significant effect on the environment and, therefore, the proposed project has been found to be categorically exempt under Class 1 (Existing Facilities) since the structures do not intensify the use of the lot because the property is currently developed with a residential structure and the after-the-fact structures are ancillary to the residential use of the lot; and,

WHEREAS, after notice issued pursuant to the requirements of the Rancho Palos Verdes Development Code, the Planning Commission held a duly noticed public hearing on December 11, 2008, at which time all interested parties were given an opportunity to be heard and present evidence; and,

WHEREAS, on December 11, 2008, Mr. Conroy granted a 90-day extension to the deadlines established by the Permit Streamlining Act and the Planning Commission continued the hearing to the February 24, 2009 Planning Commission meeting to allow

time for Staff to investigate the allegations of additional unpermitted construction on the subject property at 24 Sea Cove Drive; and,

WHEREAS, on February 24, 2009 the Planning Commission conditionally approved Case No. 2007-00046, and a Notice of Decision was prepared and distributed to all interested parties; and,

WHEREAS, on March 11, 2009, within fifteen (15) days following the Planning Commission's decision, the adjacent property owner to the east at 22 Sea Cove Drive, Ms. Pamela Simes, filed an appeal to the City Council requesting that the City Council overturn the Planning Commission's conditional approval of Case No. ZON2007-00046 based upon the location of the Coastal Setback Line, Staff's position with previous applications, and geology; and,

WHEREAS, after notice was issued pursuant to the requirements of the Rancho Palos Verdes Development Code, the City Council held a duly noticed public hearing on June 2, 2009, at which time all interested parties were given an opportunity to be heard and present evidence; and,

WHEREAS, after notice was issued pursuant to the requirements of the Rancho Palos Verdes Development Code, the City Council held a duly noticed public hearing on December 15, 2009, at which time all interested parties were given an opportunity to be heard and present evidence.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

**Section 1:** The City Council hereby denies the appeal and upholds the Planning Commission's conditional approval of Case No. ZON2007-00046, and finds as follows:

- a) There is an exceptional circumstance applicable to the property which does not apply to other property in the same zoning district, which is due to the development pattern of the existing residences on the seaward side of "old" Sea Cove Drive. The subject property is one of four residences on the seaward side of "old" Sea Cove Drive that are constructed in compliance with the requirement to maintain a 25-foot setback from the Coastal Setback Line and thereby not encroach into the Coastal Structure Setback Zone, and all of which are located over 75-feet from the coastal bluff top. The remaining 12 structures along the seawards side of "old" Sea Cove Drive are currently constructed into the Coastal Structure Setback Zone, resulting in residences that are significantly closer to the coastal bluff top than the subject property, some being as close as  $\pm 30$ -feet from the coastal bluff top. Thus, due to the development pattern of the residences on the seaward side of the street and the location of the Coastal Setback Line, the only location for the subject property to construct accessory structures is in the rear yard area, which is in the Coastal Structure Setback

Resolution No. 2009-93

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**COASTAL COMMISSION**

EXHIBIT # 9  
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Zone. Although the swimming pool, spa, chimney, barbecue and trellis are in the rear yard of the subject property, these structures continue to be located farther from the coastal bluff top than other residences on Sea Cove Drive.

- b) The variance is necessary for the preservation and enjoyment of a substantial property right since other properties in the RS-2 zoning district do not have such limitations as the subject property and have the ability to construct pools, spas and similar accessory structures in their rear yards. Of 16 properties along "old" Sea Cove Drive, 5 have pools in the rear yards. These properties, located at 16, 28, 32, 42 and 44 Sea Cove Drive, have pools that were existing prior to the City's incorporation. However, two of these properties, located at 16 and 42 Sea Cove Drive, had extensive recent projects that resulted in modifications to the existing pools. Although the pool at 16 Sea Cove Drive was built in 1955, approval was granted in 2005 that allowed a reduction in the size of the pool and a spa. The pool at 42 Sea Cove Drive was also constructed in 1955; however, when the Coastal Setback Line was established, it resulted in a pool that straddles the Coastal Setback Line. In 2000, a project was considered by the Planning Commission that included, among other requests, a request for a Zone Change to relocate the Coastal Setback Line. The Planning Commission recommended that the City Council approve the project, which was subsequently approved by the City Council on September 19, 2000. Thus, there have been other residences on the immediate "old" Sea Cove Drive that maintain improvements within the Coastal Structure Setback Zone and have been afforded the ability to maintain and construct such improvements.
- c) The variance will not be materially detrimental to the public welfare since geology reports for the improvements have been approved and the property owner must obtain the appropriate permits from the Building and Safety Division, who will conduct inspections of the project site. Further, appropriate inspections will be conducted to ensure the pool's structural integrity, as recommended by the geology reports. Furthermore, the geology reports provided by the property owner recommend that the grading and retaining wall at the coastal bluff top be demolished and the slope/bluff restored, which the City Geologist concurs with.
- d) Granting the variance will not be contrary to the objectives of the General Plan. The General Plan land use designation for the neighborhood within which the subject property is located is Residential, 2-4 DU/acre. The development of accessory structures and additions for single-family residences is consistent with this underlying land use designation. In addition, the improvements are consistent with the General Plan's goal to protect the general health, safety, and welfare of the community (Land Use Plan, Pag~ 192-193). As concluded in Finding No.3 above, although the pool and other improvements do not comply with the Coastal Structure Setback, the improvements are not detrimental to the public welfare, or injurious to property and improvements in the area.

Additionally, the pool, spa, chimney, barbecue and trellis are farther away from the slope than other existing residences on the seaward side of the street.

- e) The proposed project is consistent with the Coastal Specific Plan. The subject property is located within Subregion 4 of the City's coastal zone, as established by the Rancho Palos Verdes Coastal Specific Plan, and is designated for residential development. Subregion 4 is predominantly developed with single family residences, and is identified by a strong and unified character, adjacent land uses of different types, and active homeowners association, creating a homogeneity that establishes it as a distinct neighborhood. The after-the-fact accessory structures do not affect these characteristics.
- f) The subject property is located between the sea and the first public road (i.e., Sea Cove Drive). The public access policies of the Coastal Act (Chapter 3, Article 2) generally require the provision of public coastal access as a condition of new development. However, the subject property is a developed parcel within a developed neighborhood and does not contain any public trails from the street to the shoreline below or along the top of the bluff, nor could coastal access be obtained since the subject property and the adjacent properties are developed with single-family residences. Further, the site does not provide access because of the extreme slope that exists between the top and toe of the bluff, and as such, does not currently provide, nor will ever provide, public access to the sea.
- g) That the appeal offers no additional information to warrant overturning the Planning Commission's decision since it is based on issues related to the location of the Coastal Setback Line, Staff's position with previous applications, and geology. Further, the appeal does not directly refute any of the findings of fact made by the Planning Commission in granting the Variance and Coastal Permit; instead, it provides reactive comments to the comments made by some of the Commissioners during the Planning Commission's discussion that are based on the approved Planning Commission Minutes.

**Section 2:** The time within which the judicial review of the decision reflected in this Resolution, if available, must be sought is governed by Section 1094.6 of the California Code of Civil Procedure and other applicable short periods of limitation.

**Section 3:** For the foregoing reasons, and based on the information and findings included in the Staff Reports to the Planning Commission dated December 11, 2008 and February 24, 2009, Planning Commission Resolution No. 2009-06, the Memorandum to the City Council dated June 2, 2009 and December 15, 2009, Minutes and other records of proceedings, the City Council of the City of Rancho Palos Verdes hereby denies the appeal, thereby upholding the Planning Commission's conditional approval of Case No. ZON2007-00046 and all the conditions of approval as stated in the attached Exhibit "A" and incorporated by reference.

PASSED, APPROVED, and ADOPTED this 15<sup>th</sup> day of December 2009.

/s/ Stefan Wolowicz  
Mayor

ATTEST:

/s/ Carla Morreale  
City Clerk

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            )ss  
CITY OF RANCHO PALOS VERDES        )

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, hereby certify that the above Resolution No. 2009-93 was duly and regularly passed and adopted by the said City Council at a regular meeting held on December 15, 2009.

Carla Morreale  
City Clerk

Resolution No. 2009-93  
Page 8 of 10  
**COASTAL COMMISSION**

EXHIBIT # 9  
PAGE 8 OF 10

**EXHIBIT "A"**  
**Conditions of Approval**  
**Case No. ZON2007-00046 (VAR & CP)**

1. Prior to the submittal of plans into Building and Safety plan check, the applicant and/or property owner shall submit to the City a statement, in writing, that they have read, understand and agree to all conditions of approval contained in this approval. Failure to provide said written statement within ninety (90) days following the date of this approval shall render this approval null and void.
2. The approval shall become null and void after one year from the date of approval, unless approved plans are submitted to the Building and Safety Division to initiate the "plan check" review process.
3. The proposed project, including site layout, shall be constructed and maintained in substantial compliance with the plans reviewed and approved by the Planning Commission on February 24, 2009, as submitted by the owner.
4. The Approval of Case No. ZON2007-00046 (Variance and Coastal Permit) allows an after-the-fact pool, spa, and outdoor chimney barbecue in the Coastal Structure Setback Zone in the rear yard area of the subject property.
5. All the appropriate Building and Safety Division permits for the pool, spa, chimney, barbecue and trellis shall be obtained. Said permits shall not be issued until slope restoration of the blufftop is completed, as indicated in condition no. 9, below.
6. The maximum height of the chimney is limited to 12-feet, as measured from lowest adjacent grade to the top of the chimney. Only required spark arrestors are allowed to exceed the 12-foot height limit; however, other than the required spark arrestor, there shall not be any decorative/architectural features on the top of the chimney. Further, the spark arrestor shall not be any higher than the minimum height required by the Uniform Building Code or the manufacturer's specifications, whichever is stricter.
7. The chimney and trellis shall maintain a 5-foot side yard setback from the eastern property line. A SETBACK CERTIFICATION SHALL BE PREPARED BY A LICENSED SURVEYOR AND SUBMITTED TO THE BUILDING AND SAFETY DIVISION, INDICATING COMPLIANCE WITH THE SETBACK PRIOR TO A BUILDING PERMIT OR PLUMBING PERMIT FINAL FOR THE CHIMNEY/BARBECUE.
8. The mechanical equipment for the pool and spa shall maintain a minimum 3-foot setback from the side property lines if the manufacturers' specifications are provided to demonstrate that the equipment will not generate noise in excess of 65dBA at the property line. Otherwise, the mechanical equipment shall maintain a minimum 5-foot setback.

