

**CALIFORNIA COASTAL COMMISSION**

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Commission Action:

**W 14b****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-10-107**APPLICANT:** Griffith J. Williams, TR**PROJECT LOCATION:** 14 South La Senda Drive, Laguna Beach, Three Arch Bay, Orange County**PROJECT DESCRIPTION:** Demolition of an existing single-family residence and attached garage and construction of a new 4,140 square foot, three level, 25 foot high (above natural grade)/30 foot high (above finished grade) single family residence with an attached 652 square foot, two car garage, hardscape improvements, pool, and landscaping on a bluff top lot.**SUMMARY OF STAFF RECOMMENDATION:**

Commission staff is recommending **APPROVAL** of the proposed project with **Eight (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future blufftop or shoreline protective devices; **3)** additional approvals for any future development; **4)** conformance with submitted drainage plan; **5)** conformance with submitted landscape plan; **6)** conformance with the submitted pool leakage protection plan; **7)** conformance with geotechnical recommendations; and, **8)** a deed restriction against the property referencing all of the Special Conditions contained in this staff report. The primary issue associated with the proposed project is the location of development and whether it is sufficiently set back to avoid erosion and other hazards. Although the bluff edge has not been determined with certainty because of prior site grading, development is proposed within 25 feet of the bluff edge. However, the proposed setback is considered to be acceptable because the site is expected to be stable and able to support the proposed development, the proposed development conforms to a stringline setback, the setback is similar to other setbacks approved in the project vicinity, development is somewhat constrained by the smaller size of the lot, and, proposed development is an improvement over existing development in that the amount of development at the seaward side of the site will be substantially reduced.

**SUBSTANTIVE FILE DOCUMENTS:** Geotechnical Investigation prepared by Coastal Geotechnical, dated 1/31/08; Coastal Geotechnical letter responses dated 9/22/10, 8/5/10, and 7/7/10; Coastal Development Permit Applications & File Nos. 5-06-195 (Hayden, 12 So. La Senda); 5-02-357 (Saczalski, 10 So. La Senda), 5-04-149 (Ward, 8 So. La Senda), 5-01-240 (De la Pena, 6 So. La Senda), and 5-05-303 (Berryman, also at 6 So. La Senda); and the City of Laguna Beach LCP (as guidance only in this area of deferred certification).

**LOCAL APPROVALS RECEIVED:** City of Laguna Beach Approval in Concept, dated 5/11/10.

**LIST OF EXHIBITS:**

1. Vicinity Map
2. Site Plan
3. Proposed Seaward Patio Area
4. Existing Seaward Patio Area

**I. 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 Coastal Development Permit No. 5-10-107 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**Resolution: Approval with Conditions**

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

**II. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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. Assumption of Risk, Waiver of Liability and Indemnity**

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

#### **2. No Future Blufftop or Shoreline Protective Devices**

- A. By acceptance of this Permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no bluff protective device(s) or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-10-107 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, sea level rise, wave uprush, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence and hardscape, if any government agency has ordered that the structure(s) is/are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the principal residence appears threatened by bluff retreat but no government agency has ordered that the structures are not to be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the residence are threatened by bluff and slope

instability, erosion, landslides or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

### **3. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-10-107. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-10-107. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, change in use from a permanent residential unit and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-10-107 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

### **4. Drainage Plan**

- A. The applicant shall conform to the drainage plan prepared by Artecho, dated 10/5/07 and last updated 1/12/11, showing all drainage directed to area collection drains and sub-drain systems on site for discharge to the street through piping and/or pumping without allowing water to percolate into the ground.
- B. The permittee 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 legally required.

### **5. Landscape Plan**

- A. The applicant shall conform to the planting plan prepared by Artecho, dated 10/5/2007 last updated on 1/12/11, showing vegetated landscaped areas consisting of native plants or non-native drought tolerant plants, which are non-invasive. Local native plant stock shall be used if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Existing vegetation that does not conform to the above requirements shall be removed.

- B. No permanent in-ground irrigation systems are proposed and none shall be installed on site. Temporary above ground irrigation is allowed to establish plantings.
- C. The permittee 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 Coastal Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**6. Conformance with Pool Leak Protection Plan**

- A. The applicant shall conform to the Pool Leakage Protection Plan prepared by Pool Engineering, Inc., dated 7/20/10.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**7. Conformance with Geotechnical Recommendations**

- A. All final design and construction plans, including foundations, grading, drainage, and pool leak protection plans, shall be consistent with the recommendations contained in the following geotechnical investigations prepared by Coastal Geotechnical: Geotechnical Investigation Proposed Single-Family Residence 14 South La Senda, Three Arch Bay, Laguna Beach, California, dated January 31, 2008; Response to Coastal Commission Comments, 8/5/10; and, Response to Geotechnical Report Review, 7/7/10.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geotechnical investigations.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

**8. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as

covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

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

The Commission hereby finds and declares:

##### **A. PROJECT DESCRIPTION**

The subject site is an 18,392 square-foot, oceanfront bluff top lot, located at 14 South La Senda, Laguna Beach (Three Arch Bay), Orange County. The City's land use designation for this lot is Village Low Density and adjacent lots are also developed with single-family residences.

