

**CALIFORNIA COASTAL COMMISSION**

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Staff Report: July 21, 2011  
Hearing Date: August 10-12, 2011  
Commission Action:

# Item W11c

## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NUMBER:** 5-11-019

**APPLICANT:** Roger and Cathie Hogan

**AGENT:** C.J. Light Associates, Attn: Michael C. Evdokiou

**PROJECT LOCATION:** 4639 Brighton Road, Newport Beach (Corona del Mar)  
(Orange County)

**PROJECT DESCRIPTION:** Demolition of existing single-story single-family residence and construction of a new single-story plus semi-subterranean basement level, 15' high from finished grade, 7,399 sq. ft. single-family residence with attached 1,058 sq. ft. 4-car garage, grading consisting of 2,567 cu. yds. cut for proposed semi-subterranean basement level, hardscape improvements including new bluff-side paved patios, new spa and landscaping improvements, and removal of non-permitted non-conforming development on the coastal bluff on a 19,265 sq. ft. coastal bluff top lot.

**LOCAL APPROVALS RECEIVED:** Approval in Concept (#2011-001) from the City of Newport Beach Planning Department dated January 25, 2011.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan; *Geotechnical and Geologic Report of Proposed New Residence at 4639 Brighton Road, Newport Beach, CA* by Coast Geotechnical, Inc. dated January 26, 2011; *First Addendum to the Geotechnical and Geological Investigation of a Proposed New Residence at 4639 Brighton Road, Newport Beach, CA* by Coast Geotechnical, Inc. dated April 22, 2011; *Response to First California Coastal Commission Request for Additional Information for 4639 Brighton Road, Newport Beach, CA* by Coast Geotechnical, Inc. dated June 22, 2011; CDP 5-85-679 (Linden and Hubbard); CDP 5-86-075-(Tarantello); CDP 5-05-196(Lee); *Historic Coastal Cliff Retreat along the California Coast, USGS Open File No. 2007-1133* prepared by the Drs. Hapke and Reid dated 2007.

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## SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed project with **Nine (9) Special Conditions** regarding: **1)** submittal of revised final plans; **2)** submittal of revised final landscaping plans; **3)** no maintenance and/or augmentation of the existing shoreline protective device (for purposes of protecting the development subject to this permit), no new future bluff or shoreline protective devices and future removal of seawall; **4)** future development; **5)** assumption of risk; **6)** conformance with geotechnical recommendations; **7)** spa protection plan; **8)** construction best

management practices, **9)** condition compliance; and **10)** a deed restriction against the property referencing all of the Special Conditions contained in this staff report.

The applicant is proposing a complete redevelopment of a coastal bluff site zoned for single-family residential with the demolition of an existing one-story single family residence and construction of a new one-story with daylighting basement single-family residence. No grading cut for the proposed basement level will be within the 25-foot bluff edge setback. The basement level daylightings along the lot's southern side yard, not on the bluff-facing side of the lot. The applicant is proposing to remove existing, unpermitted, non-conforming accessory development in the form of a graded steps and path to a graded sitting area located seaward of the bluff edge. The existing development is protected by a seawall at the toe of the bluff that protects the subject lot and two lots downcoast of this one. The seawall was constructed under CDP 5-85-679 to protect existing development on the subject lot (the development the seawall protects is proposed to be demolished under this permit) and to protect development on the adjacent downcoast lots. The Commission approved the seawall with a special condition requiring a lateral public access easement to cover any portion of the beach located inland of the mean high tide line and seaward of the approved seawall.

The primary issue with the proposed development is conformance with bluff top setbacks and whether the proposed new residence relies in any way on the existing seawall. The proposed residence conforms to both the structural stringline setback and the minimum 25-foot blufftop setback from the bluff edge. Existing development beyond the bluff edge inconsistent with existing certified Coastal Land Use Element policies and past Commission practice in the area is proposed for removal. Therefore, staff is recommending approval of the proposed project with revised final plans to clearly identifying the unpermitted non-conforming existing elements on the bluff face proposed for removal under this coastal development permit.