**COASTAL COMMISSION**

EXHIBIT # 9  
PAGE 9 OF 10

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9. The retaining wall and related fill for the flat area and fire pit shall be removed, and the blufftop slope shall be restored to pre-grade conditions to the satisfaction of the Director of Planning, Building and Code Enforcement. All necessary permits and approvals from the Building and Safety Division needed to complete this removal and restoration must be obtained within 180-days of the final decision, and prior to removal of the retaining wall, fire pit and grading (fill).
  10. All recommendations in the approved geology reports reviewed and approved by the City Geologist shall be implemented.
  11. The Director of Planning, Building and Code Enforcement is authorized to approve minor modifications to the approved plans or any of the conditions if such modifications achieve substantially the same results as would strict compliance with said plans and conditions. Otherwise, all other modifications shall be subject to review and approval by the Planning Commission.
  12. In the event that a Planning requirement and a Building & Safety requirement are in conflict with one another, the stricter standard shall apply.
  13. The hours of construction shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday. No construction shall be permitted on Sundays or on legal holidays. Further, trucks shall not park, queue and/or idle at the project site or in the adjoining public rights-of-way before 7:00 AM, Monday through Saturday, in accordance with the permitted hours of construction stated above.
  14. The construction site shall be kept free of all loose materials resembling trash and debris in excess of that material used for immediate construction purposes. Such excess material may include, but is not limited to: the accumulation of debris, garbage, lumber, scrap metal, concrete, asphalt, piles of earth, salvage materials, abandoned or discarded furniture, appliances or other household fixtures.

**COASTAL COMMISSION**

EXHIBIT # 9  
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**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
 200 OCEANGATE, 10<sup>TH</sup> FLOOR  
 LONG BEACH, CA 90802-4416  
 VOICE (562) 590-5071 FAX (562) 590-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**Please Review Attached Appeal Information Sheet Prior To Completing This Form.**

**SECTION I. Appellant(s)**

Name: Commissioner Mary Shallenberger; Commissioner Sara Wan

Mailing Address: 45 Fremont St., Suite 2000

City: San Francisco

Zip Code: 94105-2219

Phone:

**SECTION II. Decision Being Appealed**

1. Name of local/port government:

City of Rancho Palos Verdes, CA

2. Brief description of development being appealed:

Approval, after-the-fact, of pool, spa, and outdoor chimney barbeque in the rear yard area of a bluff top lot located within a coastal setback zone.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

24 Sea Cove Drive, Rancho Palos Verdes (Los Angeles County), California

4. Description of decision being appealed (check one.):

Approval; no special conditions

Approval with special conditions:

Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A5-RPV-10-002

DATE FILED:

1/4/2010

DISTRICT:

Long Beach/South Coast

**COASTAL COMMISSION**

**A5-RPV-10-002**

EXHIBIT # 10

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**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

**SECTION IV. Reasons Supporting This Appeal**

**PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The subject site is located between the nearest public road and the sea, an area where development approved by the City of Rancho Palos Verdes pursuant to its certified Local Coastal Program is appealable to the Coastal Commission. In 2006 and 2007, the property owner/applicant constructed several improvements in the rear yard of the property without benefit of the required coastal development permit. The development included a pool, spa, chimney barbeque, trellis, grading on the bluff, and an 8-foot tall retaining wall at the top of the bluff to accommodate a viewing area and fire pit. Subsequent to issuance of several "Stop Work" orders by the City the property owner/applicant submitted applications for a Variance, Grading Permit, and Coastal Development Permit for after-the-fact development to the City.

The subject site containing the approved development is located within the designated Coastal Specific Plan District pursuant to the certified Rancho Palos Verdes Local Coastal Program (Coastal Specific Plan Section 17.34.060). More specifically, the approved development, after-the-fact, is located within the rear portion of the lot closest to the coastal bluff designated as the Coastal Setback Zone in the certified LCP. Section 17.34.060B (Coastal Setback Zone) states:

"The coastal setback zone comprises an area in which new development is prohibited. Residential density credit will be granted only for areas proven to the city's satisfaction to be stable. No new permanent structures shall be allowed closer than twenty-five feet to the coastal setback zone."

The above described development approved by the CDP is located within the Coastal Setback Zone, an area in which new development is prohibited pursuant to the certified LCP policy section referenced above.

Regarding the Coastal Setback Line, the City's Director of Planning, Building and Code Enforcement previously issued a formal interpretation that established the Coastal Setback Line for the subject property at 150-feet from the front property line based upon maps prepared by Earth Sciences Associates (ESA), the firm that compiled the geotechnical information for the City's Coastal Plan. The maps that establish the Coastal Setback Line accompany a report that is referenced in the City's Coastal Specific Plan/LCP. These maps constitute the basis by which the City has made determinations on the location of the Coastal Setback Line for properties, or portions thereof, located within the Coastal Setback Zone in the City in past permitting actions.

In its approval of the CDP the City acknowledges that the pool, spa, chimney, barbeque, trellis, grading, and retaining wall on the bluff do not comply with the coastal setback requirement established by the

LCP. The City approved the CDP pursuant to a Variance on the basis that other properties located on the seaward side of Sea Cove Drive contained structures located within the Coastal Setback Zone and that the only location for accessory structures on the subject property is in the rear yard area which is within the Coastal Setback Zone. In approving the Variance the City found that the variance was "necessary for the preservation and enjoyment of a substantial property right since other properties in the RS-2 zoning district do not have such limitations ..." and "have been afforded the ability to maintain and construct such improvements". The City's findings also acknowledge that the other properties located on the seaward side of Sea Cove Drive that have pools and other accessory structures in their rear yards existed prior to the City's incorporation. The City's findings state that "although the pool and other improvements due not comply with the Coastal Structure Setback, the improvements are not detrimental to the public welfare, or injurious to property or improvements in the area." Regarding consistency with the certified Coastal Specific Plan/LCP the City found that the after-the-fact accessory structures do not affect the characteristics of the neighborhood and that the subject property does not contain any public trails from the street to the shoreline or along the top of the bluff. The City made no finding that the development was consistent with the Coastal Setback Line and, as indicated above, acknowledged that the development was not consistent with this requirement of the LCP.

**COASTAL COMMISSION**

EXHIBIT # 10  
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CALIFORNIA COASTAL COMMISSION

South Coast Region

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10<sup>TH</sup> FLOOR  
LONG BEACH, CA 90802-4418  
VOICE (562) 590-5071 FAX (562) 590-5084

JAN 4 - 2010



CALIFORNIA COASTAL COMMISSION  
APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: JAMES HUSTON  
Mailing Address: 6269 SOUTHFRONT RD  
City: LIVERMORE CA Zip Code: 94551 Phone: 925 487-7991

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF RANCHO PALMS VERDES
2. Brief description of development being appealed:  
POOL, SPA, VERTICAL SUPPORT MEMBERS CHIMNEY  
BARBEQUE, TOWELS & BLUFF BACKFILL  
INSTALLED IN COASTAL STRUCTURAL SETBACK ZONE
3. Development's location (street address, assessor's parcel no., cross street, etc.):  
24 SEA COVE DR  
RANCHO PALMS VERDES CA 90275
4. Description of decision being appealed (check one.):  
 Approval; no special conditions  
 Approval with special conditions:  
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:	
APPEAL NO:	A-5-RPV-10-002
DATE FILED:	1/4/10
DISTRICT:	South Coast

COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
  - State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
  - This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.
- SEE LETTER DATED 1/4/10 ON BEHALF OF LAMBDA SIMES
- VIOLATION OF COASTAL SPECIFIC PLAN OF 1976 SEGMENTS CITY COASTAL ZONE INTO SEPARATE GEOLOGIC CATEGORIES THAT DEFINE WHERE DEVELOPMENT IS SUITABLE AND WHERE IT IS NOT, RESULTING IN THE ESTABLISHMENT OF COASTAL SETBACK LINE.
- DEVELOPMENT CODE WHICH IMPLEMENTS COASTAL PERMIT PROCEDURES FOR COASTAL SPECIFIC PLAN ESTABLISHES TWO SEPARATE ZONES ON EITHER SIDE OF THE COASTAL SETBACK LINE. RPV MUNICIPAL CODE 17.72.040-B PROHIBITS THE FOLLOWING BE BUILT IN THE COASTAL STRUCTURAL SETBACK ZONE WHEN IT STATES, ANY NEW PERMANENT STRUCTURES IN ZONE ARE PROHIBITED BUT NOT LIMITED POOLS, SPAS, VERTICAL SUPPORT MEMBERS AND CHIMNEYS.
- ALLOWING THE <sup>SUBJECT</sup> PERMIT AND VARIANCE WOULD BE PRECEDENT SETTING AND IN DIRECT VIOLATION

**To :** Coastal Commission  
**From :** James Huston on behalf of Pamela Simes  
**Date :** Jan 4th, 2010

**Subject:** Appeal of the City Councils approval of Case No. ZON2007-00046 ( Variance and Coastal permit for property at 24 sea Cove drive ). Appeal of illegal unpermitted pool, spa, trellis, outdoor chimney, barbeque, in the coastal structural setback zone.

Granting a coastal permit requires two findings and they are: 1) The proposed development is consistent with the Coastal Specific Plan. 2) The proposed development, when located between the sea and the first public road, is consistent with the applicable public access and recreation policies of the Coastal ACT.

The property owner at 24 Sea Cove Drive clearly cannot satisfy item no. 1., because the pool, spa, trellis, outdoor chimney, barbeque, are built in the coastal structural setback zone and are in direct violation of the development code which, implements the coastal permit procedures for the coastal specific plan. The municipal code states the following:

City of Rancho Palos Verdes Miniciple Code Section 17.72.040-B. Specifically "prohibits" the Following to be built in the "Coastal Structural Set back Zone" when it states:

17.72.040-B. "Uses and Developments permitted in the Coastal structural setback zone"

**"Any new permanent structures in this zone are Prohibited including but not limited to, pools, spas, vertical support members and chimneys".**

Once again, Conroy purchased 24 Sea Cove drive, eleven full years after the Coastal Specific Plan came into effect. Because the lot did not have an existing dwelling prior to 1976, the property is, Not-Like, and specifically rather, is Un-like, all the other "legal-non-conforming" homes in the community. Conroy's unpermitted constructions encroach into the protected coastal zone and are considered "Illegal" by the development code. If Conroy is allowed to encroach into the "Coastal Structural Set back zone today" he would be the first ever to obtain a Coastal permit allowing construction in the protected structural setback zone.

Also, the property owner cannot obtain a variance for the strict reasons as denoted in our previous response to the four ( 4 ) Planning Commission findings listed by Rancho Palos Verdes planning staff in the minutes dated June 6, 2009 voting to allow a variance for the After-the-Fact Conroy improvements, we provided the following rebuttal which was confirmed by the previous City of Council 4-0 ruling against the variance on June 2<sup>nd</sup> 2009.

**RPV PC Finding No. 1** - There are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, which do not apply generally to other property in the same zoning district.

**COASTAL COMMISSION**

EXHIBIT # 11  
PAGE 3 OF 5

**Our Rebuttal:**

The twelve original legal non-conforming homes that comprise the, "development pattern," referenced by Senior Planner Mr. Schonborn, of the existing residences, were built as far back as sixty years ago. This is thirty years before the current Coastal Setback Zone law even existed. Conroy on the other hand, purchased 24 Sea Cove Dr. as a bare lot and he personally designed and started his massive ongoing home project in 1987, This is more than thirty years after the first builder's and eleven full years after the Coastal Specific Plan came into effect. Conroy's lot does not enjoy the same legal- non-conforming status as the original homes. There are no special or extraordinary circumstances, other than new planning laws in place when Conroy purchased the property. He Therefore, is required to abide by those laws. He was fully aware of his special property limitations and restrictions at that time.