The applicant proposes to demolish the existing 2,623, two level single family residence and to construct a new 4,140 square foot, three level, 25 foot high (above natural grade)/30 foot high (above finished grade) single family residence with an attached 652 square foot, two car garage, hardscape improvements, pool, and landscaping (Exhibit 2). The proposed residence stair steps down the lot, so that the structure is no more than two levels in any given location. Nearest the street, the two levels include the garage at the upper/street level (finished floor level at approximately 100 feet msl [height above mean sea level]) with the main level of the residence below (finished floor elevation approximately 91 feet msl). Near the seaward side of the lot, the two levels include the same main level (91 feet msl finished floor level), with a lower living level below (finished floor level at approximately 79 feet msl). A drilled pier shoring/retaining foundation system is proposed. Grading will consist of approximately 1,580 cubic yards (1470 cubic yards of cut and 110 cubic yards of fill). Of the proposed grading figure 950 cubic yards of cut is proposed within the footprint of the residence. The export is proposed to be disposed of at Bowerman landfill in Irvine (outside the coastal zone).

The pool is proposed landward of the proposed residence. A Pool Leakage Protection Plan, prepared by Pool Engineering, Inc., dated 7/20/10 is also proposed. The Pool Leakage Protection Plan requires a separate water meter to allow for specific monitoring of pool water usage, an interior waterproof surface lining as a primary leakage protection and a sub-drain system installed below the entire bottom of the pool, and an automatic cut-off switch for the pool water fill system. The measures included in the proposed Pool Leakage Protection Plan are intended to control pool drainage and prevent infiltration of pool water onto the site or surrounding sites. The pool engineer recommends that the leak protection plan be reviewed by the project geotechnical engineer.

The proposed residence would be located significantly landward of the existing residence (approximately 16 feet landward) and conforms to a stringline setback. In addition, existing hardscape at the seaward side of the existing residence is proposed to be removed and the area returned to a more natural condition. Currently site drainage flows uncontrolled over the bluff face. The proposed development would collect site drainage and direct it back to the street.

The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach (see Exhibit #1). Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification. Because the site is located within a locked gate community, no public access exists in the immediate vicinity. The nearest public access exists at 1000 Steps County Beach approximately one half mile upcoast of the site.

#### **B. Previously Approved Coastal Development Permit**

On January 10, 2007, the Commission approved coastal development permit 5-06-195 (Hayden) at the subject site. The project approved under that permit included: demolition of the existing single-family residence and attached garage and construction of a new three level, 4,200 square foot single-family residence with an attached 550 square foot two-car garage, hardscape improvements, pool, spa and landscaping. An existing brick in concrete patio area located within the bluff top setback area for at-grade development was allowed to remain in place under this previous approval. However, the special conditions of approval were never met, the permit was never issued, and the approval has lapsed. No work approved under coastal development permit 5-06-195 was ever undertaken.

#### **C. Blufftop Development**

When demolition and new construction on a bluff top lot is reviewed by the Commission, the appropriate bluff top setback is considered to address Coastal Act policy issues including minimization of risk, protection of public views and assurance of geologic/structural stability which avoids the potential need for shoreline and/or bluff protection devices.

Section 30251 of the Coastal Act states that:

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

Section 30253 of the Coastal Act states:

*New development shall:*

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way*

*require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The subject site consists of a rectangular shaped, oceanfront, bluff lot currently developed with a split level, single family residence and terraced series of relatively low brick/stone retaining walls and associated planter areas, wood deck and spa, and various brick/hardscape/wood patios and walkways around the residence. Topographically the site consists generally of gently west to southwest sloping ground that is bounded to the southwest by an approximately 65 to 75 feet high, approximately 1:1 (horizontal to vertical) to locally near vertical seacliff, and a narrow sandy shoreline at the base of the seacliff. Rocky headlands also extend seaward of the narrow sandy beach at the base of the subject site. The sandy shoreline is associated with relatively narrow cove/pocket beach at the north end of Mussel Cove. Mussel Cove (immediately downcoast of the site) is the primary sandy beach area within the Three Arch Bay Community. The elevation of the lot at the street level is approximately 103 feet msl (height above mean sea level). The elevation at the top of the steepest part of the lot is approximately 70 feet msl.