The submitted geotechnical study of the site deems the site grossly stable under current and proposed conditions. Based on the geotechnical report, the proposed siting of the new single-family residence does not rely on the seawall to obtain minimum geological factors of safety, though the seawall does provide some protection from wave action. The Commission staff coastal engineer concurs with this determination. Thus, the proposed new residence is sited so that it doesn't require protection from the existing wall and no seawall or other shoreline protective device will be needed to protect the development over the course of its 75 year design life. Therefore, the Commission imposes Special Condition 3 requiring no maintenance and/or augmentation of the existing shoreline protective device (for purposes of protecting the development subject to this permit) and no new future shoreline protection of the development approved by this coastal development permit. With regard to the existing seawall, it was permitted by a CDP and may continue to be maintained to protect the development that is was approved to protect (e.g. development on the adjoining site). Special Condition 3 also requires the applicant agree to remove the portion of the seawall at the subject site at a future point if/when it falls into disrepair and to agree to consider removal of the seawall on this subject site if at a future point the property owner at the adjacent site, 4645 Brighton Road submits an application for a coastal development permit proposing to demolish the existing development and redevelop that site in a manner not relying on the existing seawall on that parcel. By acceptance of this permit, the applicant would agree to consider collaborating to the removal of the shoreline protective device spanning the subject parcel and the adjacent parcel at that time to restore the shoreline's natural processes and protect public recreational access.

**LIST OF EXHIBITS**

1. Project Site Location Map/Public Beach Access Location Map
  2. Assessor's Parcel Map
  3. Project Plans
  4. Structural and Deck Stringline Analysis
  5. Aerial Photographs
  6. Copy of CDP 5-85-679 and CDP 5-86-075 and staff report findings
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**STAFF RECOMMENDATION:**

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 5-11-019 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

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

**II.        STANDARD CONDITIONS:**

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

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of revised, final project plans including grading, drainage and landscape plans in substantial conformance with the plans dated March 3, 2011; however, the final plans shall include the following revisions:
  - (a) The existing 2-foot wide steps down the bluff face located seaward of the bluff edge at the 30' contour elevation line shall be circled and clearly marked *"this element proposed to be removed and area restored to pre-existing conditions"* on each set of plans;
  - (b) The existing graded gravel seating area seaward of the bluff edge 30' contour elevation line shall be circled and clearly marked *"this element proposed to be removed and area restored to pre-existing conditions"* on each set of plans;
  - (c) The existing 2-foot wide graded pathway seaward of the bluff edge 30' contour elevation line along the north side of the property line shall be shaded and clearly marked *"this element proposed to be removed and area restored to pre-existing conditions"* on each set of plans;
  - (d) The applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate certified engineering geologist has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Revised Landscaping Plan**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, two (2) sets of a revised final landscape plan prepared by an appropriately licensed professional demonstrating the following:

- The plans shall indicate the proposed residence is setback a minimum 25-feet from the bluff edge (consistent with plans submitted by the applicant on March 3, 2011). No grading is authorized seaward of the proposed primary structure.
- The existing 2-foot wide steps down the bluff face located seaward of the bluff edge at the 30' contour elevation line shall be circled and clearly marked "*this element proposed to be removed and area restored to pre-existing conditions*" on each set of plans;
- The existing graded gravel seating area seaward of the bluff edge 30' contour elevation line shall be circled and clearly marked "*this element proposed to be removed and area restored to pre-existing conditions*" on each set of plans;
- The existing 2-foot wide graded pathway seaward of the bluff edge 30' contour elevation line along the north side of the property line shall be shaded and clearly marked "*this element proposed to be removed and area restored to pre-existing conditions*" on each set of plans;
- All areas affected by construction activities not occupied by structural development shall be re-vegetated for habitat enhancement and erosion control purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas, all landscaping on the coastal bluff shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible;
- 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;
- Plantings throughout the site will be completed within 60 days after completion of construction; however, bluff re-vegetation will be completed within 90 days of removal of unpermitted development and bluff restored to natural grade;
- No permanent in-ground irrigation systems shall be installed on the bluff side of the lot. Temporary above ground irrigation is allowed to establish plantings.
- All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.