**RPV PC Finding No.2** – That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under "Like" conditions in the same zoning district.

**Our Rebuttal:**

Once again, Conroy purchased 24 Sea Cove drive, eleven full years after the current planning law came into effect. Because the lot did not have an existing dwelling prior to 1976, the property is, Not-Like", and specifically rather, is "Un-like", all the other "legal-non-conforming" homes in the community. Conroy's unpermitted constructions encroach into the protected coastal zone and are considered "Illegal" by the Development code. If Conroy is allowed to encroach into the "Coastal Structural Set back zone today, he would be the first ever to get such a variance. The Coastal Specific Plan restrictions were written specifically to protect property owners from builder abuses like Conroy's that result in slides all to prevalent in this region .

**RPV PC finding No. 3** – That granting the Variance will not be materially detrimental to the public's welfare or injurious to property and improvements in the area in which the property is located: and,

**Our Rebuttal:**

The geological factors related to the coastal set back zone for the City of Rancho Palos Verdes, prepared by ( ESA ) Lists the following significant hazards:

**" three Significant Geological hazards Identified in the Coastal Zone;**

- 1) Coastal Erosion, 2) Land sliding, and 3) Erosion along intermittent stream channels.  
Coastal Erosion and land sliding are inter-related, and they are "major threats".

The thought of overlooking these very specific documented geological threats and allow Conroy to encroach into the protected coastal structural set back zone, is clearly counter to the cities base geological study, engineering and laws. Disregarding the geologists recommendations, and subsequent laws, is clearly detrimental to the public's welfare, and potentially injurious to property & improvements in the area. It is easy to conceive how an overflowing pool left untended for even a small amount of time could easy saturate the surrounding unstable soil and overwhelm the fragile bluff.

COASTAL COMMISSION

EXHIBIT # 11  
PAGE 4 OF 5

**RPV PC finding No. 4** - That granting the Variance will not be contrary to the objectives of the General Plan or the policies and requirements of the Coastal Specific Plan.

**Our Rebuttal:**

City of Rancho Palos Verdes Miniciple Code Section 17.72.040-B. ( See attachment- C ) Specifically "prohibits" the Following to be built in the "Coastal Structural Set back Zone" when it states:

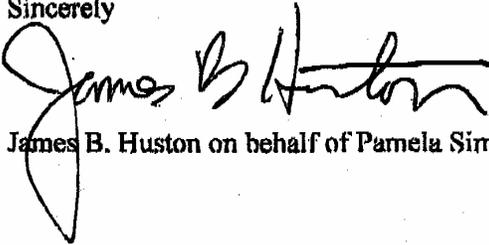
17.72.040-B. " Uses and Developments permitted in the Coastal structural setback zone"

**"Any new permanent structures in this zone are Prohibited including but not limited to , pools, spas, vertical support members and chimneys" .**

Conroy, without benefit of permits or inspections, has installed all of the above and is in direct violation of the Coastal Specific Plan. Conroy has also illegally extended the bluff with non-engineered fill that is prohibited in the coastal setback zone.

In Conclusion, we hope that the respected members of the Coastal Commission will overturn approval of subject coastal permit and associated variance and reinstatc use of ESA maps to define coastal setback zone restrictions and building limitations.

Sincerely



James B. Huston on behalf of Pamela Simes

**COASTAL COMMISSION**

EXHIBIT # 11  
PAGE 5 OF 5

CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302  
(562) 590-5071

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT  
(Commission Form D)



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

~~PAMELA SIMES FLENNING AND DON FLENNING~~  
~~22 SEA COVE DRIVE~~  
~~RANCHO PALOS VERDES CA 90275 (310) 285 9000 (W)~~  
Zip Area Code Phone No.  
(310) 612 8559

SECTION II. Decision Being Appealed

1. Name of local/port government: CITY OF RANCHO PALOS VERDES

2. Brief description of development being appealed: RPV MUNICIPAL CODE # 17.0A03 B PROHIBITS DEVELOPMENT IN THE COASTAL STRUCTURAL SETBACK ZONE - INCLUDING POOLS, SPAS, VERTICAL SUPPORTS & CHIMNEYS

3. Development's location (street address, assessor's parcel no., cross street, etc.): 24 SEA COVE DRIVE, RPV CA 90275

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: X
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-RPV-10-002

DATE FILED: 1-4-10

DISTRICT: S. Coast

H5: 4/88

COASTAL COMMISSION  
A-5-RPV-10-002

EXHIBIT # 12  
PAGE 1 OF 18

TO: Mr. Gary Timms and Members of the Coastal Commission

FROM: Pamela Simes

DATE: January 4, 2010

RE: Resolutions from the Rancho Palos Verdes City Council Hearing of December 15, 2009:

- 1) Code Amendment to clarify which existing maps to use to establish the location of the Coastal Setback Line on individual properties (CASE #ZON2009-00416)
- 2) Appeal of the Planning Commission's approval of CASE ZON2007-00253, A revised interpretation regarding the Coastal Setback Line on properties in the City's Coastal Zone,
- 3) Appeal of CASE #ZON2007-0046 (Variance and Coastal Permits for Property located at 24 Seacove Dr.)

On December 15, 2009, a precedent-setting, landmark decision was made by the Rancho Palos Verdes City Council to reject use of the ESA maps to establish the Coastal Setback Line on individual properties. Their decision was to use the Zoning Map (Resolution #1 as referenced above) which could ultimately affect 77 properties. At this meeting, former mayor, Ken Dyda, who signed the Coastal Specific Plan dated December 19, 1978, testified that **the ESA maps and geologic report are the governing documents for establishing the Coastal Setback Line in Rancho Palos Verdes.** His statements are also included in a letter from him that has been sent to the Coastal Commission. The Staff and City Attorney recommended memorializing the use of the ESA maps to determine the location of the Coastal Setback Line on individual properties. Staff has *historically* utilized the geologic maps prepared by ESA in discerning the precise location of the Coastal Setback Line on private property, and as Senior Planner Schonborn stated there have been 237 cases since 1978 which utilized the ESA maps without exceptions. Therefore, it has been established practice and procedure of the Rancho Palos Verdes Planning Commission Staff to use only the ESA maps setting an uninterrupted precedent.

In the October 20, 2009 Memorandum to the City Council, it was stated that...:

*Unless a code amendment to clarify that the City's ESA Maps are the maps that are to be used in determining the location of the Coastal Setback Line on individual properties is adopted then an urgency ordinance to establish a temporary moratorium on accepting, processing or issuing Coastal Permits would not be necessary. But if this did not occur, then the urgency ordinance should be adopted. Depending on which maps are used in processing these coastal permit applications, portions of the coast could be developed even though such developments could have significant public safety, health and welfare impacts on adjoining parcels, particularly with respect to geologic stability, and thus in order to protect against the current and immediate threat to the public safety, health and welfare, the City Council must amend the relevant Chapters of the Rancho Palos Verdes Municipal Code before allowing City staff to continue processing such coastal permit applications. This ordinance is therefore necessary for the current and immediate*

*preservation of the public health, safety and welfare and shall take effect immediately upon adoption as an urgency ordinance.*

At the October 20, 2009 meeting, the City Attorney felt that the code amendment could be processed in a timely fashion by the December 15<sup>th</sup> meeting, but the City Council decided not to adopt this because then they could not approve Conroy's variance.

By voting to adopt the Zoning Map in Resolution #1, they also voted for Resolution #2, overturning Staff's recommendation, and thereby establishing the Coastal Setback Line on Mr. Conroy's property 200 feet from Seacove Drive, which is where the Coastal Setback Line was before the Coastal Specific Plan was adopted in 1978.

With respect to Resolution #3 (referenced above), on June 2, 2009 the City Council voted 4-0 to deny Mr. Conroy's variance thus overturning the Planning Commission's earlier 3-2 vote which approved the variance. The decision had not been memorialized since a Resolution had not been adopted. Even though Staff had stated that *there has not been any new information submitted to change this decision*, the City Council decided to rehear the case so that all three Resolutions could be heard at the same time. At this December 15 meeting, they voted 4-1 in favor of upholding the variance for Mr. Conroy in contradiction to their earlier vote on June 2<sup>nd</sup>. This raises the question as to why they did a complete turnaround based on the same information.

These decisions by the City Council are in direct conflict with the objectives of the Coastal Specific Plan. They do not uphold the intent of the Coastal Specific Plan or the LCP. Rancho Palos Verdes Deputy City Manager Carolyn Petru stated that in her twenty years, she has never seen anyone pursue the degree of unpermitted, illegal construction as that of Brian Conroy, a licensed general contractor. Pursuant to Municipal Code Section 17.72.040C of Rancho Palos Verdes Development Code, *"New uses or structural improvements are prohibited in the area seaward of the Coastal Setback Zone..."* Mr. Conroy has extended the bluff-top 50 feet with his Bobcat. I am including an aerial photograph of the coastline taken in 1968 which will document where this bluff was before Conroy's illegal extension. Our understanding is that he has been ordered to remove a portion of the extension of the bluff-front. In addition, pursuant to Municipal Code Sec. 17.72.040.B **Uses and development permitted in Coastal Structure Setback Zone.** *Any new permanent structures in this zone are prohibited, including, but not limited to, pools, spas, vertical support members and chimneys.* Additionally, Mr. Conroy has, without permits or inspections, illegally installed all of the above.

Commissioner Ruttenberg stated (December 11, 2008, p. 32) that the applicant was asking for equity in regards to being allowed to have the pool and other improvements, however he disagreed. He did not want to hear about equities in this situation where there has clearly and admittedly been a direct violation of the laws. There has been unpermitted construction on the property by a general contractor.

As Commissioner Tomblin summarized, according to the applicant, he bought a property knowing that there was a coastal setback line in place. After buying the property he discussed construction plans with the City, and staff gave recommendations on what they would and would not consider as part of an application process. Because he was in disagreement with what he heard

from staff, the applicant went ahead, in disregard of the law, and started construction. Commissioner Tomblin stated that he could not support the Variance and voted to deny the application.

Any approval of above-referenced variance would be precedent setting as noted by Director Joel Rojas who stated that if a future application comes forward it would be difficult not to make a finding under the same pretense.

Granting this variance to Mr. Conroy is a landmark decision that establishes an even more dangerous precedent through the tacit approval it gives to others who wish to follow his example by building at their own discretion without regard for city rules and regulations. It makes a travesty of the law by allowing a professional licensed general contractor to manipulate the system for his own personal gain in the form of increased property values. It seems implausible that City Council voted in such a way as to risk massive damages to these coastal properties and, at the same time, condone the flaunting of a total disregard for the law.

It is my fervent hope that the Coastal Commission will recognize the importance of its decision and will seriously consider the far-reaching impact that the decision will have on our community.