A Geotechnical Investigation was prepared for the proposed development by Coastal Geotechnical, dated 1/31/08. In addition, a document titled Response to Geotechnical Report Review was prepared by Coastal Geotechnical, dated 7/7/10 in response to the City of Laguna Beach, Department of Community Development, Geotechnical Review Checklist for the proposed project. Also prepared by Coastal Geotechnical is a document titled Response to Coastal Commission Comments, dated 8/5/10. The Geotechnical information prepared for the subject site includes conclusions and recommendations regarding the proposed development. The geologic report concludes that the subject site is grossly stable (i.e. factor of safety in excess of 1.5) and is suitable for the proposed development.

### Setback

Section 30253 of the Coastal Act requires that risks and geologic instability be minimized and requires new development to be designed to assure it is stable and has structural integrity throughout the life of the structure. Setting development back from the edge of the bluff can substantially decrease risk because the further from the bluff edge development is located, the less likely it is that the development may become threatened by bluff retreat. Likewise, setbacks decrease the likelihood of geologic instability. The added weight of development, watering or irrigating plants, and human activity closer to the bluff edge can all increase the rate of erosion and bluff retreat. Thus, by reducing these factors bluff stability can be increased. In addition, Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be protected. Setting development further back from the edge of the coastal bluff decreases the project's visibility from the beach below and as seen from the water. For these reasons, the Commission typically imposes some type of bluff edge setback. Further, setting development back away from the bluff edge reduces the likelihood that a shoreline or bluff protection device may be needed in the future. Section 30253 prohibits development that would "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." If new development necessitates future protection, the landform and shoreline processes could be dramatically altered by the presence of the protective system. The Coastal Act limits construction of these protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline

beach dynamics on and off site, ultimately resulting in the loss of beach. For all these reasons, the Commission typically imposes some kind of bluff edge setback with new development.

In Three Arch Bay, when supported by site-specific geotechnical analysis, the Commission typically imposes a minimum bluff edge setback of 25 feet from the edge of the bluff for primary structures (e.g. the enclosed living area of residential structures). The minimum 25-foot setback from the bluff edge is deemed acceptable within the Three Arch Bay community based on the relatively stable, underlying San Onofre formation bedrock.

Another method of determining the location of a bluff top setback that has been used in Three Arch Bay is known as a stringline set back. A stringline is the line formed by connecting the nearest adjacent corners of the adjacent residences. A stringline setback accounts for the location of adjacent development and can be used where the resultant setback is otherwise consistent with recommendations in a geotechnical report and other applicable Coastal Act policies. This allows equity among neighbors and recognizes existing patterns of development.

In the immediate project vicinity, the Commission has approved the following projects: 5-02-357 (Saczalski, 10 So. La Senda), 5-04-149 (Ward, 8 So. La Senda), 5-01-240 (De la Pena, 6 So. La Senda), and 5-05-303 (Berryman, also at 6 So. La Senda). With the exception of at-grade patio development on the seaward side of the proposed residence, the proposed development is consistent with the bluff top setbacks approved by the Commission most recently in the immediate project vicinity. Regarding the subject site, the applicant's geotechnical consultant states (in the Response to Coastal Commission Comments letter, dated 8/5/10, prepared by Coastal Geotechnical):

*"Based on review and interpretation of the available aerial photographs pertinent to the site (References 1 through 7) and review of other geotechnical work associated with relatively recent development of nearby lots, the portion of seaciff bounding the site appears physiographically similar and it appears that relatively little erosion of the seaciff has occurred during the years 1932 to present. Our review of the available geotechnical/coastal reports pertinent to the site vicinity suggests that the mean longterm rate of seaciff retreat for sections of coastline exposing San Onofre Breccia bedrock along the south Laguna Beach area is relatively low, with estimated rates ranging up to approximately 0.20-feet/year (References 12 and 13). Given that the seaciff backing the site is situated within a relatively narrow cove/pocket beach at the north end of Mussel Cove and significantly shadowed from direct wave attack by the rocky headlands, the need for shore line protection devices during the design life of the structure (50 to 75-years) is not anticipated."*

The proposed residence would be located significantly landward of the seaward-most part of the existing residence (approximately 16 feet landward) and conforms to a stringline setback. Under the Commission's approval of the previous coastal development permit at the site (5-06-195), a similar residential footprint was approved.

The Commission's staff geologist has reviewed the proposed project including review of the geotechnical information and project plans, and has visited the subject site. Given the expected stability of the site, the Commission's staff geologist has determined that the proposed setback for enclosed living area is appropriate and is not expected to lead to instability. The setback proposed in this case complies with the minimum setback the Commission typically imposes.