Sincerely,

Pamela Simes  
Don Fleming  
Jim Huston  
Doug Ross  
Joccoma Maulsby  
Al Gersten

COASTAL COMMISSION

EXHIBIT # 12  
PAGE 4 OF 18

TO: Coastal Commission

APPELLANT: Pamela Simes

APPLICANT: Brian and Jennifer Conroy

LOCATION: 24 Seacove Drive, Rancho Palos Verdes, California 90275

DATE: January 4, 2010

RE: Approval for illegal, unpermitted, uninspected pool, spa, barbecue, outdoor chimney, and trellis in the Coastal Structure Setback Zone (Case #ZON2007-0046 for Variance and Coastal Permits)

The basis for this appeal is that the decision by the Rancho Palos Verdes City Council on December 15, 2009 to approve the above-referenced variance is inconsistent with the Coastal Specific Plan, also known as the LCP, and the City's municipal codes pertaining to geologic stability. This vote is in direct contradiction to their earlier June 2, 2009 4-0 vote which overturned the Planning Commission's earlier 3-2 vote approving the variance. The information that they used to first deny the variance is the same information that was used to subsequently approve it. This will have citywide ramifications for Rancho Palos Verdes and will be precedential in future interpretations of the LCP.

The following information taken from the Coastal Specific Plan, Zoning Maps, the Development Code, testimony, memorandums, city records, and municipal codes uphold the denial by the City Council of the above-referenced variance at their June 2, 2009 4-0 vote:

***Finding #1***

***That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, which do not apply generally to other property in the same zoning district;***

***Finding #2***

***That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the same zoning district;***

- 1) In overturning the Planning Commission's conditional approval of Case No. ZON2007-00046, thereby denying Case No. ZON200700046 for a Variance and Coastal Permit, the City Council found the following (October 20, 2009 Memorandum, p. 11-10):
  - a) The project site is not subject to exceptional or extraordinary circumstances or conditions which do not apply generally to other properties in the RS-1 zoning district. The subject property is a bluff-top sloping lot, which is consistent with other bluff-top properties on Sea Cove Drive. Like other lots in this area, the Coastal Setback Line traverses the property, which creates the same restrictions

extraordinary circumstance.

- b) The variance is not necessary for the preservation and enjoyment of a substantial property right, since the property is currently developed with a single family residential structure, which is the primary permitted use of the lot. A single-family residence and pool are allowed; however, Section 17.02.020.C states, "private outdoor recreational uses, such as tennis courts, swimming pools and basketball courts, ... are incidental to the residential use of the property" (emphasis added). There is a distinction between primary and ancillary uses, since a pool could not be constructed on a vacant Residentially-zoned property and, therefore, it is an ancillary or incidental use or property right. Thus, the substantial property right is the ability to construct and maintain a single-family residence on the property, and a pool is an incidental use and lesser property right. Further, the variance would grant a special privilege not enjoyed by others in the area or zone since a pool, spa, and outdoor fireplace are private outdoor recreational uses that are incidental to the residential use of the property, and not a primary allowable use.
- 2) At the February 24, 2009 Planning Commission meeting, Commissioners Knight and Tetreault voted to deny the variance based on the following information:
- Commissioner Knight stated that he still could not make the finding that this is an extraordinary or unusual circumstance, as the improvements on the other properties were existing before the formation of the Coastal Setback Line. As Knight stated (Attachment 153), whatever has been approved by the City in the past was done with structures built before the Coastal Specific Plan was put in place and dealing with situations where residents have existing non-conforming improvements on the property. He felt that staff's justification of the other properties in the area with similar amenities is in a different category, as they were existing and non-conforming to begin with. He also had trouble with finding No.1 for the Coastal Permit. He noted that the Coastal Specific Plan has a geotechnical factors section of the natural environment elements which also involves the coastal setback line, and this was not mentioned in the staff report. He did not find this to be consistent with the Coastal Permit finding No.1.
  - Commissioner Tetreault felt that a couple of assumptions have been made in order to justify granting this Variance application. The first assumption is that a backyard pool is a substantial property right and the second assumption is that there could not have been a swimming pool and a house on this property. He disagreed with both of these assumptions, as he did not think a backyard pool is a substantial property right. Further, since the house was constructed by the current owner, the house could have been built in a fashion that would have accommodated the swimming pool. In regards to the other homes that have swimming pools in the backyard that go closer to the bluff, those are legal non-conforming. Because there is a property on the street that has a structure that is legal non-conforming does not mean that others on the street can enjoy that same

property right by avoiding compliance to the current setback laws in the City. He felt that much of the argument being presented by the applicant is that there are several properties on the street with pools in the backyard that were constructed before the City was incorporated and before the coastal setback line was established, and he should also be allowed to have a swimming pool in the same area. He did not accept that argument.

3) At the December 11, 2008 Planning Commission meeting, the following statements were made against approval of the variance:

- Any approval of above-referenced variance would be precedent setting as noted by Director Rojas who stated that if a future application comes forward it would be difficult not to make a finding under the same pretense Commissioner Knight also stated at the same meeting that he was having trouble with the findings for the Variance and Coastal Permit. He was also concerned with Staff's justification for the Variance, as he felt if the Commission approves this request it would be difficult not to approve other similar requests. Commissioner Ruttenberg stated that if the Planning Commission makes the decision to grant a Variance, it opens itself up to interpreting the codes a certain way to where the next resident comes before them requesting a variance and noting the former interpretation made by the commission.
- Commissioner Ruttenberg that one of the findings for a Variance is that the Variance is necessary for the preservation and enjoyment of a substantial property right, and he asked if the Code states that having a swimming pool is a substantial property right. He felt that one of the 'purposes of the city's incorporation was to stop the kind of building being done under the county and to establish rules to provide more limitations than before. He questioned to what degree the Commission's decision or interpretation should be influenced by what happened before city incorporation.
- Commissioner Ruttenberg stated that the applicant was asking for equity in regards to being allowed to have the pool and other improvements, however he disagreed. He did not want to hear about equities in this situation where there has clearly and admittedly been a direct violation of the laws. There has been unpermitted construction on the property by a general contractor."
- Commissioner Ruttenberg's concern was that whenever the Planning Commission makes a decision to grant a Variance, they open themselves up by having interpreted the codes a certain way to where the next resident comes before them requesting a Variance and noting the former interpretation made by the Commission. In this particular case there are four residences out of sixteen that have swimming pools, and if this is interpreted as a substantial property right, wouldn't that then put the Planning Commission in a position where it would be difficult to reject anyone who comes before them and wants to have a swimming

pool that requires a Variance because everywhere in the City there will be four out of sixteen homes that already have a swimming pool.

- Commissioner Knight asked how many properties on Seacove Drive have structures built in the coastal setback area. Senior Planner Schonborn answered that of the sixteen properties on Seacove Drive, twelve have structures in the coastal setback area. He noted that all twelve were constructed before the City was incorporated.
  - Commissioner Ruttenberg stated that Seacove Drive has sixteen residences and four of those have swimming pools that were all built before city incorporation. He felt that one of the purposes of the city's incorporation was to stop the kind of building being done under the county and to establish rules to provide more limitations than before. He questioned to what degree the Commission's decision or interpretation should be influenced by what happened before city incorporation.
  - Commissioner Knight stated that he was having trouble with the findings for the Variance and Coastal Permit. He was also concerned with Staff's justification for the Variance, as he felt if the Commission approves this request it would be difficult not to approve other similar requests. He did not think the Variance process was the appropriate process to change the coastal setback line, and that an application to change the coastal setback line was more appropriate.
- 4) Staff upheld, in the February 24, 2009 Memorandum as noted below, the process by which pools and other structures have been built along Old Seacove Drive prior to the State's enactment of the Coastal Act of 1976. These were legal, non-conforming improvements that existed before the formation of the Coastal Setback Line.

*It is important to differentiate between the many residential subdivisions along the City's coastline, which consists of newer tracts approved by the City (Lunada Pointe, Oceanfront Estates, west portions of Seacove Drive and Trump National Estates) and older tracts approved by the County prior to the City's incorporation (east portions of Seacove Drive and the Portuguese Bend Club).*

*Within the older subdivisions (those recorded prior to City incorporation), the Coastal Setback Line had not been delineated on the final tract maps because those subdivisions were created prior to the State's enactment of the Coastal Act in 1976. Most of the structures in these older subdivisions were also constructed prior to the Coastal Act. When the City incorporated and adopted its Development Code and Coastal Specific Plan, the Coastal Setback Line was placed on the City's Zoning Map. This affected the older subdivisions because when the Coastal Setback Line was added, it was located inland of most of the existing older structures and lots in the Portuguese Bend Club and traversed all of the lots and some structures on the east portion of Seacove Drive. Subsequently, many structures in these areas are located in the Coastal Structure Setback Zone or even on the ocean side of the Coastal Structure Setback Zone and are thus non-conforming. The Code acknowledges these non-conformities by allowing minor additions to structures that are located within the Coastal Setback Zone. Furthermore, in the past the City has issued Variances to permit residential additions and accessory structures to*

*be located within or seaward of the Coastal Structure Setback Zone for the older subdivisions that were approved prior to the City's incorporation.*

*Staff has researched other residences along Sea Cove Drive and has found that there are a total of 16 residences along Sea Cove Drive. Thirteen of these residences were constructed prior to the City's incorporation in 1973, one was constructed in 1978 prior to adoption of the Coastal Specific Plan, and two were constructed in the 1980's. The two residences constructed in the 1980's (24 and 26 Sea Cove Drive) were approved in locations that comply with the Coastal Setback Line and the related Coastal Structure Setback Line. On the 16 residential lots, many of the additions to the residences and pools were constructed prior to the City's incorporation. There have been several major projects on properties that have utilized the existing footprints or have been approved via other processes. See Attachment A for a list of the properties along with the associated additions or projects.*

*As such, Staff believes that this argument serves to prove that there are processes in place that can allow improvements in the Coastal Structure Setback Zone (area 25' landward of the Coastal Setback Line) and in the Coastal Setback Zone (area 25' seaward of the Coastal Setback Line).*

On June 15, 2009, the City Council agreed that whatever had been approved by the City in the past was done with structures built before the Coastal Specific Plan was put in place where residents have existing legal, non-conforming improvements on the property. All properties in the area with similar amenities are in a different category, as they were existing non-conforming to begin with. An opportunity for a Variance request typically applies to legal non-conforming pre-existing structures and not illegal projects built after a new law has been enacted.

**Finding #3**

*That granting the variance will not be materially detrimental to the public's welfare or injurious to property and improvements in the area in which the property is located.*

**Finding #4**

*That granting the variance will not be contrary to the objectives of the General Plan or the policies and requirements of the Coastal Specific Plan.*

**Finding #5**

*The proposed development is consistent with the Coastal Specific Plan.*

Granting this variance will be materially detrimental to the public's welfare or injurious to property and improvements in the area in which the property is located. It will also be contrary to the policies and requirements of the Coastal Specific Plan. The proposed development raises issues with regards to geologic stability and the unpermitted, illegal encroachment into the Coastal Structure Setback Zone. This variance also raises issues with regard to the Zoning Map,

the Municipal Codes, and other documents on file with the City. The subject property is located adjacent to the cliffs in the area between Abalone Cove and Marineland: an area that, according to previous geologic studies, has marginal stability and development should be restricted. The Zoning Map documents this as an Open Space Hazard, and therefore, development in this area should be extremely limited. Support for this can be found in the following two Municipal Code Sections:

- Pursuant to Municipal Code Section 17.72.040C of Rancho Palos Verdes Development Code, *"New uses or structural improvements are prohibited in the area seaward of the Coastal Setback Zone..."* Mr. Conroy has extended the bluff-top 50 feet with his Bobcat. Our understanding is that he has been ordered to remove a portion of the extension of the bluff-front. According to the ESA report (October 20, 2009 Memorandum, p. 10-73), *"Future episodes of landsliding also could result from geotechnically unsound construction practices in and around the coastal zone."*
- Pursuant to Municipal Code Sec. 17.72.040.B **Uses and development permitted in Coastal Structure Setback Zone.** *Any new permanent structures in this zone are prohibited, including, but not limited to, pools, spas, vertical support members and chimneys.* Additionally, Mr. Conroy has, without permits or inspections, illegally installed all of the above. According to the ESA report (October 20, 2009 Memorandum, p. 10-73), *"Future episodes of landsliding also could result from geotechnically unsound construction practices in and around the coastal zone."*

The following information is further evidence of how allowing this variance will be detrimental to public welfare and contrary to the policies and the requirements of the Coastal Specific Plan: The subject property is a bluff-top sloping lot, which is consistent with other bluff-top properties on Sea Cove Drive. Like other lots in this area, the Coastal Setback Line traverses the property, which creates the same restrictions that affect all other bluff-top properties in the Coastal Zone of the City.

- 1) The June 21, 2007 Planning Commission Memorandum (pp. 9-33 to 9-82), firmly documents the city's determination that the Coastal Setback Line for this property is 150 feet from the front property line. The Coastal permit was approved in 1987 for the existing residence. This determination was not contested by the property owner, Brian Conroy. In fact, two separate reports by Mr. Conroy's engineers, (Triad Foundation Engineering, dated 12-29-87, and Denn Engineers, dated 11-22-00), both illustrated the Coastal Setback Line at 150-feet from the front property line. The subject property
- 2) Until 2008, Staff had upheld the Triad Geologic Report (12-29-87 geologic map and cross section) which establishes a safe building site at 150 feet from Seacove Drive, with a minimum 25-foot (Coastal Structure Setback Zone) from the Coastal Setback Line. The report and Mr. Conroy's Coastal Permit 30 also states that the land seaward of the Coastal Setback Line is zoned Open Space Hazard and lies within the Landslide Moratorium Area. Site specific geology in the report, map and cross section show that there is instability and ancient landslide along the bluff.

COASTAL COMMISSION

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- 3) The Coastal Specific Plan upholds that *any* deviation from use of the ESA maps would be harmful to public safety, health and welfare as stated in the October 20, 2009 Memorandum:

*Depending on which maps are used in processing these coastal permit applications, portions of the coast could be developed even though such developments could have significant public safety, health and welfare impacts on adjoining parcels, particularly with respect to geologic stability, and thus in order to protect against the current and immediate threat to the public safety, health and welfare, the City Council must amend the relevant Chapters of the Rancho Palos Verdes Municipal Code before allowing City staff to continue processing such coastal permit applications. This ordinance is therefore necessary for the current and immediate preservation of the public health, safety and welfare and shall take effect immediately upon adoption as an urgency ordinance.*

- 4) According to the land-use planning categories outlined in the report entitled, "Geologic Factors Related to a Coastal Setback Zone for the City of Rancho Palos Verdes" and the Coastal Specific Plan, pools, spas, fireplace/barbecue and trellises are prohibited in the Coastal Structure Setback Zone. The purpose of the Coastal Setback Line is to ensure that no future construction will be performed in prohibited areas. It is imperative that we adhere to these guidelines as we have witnessed not only the Portugese Bend slide, but also the slippage at the current Trump Golf Course and, most recently, at the Palos Verdes Bay Club which is situated at the end of old Seacove Dr. Also, Palos Verdes Estates has now lost five to six houses by not adhering to these guidelines.
- 5) Geologic Conditions in Subregion 4 Coastal Specific Plan, (p. S4-2):

*Geologically sensitive areas, in almost every respect, are associated with the bluff and natural drainage courses in the area. Actions on properties seaward of Seacove Dr. need to be cognizant of this condition.*

- 6) ESA Report and Maps, Category 2, (October 20, 2009 Memorandum, p. 10-76) applies to 24 Seacove Dr.:

*Areas classed in Category 2 are scattered throughout the coastal zone. They exhibit essentially one or both of two restrictive conditions; 1) marginally stable areas adjacent to the crest of the sea cliff or 2) ancient landslide deposits of marginal stability. The areas bordering the sea cliff are relatively narrow, while the ancient landslide deposits are more extensive.*

*The longest tract of this category that borders the sea cliff runs westward from Ahalone Cove to the cove west of Marineland. Seaward-dipping shale caps basalt along much of this stretch of sea cliff and results in a situation favorable for shallow landslide, in the higher sections of the cliff.*

COASTAL COMMISSION

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- 7) Environmental Assessment to Uphold the Coastal Setback Line (November 24, 2009 Memorandum, p. 5) which supports the Coastal Specific Plan and ESA Map and Reports:

*The proposed Zone Text Amendment would add language that specifies use of the ESA Maps to determine the location of the Coastal Setback Line since there is no language in the City's Development Code that references which maps to use to establish the location of the Coastal Setback Line. Thus, the proposed Zone Text Amendment involves no physical change to the environment itself and has no possibility to have a significant effect on the environment. Further, the Zone Text Amendment does not involve construction activities and will impose a process to more accurately determine the location of the Coastal Setback Line to prevent environmental degradation by keeping buildings and structures farther away from the coastal bluffs.*

- 8) When Jim Huston and I were at the RPV Building Department, Building Inspector, Paul Christman, provided us with a pool inspection form and stated that there had to be multiple inspections of Reinforcing Steel, Gas Piping, Main Drain, Electrical Ground Work, etc. The City Council Members were very concerned that because the pool was already completed without permits and inspections, it would be impossible to conduct the proper inspections necessary to uphold the safety and stability of the pool on the fragile bluff front. There was also a great concern that borings had not been made by Conroy to establish the safety of this pool on the fragile bluff front. Additionally, since he has illegally extended the bluff top, there have been no borings done to uphold the stability of the bluff.
- 9) Conroy's development does not uphold the Coastal Specific Plan Geotechnical Factors section of the Natural Environment Elements, which involves the Coastal Setback Line. According to the geologic report that was prepared in 1978 for the Coastal Specific Plan, "Coastal erosion and landsliding are interrelated, and they are clearly major threats both aerially and economically." The geologic constraints in the coastal zone were assessed by a classification system based on the suitability for existing and anticipated land use. More specifically, as stated in the geologic report of 1978, the author designated all lands in Categories 1A, 1B and 2 as part of the Coastal Setback Zone. Therefore, development in this area is extremely limited pursuant to the Municipal Code #17.72.040B which prohibits pools, spas, vertical support members, and chimneys.
- Category 1a... Areas unsuited for any permanent structure and potentially hazardous for human passage"
  - Category 1b - Areas unsuited for any permanent structure, but, in general, safe for human passage.
  - Category 2 - Areas suitable only for light, non-residential structures not requiring significant excavation or grading.

COASTAL COMMISSION

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On the basis of the available geologic information, a realistic coastal set-back zone would include all lands in Category 1a, Category 1b, and Category 2.

Mr. Conroy's latest geologic report, from *Coastline Geotechnical*, was first submitted in 2002 but was denied seven times before it was finally accepted in 2008. This report contradicts earlier geologic reports and, if upheld, it would allow for a precedent-setting decision which would have citywide ramifications.

There is no precedent-setting basis for new pool construction. The existing pools in this area were grandfathered in because their construction occurred before the establishment of the Coastal Zoning Commission. This fact was verified by Senior Planner Schonborn at the December 11, 2008 meeting where he noted that all 12 properties that have structures in the Coastal Setback area were constructed before the city was incorporated. Additionally, Director Rojas noted that any approval of above-referenced variance would be precedent setting, and if a future application comes forward it would be difficult not to make a finding under the same pretense

The above-mentioned information clearly supports the City Council's June 2, 2009 vote to deny the Conroy request for a variance. What is unclear is why they chose to approve the variance on December 15<sup>th</sup> based on the same information. The approval of the variance is a precedent-setting decision of citywide ramifications and is inconsistent with the City's tradition of using the ESA maps and adhering to the Coastal Specific Plan and Development Codes. We are filing this appeal to uphold the Coastal Specific Plan and Development Codes which protect the coastal bluff and the residents Rancho Palos Verdes. Additional documents will be submitted to further support this appeal.

Sincerely,

Pamela Simes  
Don Fleming  
Jim Huston  
Doug Ross  
Joccoma Maulsby  
Al Gersten

COASTAL COMMISSION

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## Attachment A

**Appellant: The City's determination of the location of the Coastal Setback Line is inconsistent with prior development in the area.**

**Appellant: The City has not provided an explanation of the process by which pools and other structures have been built on the properties along Sea Cove Drive.**

It is important to differentiate between the many residential subdivisions along the City's coastline, which consists of newer tracts approved by the City (Lunada Pointe, Oceanfront Estates, west portions of Seacove Drive and Trump National Estates) and older tracts approved by the County prior to the City's incorporation (east portions of Seacove Drive and the Portuguese Bend Club).

Within the older subdivisions (those recorded prior to City incorporation), the Coastal Setback Line had not been delineated on the final tract maps because those subdivisions were created prior to the State's enactment of the Coastal Act in 1976. Most of the structures in these older subdivisions were also constructed prior to the Coastal Act. When the City incorporated and adopted its Development Code and Coastal Specific Plan, the Coastal Setback Line was placed on the City's Zoning Map. This affected the older subdivisions because when the Coastal Setback Line was added, it was located inland of most of the existing older structures and lots in the Portuguese Bend Club and traversed all of the lots and some structures on the east portion of Seacove Drive. Subsequently, many structures in these areas are located in the Coastal Structure Setback Zone or even on the ocean side of the Coastal Structure Setback Zone and are thus non-conforming. The Code acknowledges these non-conformities by allowing minor additions to structures that are located within the Coastal Setback Zone. Furthermore, in the past the City has issued Variances to permit residential additions and accessory structures to be located within or seaward of the Coastal Structure Setback Zone for the older subdivisions that were approved prior to the City's incorporation.