Although, due to existing development and past site disturbance, the precise location of the bluff edge is difficult to determine, the Commission's staff geologist indicates that it would likely be

somewhere under the existing and proposed structures. According to the City of Laguna Beach's method for determining the edge of the bluff, which hasn't been certified for Three Arch Bay, it would be located approximately at the 70 foot contour elevation (which is roughly 40 to 50 feet seaward of the staff geologist's bluff edge placement). In this case, however, the proposed setback is acceptable for a number of reasons. First, the geotechnical information indicates that the site is expected to be stable for the life of the project. In addition, the project as proposed conforms to a structural stringline. As referenced above, nearby residential development in the project area has been approved with similar setbacks. The siting of the proposed residence is consistent with these past approvals. The subject lot is smaller and thus more constrained than other bluff top lots in the Three Arch Bay Community. And, the proposed project represents an improvement over existing development at the site in that the seaward extent of the residence will be moved approximately 16 feet landward of the existing residence's footprint. Also, the area seaward of the residence, currently developed with patio hardscape, will be returned to a more natural condition. For these reasons, the Commission finds the proposed bluff setback to be acceptable.

Along with a bluff edge setback for enclosed living area, the Commission typically imposes a bluff edge setback for hardscape/patio type development. Hardscape/patio type improvements can be moved away from hazards more readily than primary structures. In addition, consistently applying an appropriate bluff edge setback provides equitability for developments within the same general area.

Hardscape/patio development currently exists at the subject site seaward of the existing and proposed residence (See Exhibit 4). In addition, the existing residence extends 16 feet seaward of the proposed residence on the southwestern side of the property. This portion of the residence is proposed to be removed and not replaced in this location. This development includes brick set in concrete patio area, concrete stairs and walkways, a wooden deck area, low walls and a stone fireplace. In addition, this area currently drains, uncontrolled, over the bluff face.

In the area seaward of the proposed residence, the applicant proposes to remove all development that can be removed without destabilizing the bluff and returning the area to a more natural state (See exhibit 3). The area is already terraced, so some retaining walls will need to be retained in order to assure continued site stability. These include a retaining wall along the northwest property line (so as not to destabilize the adjacent site) and a stone retaining wall located seaward of the existing patio area stairs.

Removing the stone retaining wall was considered, but the idea was abandoned due to development that would be required to accomplish its removal. Removal of the stone retaining wall would require creation of a 2:1 slope (or steeper) in the area seaward of the wall. This would require significant grading within the bluff top area. In addition, overexcavation would be required in order to bench the new slope into the existing sloped area for stability. These activities would likely require the use of heavy equipment within the blufftop area. For these reasons, it was determined that the least intrusive choice, that still maintains site stability, was to allow the existing wall to remain in place. The wall will be surrounded by native plants which would obscure it from view.

The existing brick in concrete patio area immediately seaward of the residence is proposed to be replaced with stone in sand patio area. The stone in sand patio area (elevation 79.4 msl) will transition to a lower level (elevation approximately 73 msl) via a proposed built-in planter box. The proposed planter box will replace an existing stone fireplace and wall. Seaward of the planter box, an existing lower level brick in concrete patio will be removed and replaced with native plants and a small (approximately 8 feet by 8 feet) undeveloped open area. The existing stairs are proposed to

be reconfigured along the proposed planter box and will lead from the stone in sand patio area to the lower undeveloped area.

The stone in sand patio is proposed to be graded such that drainage will flow at a 1% slope toward a channel drain. The natural planted area is also proposed be graded at a 1% slope, directing drainage away from the bluff edge toward the same channel drain. A sump pump is proposed at the northwest edge of the property adjacent to the channel drain. Drainage will be directed to the sump pump and pumped to the street.

A new retaining wall along the southeast property line is proposed to maintain stability at the adjacent site. A return wall is proposed to extend from the southeast retaining wall. This return wall is needed because a portion of the existing residence (to be removed) and wooden deck area's elevation (approximately 84 feet msl) will be lowered to an approximately 81 foot elevation so that the topography will blend with the elevations to the northwest on site, including the proposed stone in sand patio at the 79.4 foot msl elevation. The area immediately to the southeast will be transitioning from an 85 foot elevation. The existing seaward portion of the residence and wooden deck are proposed to be removed and replaced with decomposed granite. This decomposed granite area will be within the same footprint of the existing wooden deck area (though at the slightly lower elevation) and will be approximately 8 feet by 12 feet.

Overall, the proposed project will result in the seaward most portion of the residence moving approximately 16 feet landward of the location of the existing residence (to be removed). Extensive hardscape and residential area in the area between the proposed residence and the bluff face will be removed and the area will be restored to as natural a state as is possible given existing, surrounding development. All residential development will be located landward of the structural stringline. The applicant's geotechnical consultant has indicated that the proposed development is not expected to need shoreline protection devices for the life of the development. The Commission's staff geologist has determined that the proposed setback is appropriate and is not expected to lead to instability. Based on all these factors, the Commission finds that the proposed bluff setback for the proposed development is adequate to assure that risks and instability are minimized.

#### Geotechnical Recommendations

Regarding the feasibility of the proposed project the geotechnical investigation prepared by Coastal Geotechnical, dated January 31, 2008 (updated 7/7/10 and 8/5/10) states:

*"Based on the results of our geotechnical investigation, construction of the proposed new single-family residence is considered feasible from a geotechnical standpoint. Grading and foundation plans should take into account the appropriate geotechnical features of the site. Assuming that the conclusions and recommendation provided in this report are implemented during design and construction, the proposed construction is not expected to adversely impact existing adjacent properties from a geotechnical standpoint."*

Specifically regarding bluff slope stability, the geologic consultant concludes in the geotechnical investigation prepared by Coastal Geotechnical, dated January 31, 2008 (updated 7/7/10 and 8/5/10):

*"No new slopes are planned. Based on review of the available previous work relative to this site and the development of nearby properties, our field observation, and our interpretation of the referenced aerial photographs, the existing seacliff does not exhibit evidence of gross*

*instability. Slope stability analyses indicating gross slope stability factors-of-safety of at least 1.5 (static) and 1.1 (seismic) within the proposed building area are presented in Appendix A.”*

The geologic consultant has found that the subject site is suitable for the proposed development provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. Adherence to the recommendations contained in the above-mentioned geotechnical investigation is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, Special Condition 7 requires that the applicant conform to the geotechnical recommendations in the above mentioned geotechnical investigation.

#### Future Protective Device

The subject site is an oceanfront, bluff lot. In general, bluff top lots are inherently hazardous. It is the nature of bluffs, and especially ocean bluffs, to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. (See, for example, CDPs P-80-7431 & 5-99-332-A1: Kinard/Frahm; CDPs 5-88-177 & 5-93-254G: Arnold; CDPs 5-84-46 & 5-98-39: Denver/Canter; CDPs 5-95-23 & 5-99-56: Bennet; and CDPs 6-88-515 & 6-99-114G: McAllister). In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may become endangered as a result of impacts from coastal or geologic hazards.

Section 30253 of the Coastal Act requires that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a protection device.

The Coastal Act limits construction of these protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for residential development only for existing principal structures. The construction of a shoreline protective device to protect a new residential development would not be required by Section 30235 of the Coastal Act. In addition, the construction of a shoreline protective device to protect new residential development would conflict with Section 30251 of the Coastal Act

which states that permitted development shall minimize the alteration of natural land forms, including coastal bluffs which would be subject to increased erosion from such a device.

No shoreline protection device is proposed. The geologic consultant for the subject development does not anticipate the need for a future shoreline or bluff protection device, and states:

*"Given that the seacliff backing the site is situated within a relatively narrow cove/pocket beach at the north end of Mussel Cove and significantly shadowed from direct wave attack by the rocky headlands, the need for shore line protection devices during the design life of the structure (50 to 75-years) is not anticipated."*

The proposed development includes demolition of the existing residence and construction of a new single family residence, which constitutes new development for the purposes of Sections 30235 and 30253. Because the proposed project is new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site is stable, that the project should be safe for the life of the project, and that no shoreline protection devices will be needed. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, as stated above, geologic conditions change over time and predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices. Therefore, the Commission imposes Special Condition 2, which prohibits the applicant and their successors in interest from constructing shoreline/bluff protective devices to protect the proposed development and requiring that the applicant waive, on behalf of itself and all successors and assigns, any right to construct protective devices for the proposed project that may exist under 30235.

#### Assumption of Risk

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. The site is an oceanfront, bluff top lot, which is inherently hazardous. Given that the applicant has chosen to implement the project despite potential risks from bluff erosion and landslide, the applicant must assume the risks. Therefore, the Commission imposes Special Condition 1, requiring the applicant to assume the risk of the development. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

#### Drainage and Landscaping

One factor that can minimize the hazards inherent to blufftop development is proper collection of site drainage. The proposed project's plans indicate that all roof drainage and runoff will be

directed to area collection drains and sub-drain systems on site for discharge to the street. Another factor that can minimize the hazards inherent to bluff development is limiting the amount of water introduced to the bluff top area. In order to maximize bluff stability, the amount of water introduced to the site should be minimized. The applicant's plans also include a landscape plan which shows all vegetated landscaped areas only consisting of native plants or non-native drought tolerant plants, which are non-invasive. Water on site can be reduced by limiting permanent irrigation systems. Consequently, irrigation must be limited to temporary irrigation only as needed to establish plants. Only temporary irrigation is proposed. Therefore, as a condition of approval, the applicant is required to comply with the submitted irrigation plan.