Staff has researched other residences along Sea Cove Drive and has found that there are a total of 16 residences along Sea Cove Drive. Thirteen of these residences were constructed prior to the City's incorporation in 1973, one was constructed in 1978 prior to adoption of the Coastal Specific Plan, and two were constructed in the 1980's. The two residences constructed in the 1980's (24 and 26 Sea Cove Drive) were approved in locations that comply with the Coastal Setback Line and the related Coastal Structure Setback Line. On the 16 residential lots, many of the additions to the residences and pools were constructed prior to the City's incorporation. There have been several major projects on properties that have utilized the existing footprints or have been approved via other processes. The properties, along with the associated additions or projects, are listed below:

### **8 Sea Cove Drive**

- Residence built in 1959
- Pool in the rear yard was built in 1960

Renovations: in 2003, a reduction in the size of the pool to be within the (at-the-time)

**COASTAL COMMISSION**

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existing pool footprint was approved. Also a new spa was approved through a Variance since the entire property is seaward of the Coastal Setback Line.

**16 Sea Cove**

- Residence built in 1955
- Pool in the rear yard built in 1955
- Addition built in 1972
- Zone Change #23, approved in 1994, relocated the Coastal Setback Line (CSL) from the front of the existing residence to the top of the bluff, which is approximately 40-feet seaward of the existing residence.
- Additions approved in 1995 and constructed in 1999, outside of CSL (due to new location of the CSL) ,
- Approval granted in 2005 to reduce the pool size, and construct a new spa, barbecue and fire pit.

**24 Sea Cove**

- Residence approved in 1988, outside of the CSL, and outside of the Coastal Structure Setback Zone (Le., the area that is 25-feet landward from the CSL)
- No pool

**26 Sea Cove**

- Residence approved in 1988, outside of the Coastal Setback Line (CSL)
- No pool

**30 Sea Cove**

- Residence built in 1953
- Portion of garage converted to habitable and a new garage built in 1998. (plan on file illustrates the Coastal Structure Setback Line located seaward of the additions, and not in the Coastal Structure Setback Zone)

**34 Sea Cove**

- Residence built in 1952
- Pool in the front yard built in 1960
- Variance approved in 1998 for a covered patio that exceeded the 250 square foot limitation for improvements that encroach into the Coastal Structure Setback Zone

**36 Sea Cove**

- Residence built in 1952
- No pool
- A new garage approved in 1982 that was outside of the Coastal Structure Setback Zone

**38 Sea Cove**

- Residence built in 1952
- No pool
- Variance approved in 1999 for additions to an existing residence that is in (or partially in) the Coastal Structure Setback Zone

COASTAL COMMISSION

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**40 Sea Cove**

- Residence built in 1953
- Pool in the front yard built in 1954
- Paddle tennis court in the front yard approved in 1978
- Pergola addition in the front yard approved in 1992

**42 Sea Cove**

- Residence built in 1955
- Pool in the rear yard built in 1955
- Renovations: In 2000, the City Council approved the demolition of the existing residence, and rebuilding of a larger residence, along with the demolition and rebuild of a pool using the existing footprint. The Council also approved a zone change to move the Coastal Setback Line closer to the bluff top. The location created a legal non-conformity because the residence (built in 1955) encroached 9 feet into the Coastal Structure Setback Zone. The Coastal Permit was appealed to the California Coastal Commission, but subsequently withdrawn.

**44 Sea Cove**

- Residence built in 1951
- Pool built in 1967
- Additions built in 1984 and 1988 that were outside of the Coastal Structure Setback Zone

As such, Staff believes that this argument serves to prove that there are processes in place that can allow improvements in the Coastal Structure Setback Zone (area 25' landward of the Coastal Setback Line) and in the Coastal Setback Zone (area 25' seaward of the Coastal Setback Line).

**COASTAL COMMISSION**

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# FAX

**To:** Mr. Gary Timms, District Manager

**From:** Ken Dyda  
Former mayor, RPV, 1978  
Signer of the Coastal Specific Plan

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**Fax:** (562) 590-5084

**Pages:** 2 (incl. cover)

---

**Phone:**

**Date:** 1-2-10

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Application #: 5-RPV-09-103  
Local Permit #: ZON2007-00046  
Applicants: Brian and Jennifer  
Conroy

**Re:** Location: 24 Seacove Dr., Rancho Palos Verdes, Los Angeles County

Pamela Simes

---

**Description:** Illegal, uninspected, unpermitted pool, spa, trellis, barbecue/fireplace in area of property located within the City's Coastal Structure Setback Zone, which improvements are prohibited pursuant to Municipal Code Section 17.72.040 and to illegal, unpermitted, uninspected extension of bluff front and 8-ft tall garden retaining wall with a fire feature at bluff front that is located in the City's Coastal Setback Zone, which is prohibited pursuant to Municipal Code Section 17.72.040.

---

Dear Mr. Timm,

Enclosed is my letter for the above-referenced appeal. This memorializes, in part, what I discussed at the December 15, 2009 City Council meeting and also in a memorandum to the City Council.

If you have any questions, please contact me.

Sincerely,

Ken Dyda

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PAGE 17 OF 18

**Kenneth J. Dyda**

January 1, 2010

To Whom It May Concern:

Subject: Rancho Palos Verdes Coastal Setback Line.

The City of Rancho Palos Verdes passed, approved and adopted the Coastal Specific Plan on December 19, 1978. As mayor, I signed the resolution adopting the Plan. The document contains many figures some of which are illustrative of the city's Coastal Zone. These figures are reductions of maps on file with the city. These figures were not intended to be used for definitive measurements. The Bibliography contains the definitive references to the maps developed for the Plan. These maps are of a sufficient size to allow more accurate determination of distances. Earth Sciences Associates was the firm the city used to develop, among other geological elements, the coastal setback line. Because that map is larger, and therefore more accurate than the illustrations in the body of the plan, it has been and should be the standard for determining the location of the Coastal Setback Line. Making a property improvement in the coastal zone without applying for a permit does not afford the opportunity to know the set back requirements.

The illustrations presented to support the after the fact location of a swimming pool on the Conroy property is false and misleading. The figure in the plan showing the set back line was enlarged to a point where the dots representing the line were more than twenty five feet in diameter when superimposed on the Conroy plot plan which was to a much different scale. By combining the enlarged map with the plot plan at two different scales, in my view, eliminates any credibility. This is total misdirection.

Further, to use this combined illustration to justify the position that the pool does not encroach beyond the setback line, the set back line drawn as part of the plot plan started with the assumption that the setback line just touches the ocean side of the pool. To accomplish this, the set back line of the plot plan is not in the center of the dots purported to represent the setback line. Rather, it is ocean ward of that center further compounding the errors.

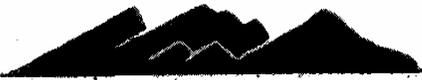
I urged the city council to uphold the use of the ESA maps for accuracy.

Sincerely,

Ken Dyda

5715 Capeswood Drive  
Rancho Palos Verdes, CA 90275-1725  
Home - (310) 375-3932 Cell - (310) 386-0285  
Email kendyda@verizon.net

**COASTAL COMMISSION**EXHIBIT # 12  
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# COASTLINE GEOTECHNICAL CONSULTANTS, INC.

## CONSULTING GEOTECHNICAL ENGINEERS

1446 W. 178TH STREET  
GARDENA, CALIFORNIA 90248-3202

E-mail: [coastlinegeo@sbcglobal.net](mailto:coastlinegeo@sbcglobal.net)

Tel. (310) 217-1504  
Fax (310) 217-1909

May 21, 2009

Project No. 1773C-059

Mr. and Mrs. Brian Conroy  
24 Seacove Drive  
Rancho Palos Verdes, CA 90275

**Subject:** Opinion Letters  
Proposed Swimming Pool  
24 Seacove Drive  
Rancho Palos Verdes, CA

**RECEIVED**  
South Coast Region

JAN 12 2010

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. and Mrs. Conroy:

At your request, we have reviewed two opinion letters concerning your proposed swimming pool, from the following:

1. James B. Huston  
Huston General Contracting, Inc.  
Livermore (Alameda County), CA  
Undated
2. Andres E. Stambuk, P. E.  
CRES Engineering  
Brentwood (Contra Costa County), CA  
February 23, 2009

Neither individual indicated he had visited or personally viewed the property. Both have offices in the East Bay area in Northern California. CRES specializes in structural design, not geotechnical engineering.

The segmental retaining walls and fill will be removed from the top of slope. This is required by the City and recommended by this office.

The pool location has been studied using engineering geology observations by George DeVries and Todd Houseal, State Certified Engineering Geologists, and Richard Martin, State licensed Civil and Geotechnical Engineer, who are all local, experienced professionals.

COASTAL COMMISSION  
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Project No. 1773C-059  
Conroy/Ranch Palos Verdes

2

Prior geotechnical work performed by Coastline Geotechnical Consultants, Inc. on residential property on Seacove, some of which resulted in the modification of the coastal setback line, included #1, 7, 8, 16, 28, 30, 36, 40, 2, and 44 Seacove Drive.

Our findings, as reported on June 16, 2008, which is on file with the building department, indicates the pool site is safe from the potential for landsliding. The resistance to sliding is more than 50 percent higher than the driving forces which cause the movement. These calculations are based on saturated soil and bedrock.

Water from the pool or other sources, such as landscaping, have been considered in the evaluation of the site stability. In addition, most engineers know that pool filled with water (62.4 pounds/cubic foot) weights less than the soil excavated (110 pounds/cubic foot). Therefore, there is a net reduction in the load due to the pool construction.