In addition, to further decrease the potential for bluff instability, deep-rooted, low water use, plants should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. The applicant has submitted a landscape plan that only includes native plants or non-native drought tolerant plants, which are non-invasive. Therefore, as a condition of approval, the applicant is required to comply with the submitted landscape plan.

#### Conclusion

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with Sections 30251 and 30253 of the Coastal Act which require that landform alteration be minimized, scenic coastal views be protected, and geologic stability be assured.

#### **D. DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes Special Condition 3, which requires either an amendment or an additional coastal development permit from the Commission for any future improvements to the single-family residence not authorized by this permit.

#### **E. PUBLIC ACCESS**

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

The proposed project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed replacement of a single family residence on an existing residential lot will not affect the existing public access conditions. It is the locked gate nature of the community, not this home that impedes public access. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities.

Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### F. WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Due to the potential for increased hazards in blufftop areas, which could be caused by encouraging water infiltration for water quality purposes, maximizing on site retention of drainage is not required. The project plans submitted by the applicant included a drainage and run-off control plan showing all roof drainage and runoff directed to area collection drains and sub-drain systems on site for discharge to the street. As mentioned above, the applicant's plans also included a landscape plan which shows all vegetated landscaped areas consisting of native plants or non-native drought tolerant plants, which are non-invasive. The Commission imposes Special Condition 4, which requires the applicant to conform to the submitted drainage and run-off control plan and Special Condition 5, which requires the applicant to conform to the submitted landscape plan.

The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### G. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes Special Condition 8, which requires that the property owner record a deed restriction against the property, referencing all of the above Special

Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

#### **H. LOCAL COASTAL PROGRAM**

Section 30604 (a) of the Coastal Act states:

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

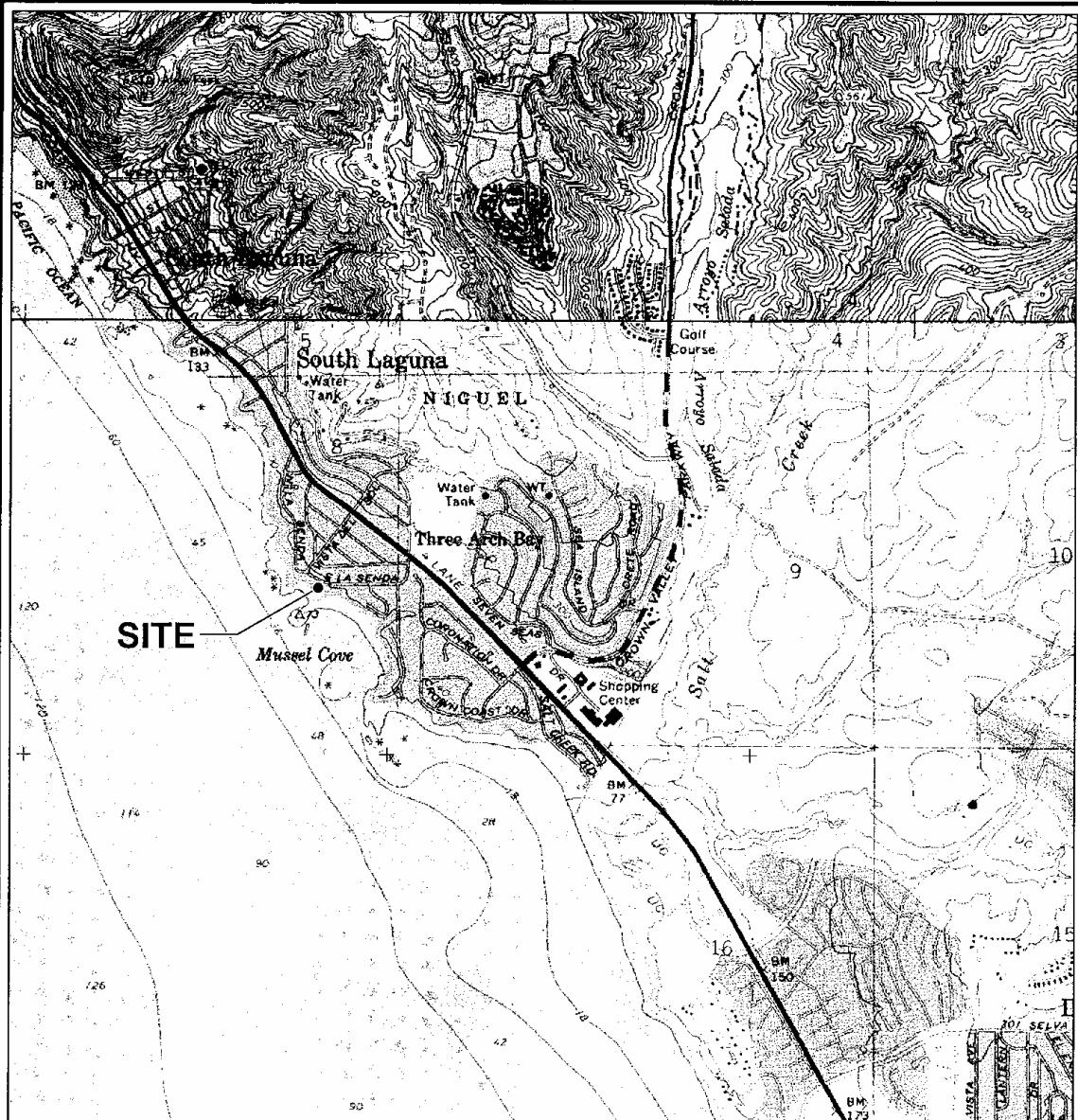
The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and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