Respectfully submitted,

**COASTLINE GEOTECHNICAL CONSULTANTS, INC.**



Richard A. Martin, RGE 563

RAM/jm



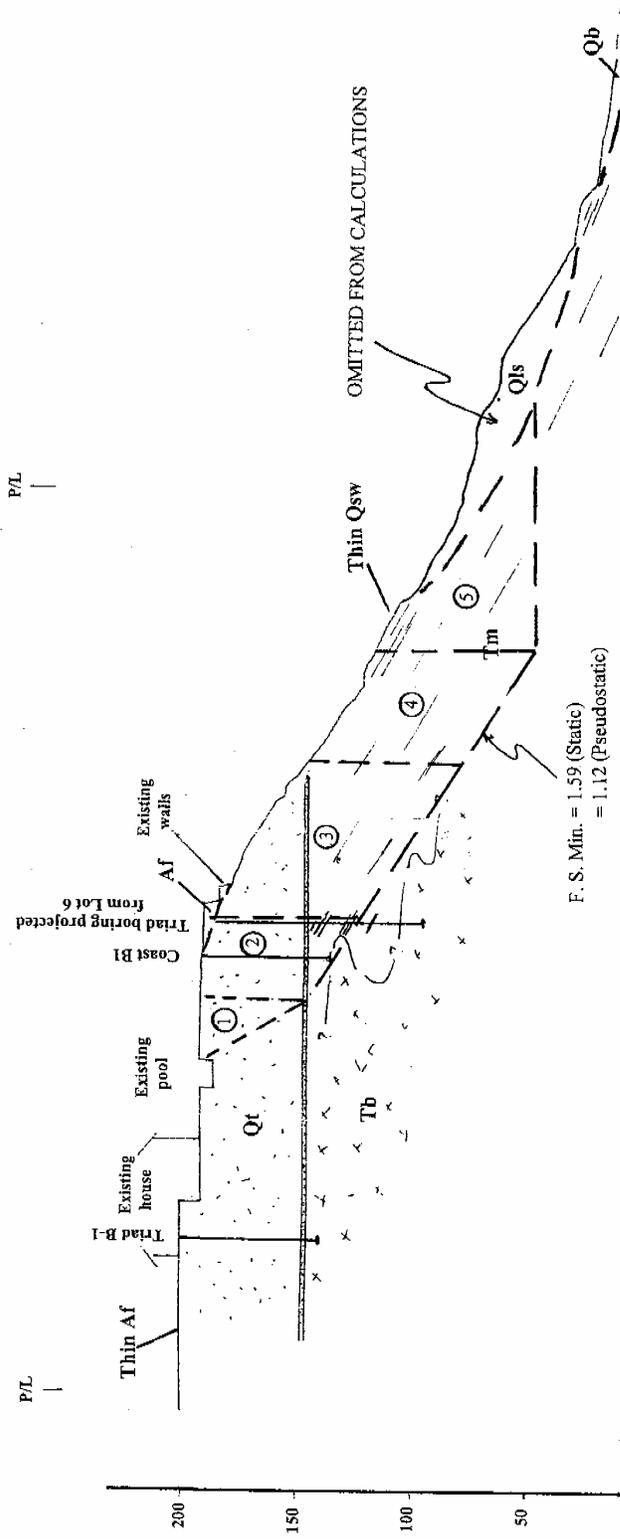
**COASTAL COMMISSION**

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PAGE 2 OF 5



PLANAR SLOPE STABILITY ANALYSIS

**GEOLOGIC CROSS SECTION A-A'**  
BY COAST GEOTECHNICAL



Scale 1" = 50ft(H=V)

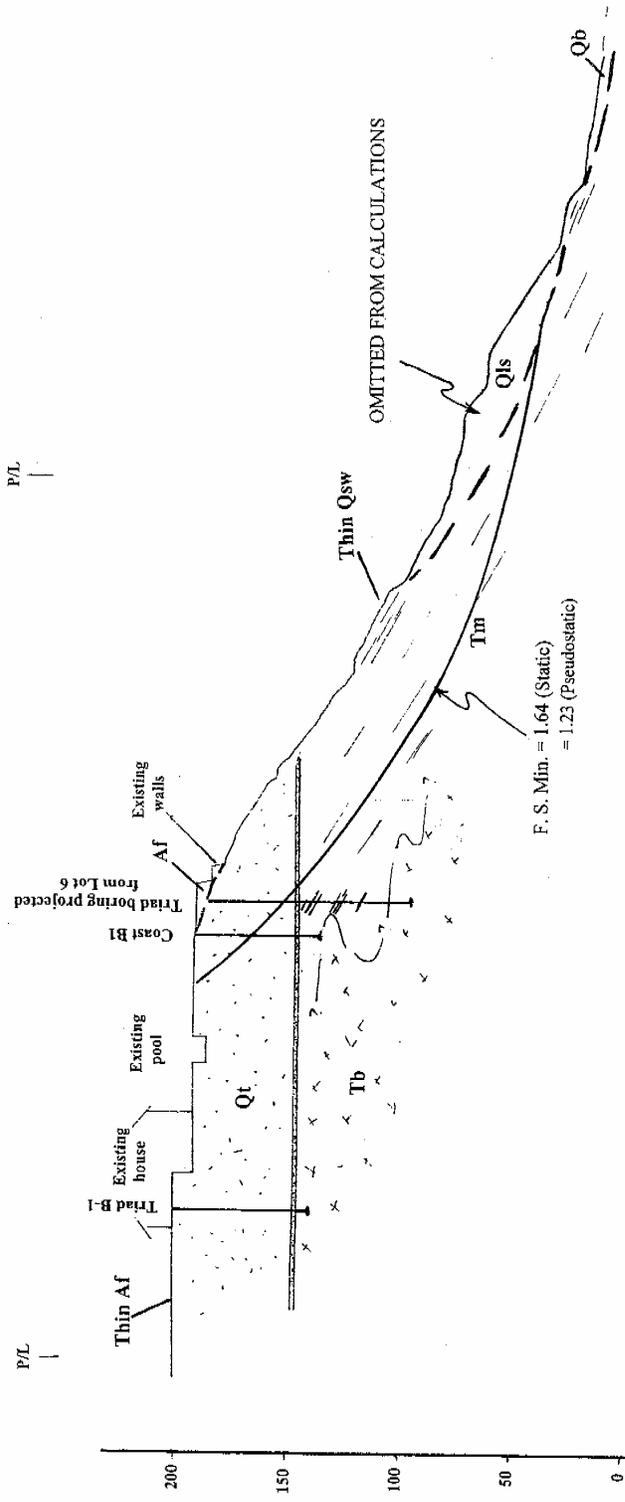
COASTLINE GEOTECHNICAL CONSULTANTS

PROJECT NO. 1773C-038 PLATE 12

COASTAL COMMISSION

**GEOLOGIC CROSS SECTION A-A'**  
BY COAST GEOTECHNICAL

**CIRCULAR SLOPE STABILITY ANALYSIS**



COASTLINE GEOTECHNICAL CONSULTANTS PROJECT NO. 1773C-038 PLATE 14

**COASTAL COMMISSION**

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PAGE 5 OF 5



**COASTLINE GEOTECHNICAL CONSULTANTS, INC.**

**CONSULTING GEOTECHNICAL ENGINEERS**

1446 W. 178TH STREET  
GARDENA, CALIFORNIA 90248-3202

E-mail: [coastlinegeo@sbcglobal.net](mailto:coastlinegeo@sbcglobal.net)

Tel. (310) 217-1504  
Fax (310) 217-1909

August 20, 2010

Project No. 1773C-080

Brian Conroy  
24 Seacove Drive  
Rancho Palos Verdes, CA 90275

Subject: Site Restoration  
24 Seacove Drive  
Rancho Palos Verdes, California

**RECEIVED**  
South Coast Region

SEP 8 2010

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Conroy:

At your request, the writer inspected the subject site on August 17, 2010. The purpose of the visit was to verify the removal of the Keystone block walls and fill, and site restoration to its pre-existing condition.

Since our last site inspection, the two six-foot high Keystone block, fill and stairways have been removed. The slope has been restored and the area replanted.

Area drains were installed in the grass area near the top-of-slope, on the east and west sides of the property. These drains, along with area drains in the desk, north of the pool, are connected to subsurface pipe lead to a sump near the southwest corner of the residence. This sump is equipt with a pump which discharges the runoff water into the street.

While no representative from this office was present during restoration, the site condition appear to be close to the conditions observed back in 2002. The grass, slope planting and drains have been added. The topographic plan prepared by Bolton Engineering, dated July 19, 2010, presents the restored site conditions.

Should there be any questions, please contact the writer.

Respectfully Submitted,

COASTLINE GEOTECHNICAL CONSULTANTS, Inc.

Richard A. Martin, RGE 653  
(5) Addressee



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A.S-RPV-10-002

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**CALIFORNIA COASTAL COMMISSION**

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



September 3, 2009

Joel Rojas, Director  
Eduardo Schonborn, Senior Planner  
City of Rancho Palos Verdes  
30940 Hawthorne Blvd.  
Rancho Palos Verdes, CA  
90275-5391

Subject: Appeal of Case No. ZON2007-00253 (Interpretation Procedure)

Dear Joel and Eduardo,

The above referenced item is scheduled for public hearing before the RPV Planning Commission on Tuesday, September 8. The interpretation procedure at issue concerns the methodology used to determine the City's Coastal Setback Line on individual properties relative to existing maps contained in the City's certified Local Coastal Plan otherwise known as the Coastal Specific Plan.

As previously described and carried out in past permitting actions, the Coastal Setback Line is based upon the maps contained in the report entitled "Geologic Factors Related to a Coastal Set-Back Zone for the City of Rancho Palos Verdes, California" prepared by Earth Sciences Associates (ESA) in 1976. Said report is referenced in the appendix of the City's Coastal Specific Plan. Other maps contained in the Specific Plan, which may contain variations in delineating the coastal setback line, have not previously been used to determine the setback line. It is our understanding that staff is recommending that the Planning Commission, due to the variation in the location of the Coastal Setback Line on different City maps, determine the setback line on the basis of maps contained in the Coastal Specific Plan and a site specific geologic study until the issue can be further clarified by amending the Local Coastal Plan.

In acknowledging the existing discrepancies or variations contained in the Coastal Specific Plan maps and the age of the primary document and maps used to determine the appropriate setback line, Commission staff is supportive of a process to amend the LCP to include updated maps and requirements for determining the appropriate geologic blufftop setbacks to assure geologic stability and safety for new coastal development in the City. Until the LCP has been amended, the City should not change the methodology used for determining the setback line. The appropriate maps for determining the Coastal Setback Line are those contained in the ESA report referenced above along with a site specific geologic study. In considering a future LCP amendment as well as applications for Coastal Development Permits (CDPs) for new development on coastal blufftops, setback lines from coastal bluff edges should, at the very minimum, be established to assure a geologic factor of safety of 1.5; provide for a 75-year bluff retreat setback or greater if necessary to assure geologic stability for development, and; contain an additional buffer.

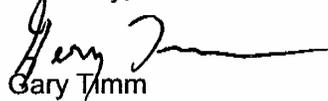
COASTAL COMMISSION  
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In addition, any methodology used to determine appropriate blufftop setbacks should consider future impacts to bluffs from projected sea level rise. In no case should the ESA report and maps be interpreted in a manner that allows a more liberal seaward encroachment of development than the strict interpretation that has been used to date to determine such line. In closing, I also want to reiterate that any action taken to determine the Coastal Setback Line for the purpose of existing unpermitted development or future proposed development is subject to a Coastal Development Permit that would be appealable to the Coastal Commission due to its location.

Please contact me if you have any questions or wish to discuss this issue further.

Sincerely,



Gary Timm  
Coastal Program Manager  
South Coast District, Long Beach  
562-590-5071  
gtimm@coastal.ca.gov

cc Gabriel Buhr  
John Ainsworth  
Teresa Henry

**COASTAL COMMISSION**

EXHIBIT # 151  
PAGE 2 OF 2

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South Coast Region

NOV - 1 2010

**RESOLUTION NO. 2010- 01**

CALIFORNIA  
COASTAL COMMISSION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DENYING THE APPEAL BY MS. PAMELA SIMES AND FURTHER REVISING THE DIRECTOR'S INTERPRETATION (CASE NO. ZON2007-00253) DETERMINING THAT THE LOCATION OF THE CITY'S COASTAL SETBACK LINE ON INDIVIDUAL PROPERTIES WITHIN THE COASTAL ZONE SHALL BE BASED ON THE CITY'S OFFICIAL ZONING MAP.**

WHEREAS, the Coastal Zone boundary within the City and the entire State was created by the California Coastal Commission as part of the implementation of the State's Coastal Act, which was enacted in 1976; and,

WHEREAS, in preparation of the City's Coastal Specific Plan, a comprehensive geologic study of the City's coastal region was prepared, which segmented the City's Coastal Zone into separate geologic categories that defined where development was suitable and where it was not, resulting in the establishment of the Coastal Setback Line. The geologic study is titled, "Geologic Factors Related to a Coastal Set-Back Zone for the City of Rancho Palos Verdes, California" prepared by Earth Sciences Associates (ESA) in 1976, which contain geologic maps that specifically identify a 25' required setback landward of the Coastal Setback Line; and,

WHEREAS, the comprehensive geologic report titled "Geologic Factors Related to a Coastal Set-Back Zone for the City of Rancho Palos Verdes, California" by Earth Sciences Associates (ESA) was used to prepare the City's Coastal Specific Plan, which was adopted by the California Coastal Commission; and,

WHEREAS, the Development Code, which implements the Coastal Permit procedures for the Coastal Specific Plan, established two separate "Zones" on either side of the Coastal Setback Line whereby the area seaward of the Coastal Setback Line is called the "Coastal Setback Zone" and the areas twenty-five feet (25') landward of the Coastal Setback Line is called "Coastal Structure Setback Zone"; and,

WHEREAS, Staff has historically utilized the geologic maps prepared by ESA (referenced above) in discerning the precise location of the Coastal Setback Line on private property; and,

WHEREAS, on May 24, 2007, Brian Conroy, owner of property located at 24 Sea Cove Drive, submitted a request for a formal interpretation (Case No. ZON2007-00253) requesting Staff's basis for establishing the location of the Coastal Setback Line for his property at 24 Sea Cove Drive and on properties within the City's Coastal Zone; and,

WHEREAS, on June 21, 2007, the Director of Planning, Building and Code Enforcement issued a formal Interpretation regarding how to interpret the City's maps for determining the most precise location of the Coastal Setback Line on private properties,

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which in cases of uncertainty or ambiguity resulting from the Specific Plan Maps to establish the location of the Coastal Setback Line on individual properties within the Coastal Zone, then the maps that accompany the report titled, "Geologic Factors Related to a Coastal Set-Back Zone for the City of Rancho Palos Verdes, California" prepared by Earth Sciences Associates (ESA) in 1976 and referenced in the appendix to the City of Rancho Palos Verdes Coastal Specific Plan shall be used; and,

WHEREAS, on July 3, 2007, Mr. and Mrs. Conroy, through their attorney, Scott Campbell, submitted an appeal of the Director's formal Interpretation and requested that the appeal hearing be conducted at the August 14, 2007 meeting, thereby relinquishing their right to a hearing within 30 days of their appeal; and,

WHEREAS, after the hearing was duly noticed, the Conroy's notified Staff that they would like to exercise their option of accepting Staff's determination of the Coastal Setback Line and instead process the Variance and Coastal Permit applications (ZON2007-00046) in an attempt to legalize the illegal construction, and requested that their Interpretation Procedure appeal be held in abeyance; and,

WHEREAS, the Planning Commission tabled the appeal hearing on August 14, 2007 to allow the property owner time to process the applications associated with Case No. ZON2007-00046; and,

WHEREAS, on December 11, 2008, the Planning Commission considered Case No. ZON2007-00046 for a Coastal Permit and Variance, but continued the public hearing to the February 24, 2009 meeting to allow Staff to investigate additional code violation allegations against the applicant that were raised by a neighbor, and present Staff's interpretation decision (i.e., this appeal) at the same time as the Variance request, thereby allowing the Planning Commission the opportunity to first hear the use determination regarding the location of the Coastal Setback Line, and if necessary hear the Variance request for the after-the-fact improvements in the rear yard; and,

WHEREAS, on February 5, 2009, the City mailed notices of the pending Planning Commission hearing to 67 property owners within a 500-foot radius from the subject property, the Coastal Commission, and to the *West Portuguese Bend Community Association*, and published a notice in the *Peninsula News* on February 5, 2009; and,

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the Planning Commission conducted a public hearing on February 24, 2009, at which time all interested parties were given an opportunity to be heard and present evidence regarding the appeal of Case No. ZON2007-00253.

WHEREAS, on February 24, 2009, the Planning Commission tabled the appeal hearing at the request of the appellant; and,

WHEREAS, on August 20, 2009, the City mailed notices of the pending Planning Commission hearing to 67 property owners within a 500-foot radius from the subject

property, the Coastal Commission, and to the *West Portuguese Bend Community Association*, and published a notice in the *Peninsula News* on August 20, 2009; and,

WHEREAS, on September 8, 2009, the Planning Commission adopted P.C. Resolution No. 2009-36, revising the Director's Interpretation and determining that the location of the Coastal Setback Line on properties shall be based on a site-specific geology study and the Coastal Specific Plan Land Use Map; and,

WHEREAS, on September 23, 2005, within fifteen (15) days following the Planning Commission's decision, the adjacent property owner to the east at 22 Sea Cove Drive, Ms. Pamela Simes, filed an appeal to the City Council requesting that the City Council overturn the Planning Commission's revised Interpretation based upon the Director's original June 21, 2007 Interpretation; and,

WHEREAS, after notice was issued pursuant to the requirements of the Rancho Palos Verdes Development Code, the City Council held a duly noticed public hearing on October 20, 2009, at which the City Council continued the public hearing to December 15, 2009; and,

WHEREAS, on December 15, 2009, the City Council held a public hearing at which time all interested parties were given an opportunity to be heard and present evidence;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:

**Section 1:** The City Council hereby revises the Director's Interpretation dated June 21, 2007, and the Director's revised Interpretation which was upheld by the Planning Commission on September 8, 2009 (Case No. ZON2007-00253), and finds that the location of the Coastal Setback Line on properties shall be based on the City's official Zoning Map, by overlaying an enlarged portion of the City's Zoning Map onto a property and identifying the centerline of the Coastal Setback Line, as shown on the enlarged portion of the City's Zoning Map, as the location of the Coastal Setback Line for that property.

**Section 2:** The time within which the judicial review of the decision reflected in this Resolution, if available, must be sought is governed by Section 1094.6 of the California Code of Civil Procedure and other applicable short periods of limitation.

**Section 3:** For the foregoing reasons, and based on the information and findings included in the Staff Reports, Resolutions, Memoranda, Minutes and other records of proceedings, the City Council of the City of Rancho Palos Verdes hereby denies the appeal, and further revises the Planning Commission's revised Interpretation of Case No. ZON2007-00253.

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PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of January 2010.

/s/ Stefan Wolowicz  
Mayor

ATTEST:

/s/ Carla Morreale  
City Clerk

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES            )ss  
CITY OF RANCHO PALOS VERDES        )

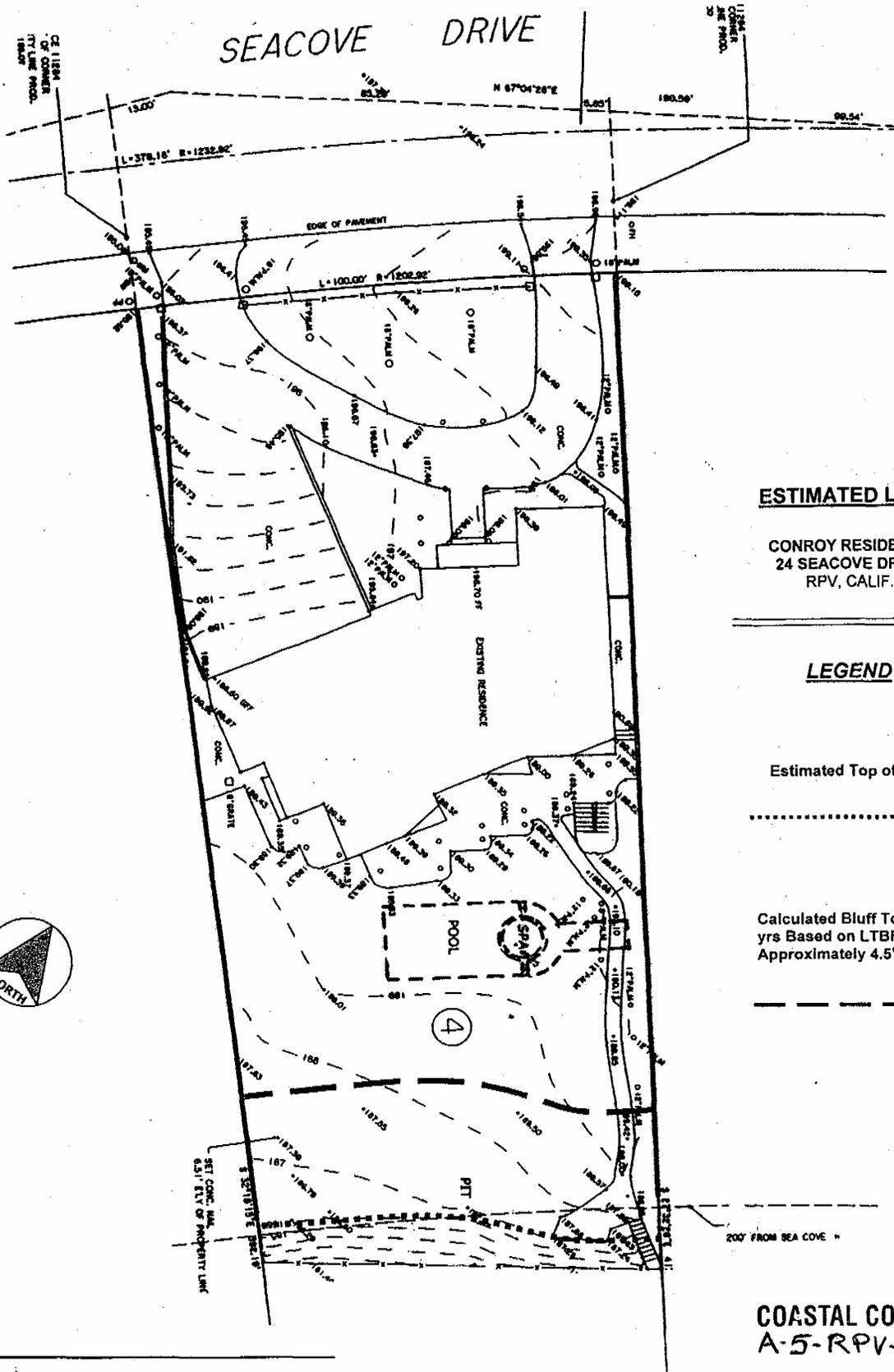
I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, hereby certify that the above Resolution No. 2010-01 was duly and regularly passed and adopted by the said City Council at a regular meeting held on January 5, 2010.

  
City Clerk

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**ESTIMATED LTBR**

CONROY RESIDENCE  
24 SEACOVE DRIVE  
RPV, CALIF.

**LEGEND**

Estimated Top of Bluff



Calculated Bluff Top in 75-  
yrs Based on LTBR Rate of  
Approximately 4.5" per Year



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**Hamilton & Associates**