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

#### **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

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



BASE MAP: U.S.G.S. Dana Point &amp; San Juan Capistrano 7-1/2 Minute Quadrangles

COASTAL COMMISSION

5-10-107

EXHIBIT # 1

PAGE 1 OF 1

SCALE: 1" = 2000'

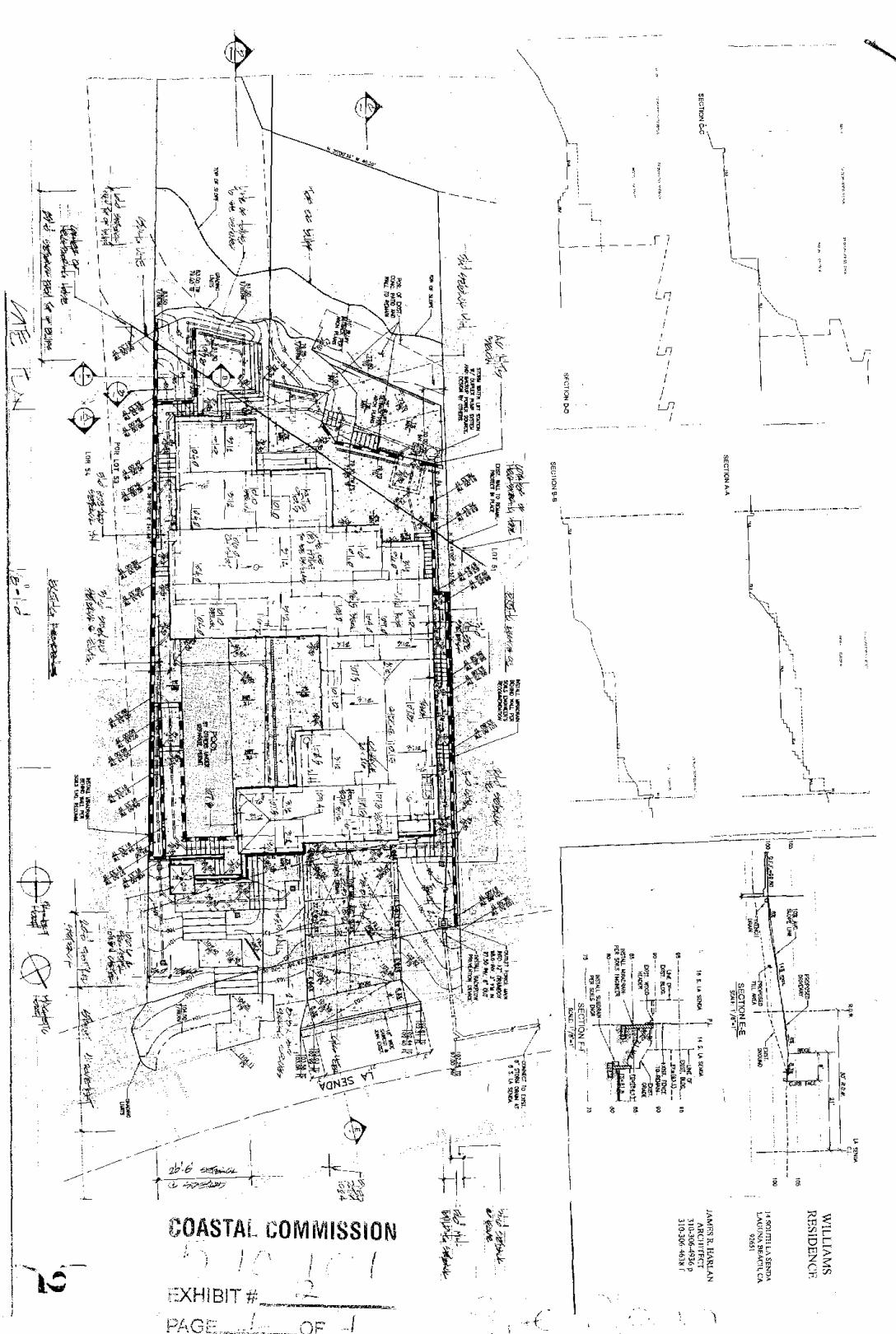


## LOCATION MAP

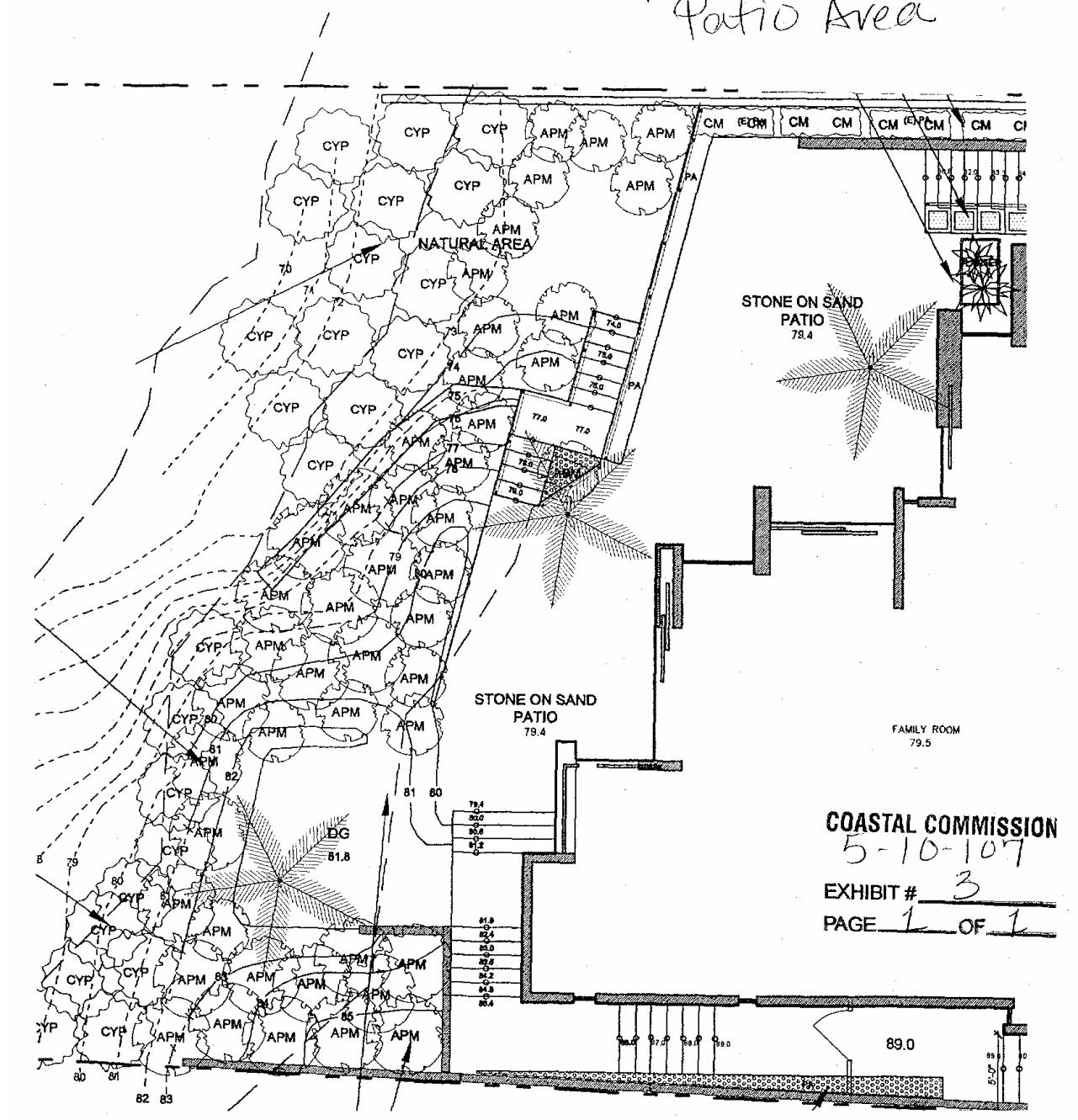
COASTAL GEOTECHNICAL  
GEOTECHNICAL CONSULTANTS14 South La Senda  
Three Arch Bay, Laguna Beach, California

PROJECT NO. 787.1

FIGURE NO. 1



# Proposed Seaward Patio Area



Portion of  
Existing Residence  
+ wood deck  
to be removed

Brick Patio  
Area to be  
Removed