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

**3. No Shoreline or Bluff Protective Device(s) to Protect the Proposed Development**

- A(1). By acceptance of this permit, the applicants agree, on behalf of themselves and all other successors and assigns, that the existing shoreline protective device on the subject site shall not be maintained and/or augmented for purposes of protecting the development approved by this coastal development permit and that no new shoreline or bluff protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-11-019 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, landslide, sea level rise, flooding, waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby agree to waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2) By acceptance of this permit, the applicants agree on behalf of themselves and all other successors and assigns to apply for an amendment to this coastal development permit for the removal of the existing shoreline protective device on the subject property, when the following conditions arise: i) the existing shoreline protective device falls into a state of disrepair and ii) the existing shoreline protective device on the subject property can be safely removed without jeopardizing the existing development on the adjacent parcel at 4645 Brighton Road. In addition, if the property owner at 4645 Brighton Road proposes to demolish the existing development on that parcel and redevelop that site in a manner not relying on the existing seawall on that parcel, the applicants agree, by acceptance of this permit, to collaborate with the property owner at 4645 Brighton Road, at the time he or she submits an application for a coastal development permit, and consider the removal of the shoreline protective device spanning the subject parcel and the adjacent parcel at 4645 Brighton Road.
- A(3). By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the house, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

**4. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-11-019. 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. 5-11-019. Accordingly, any future improvements to the single family development authorized by this permit, including but not limited to landscape improvements and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-11-019 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**5. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, landslide, sea level rise, flooding, waves, erosion, storm conditions or other natural hazards; (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.

**6. Conformance with Geotechnical Recommendations**

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigations: Geotechnical and Geologic Report of Proposed New Residence at 4639 Brighton Road, Corona Del Mar prepared by Coastal Geotechnical dated January 26, 2011, First Addendum to the Geotechnical and Geologic Investigation of a Proposed New Residence at 4639 Brighton Road, Newport Beach, CA by Coastal Geotechnical dated April 22, 2011 and Response to First California Coastal Commission Request for Additional Information for 4639 Brighton Road, Newport Beach, CA by Coast Geotechnical dated June 22, 2011.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C.** The applicants 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.

**7. Water Feature/Spa Protection Plan**

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

**8. Construction Best Management Practices**

- A.** The permittee shall comply with the following construction-related requirements:
- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
  - (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
  - (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.



- B.** Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:
- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
  - (2) The applicant shall develop and implement spill prevention and control measures;
  - (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a stormdrain, open ditch or surface water; and
  - (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

**9. Condition Compliance**

Within 90 days of Commission action on this coastal development permit application, the applicant shall satisfy all the requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Within 90 days of issuance of the Coastal Development Permit by the Executive Director, the applicant shall implement the plan to remove the unpermitted development, as outlined on the Revised Final Plan specified in Special Conditions 1. No later than 90 days following completion of the removal plan, the applicant shall implement the re-vegetation plan specified in Special Condition 2. The Executive Director may grant additional time in writing to comply with this condition 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.

**10. 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 landowners have 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 and Location**

The proposed project site is located between the nearest public roadway and the shoreline on a coastal bluff top lot subject to wave erosion in the community of Cameo Shores (Corona del Mar/Newport Beach) (Exhibits #1-2). The site is a 19,265 square foot lot designated Low Density Residential by the City of Newport Beach Land Use Plan (LUP); the proposed project adheres to this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development to the north, south and east. To the west of the project site is a coastal bluff, rocky beach and the Pacific Ocean. Public access and public recreation opportunities exist nearby at Little Corona Beach to the northwest and Crystal Cove State Beach to the southeast. There is a gated vertical access walkway between the project site and the upcoast property. The general public also holds a lateral public access easement on the subject property along the beach at the toe of the bluff.

The proposed project consists of demolition of an existing single-story, single-family residence and garage and construction of a new 7,399 square foot (4,461 sq. ft. ground floor and 2,938 sq. ft. basement level) residence, 15-feet above finished grade, attached 1,058 sq. ft. four-car garages, spa, hardscape and landscape improvements on a coastal bluff top lot. Grading will consist of approximately 2,567 cubic yards of cut for basement construction entirely within the footprint of the ground level structure which meets the 25-foot bluff top setback. The proposed basement daylights to a small courtyard along the southern (downcoast) property side yard with stairs leading up to the ground level. The basement does not daylight on the bluff side of the lot and will not require grading on the bluff side of the lot. No grading is proposed or approved within the 25-foot bluff edge setback. The two, two-car garages accommodating a total of four cars for the development would provide more than adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit. The existing pool/spa located within the center courtyard of the residence will be demolished and a new spa located on the rear side of the lot (bluff facing) is proposed to be constructed. The foundation system of the proposed residence will consist of continuous and spread footings.

The City of Newport Beach does not have a certified Local Coastal Program, only a certified Land Use Plan (LUP). Therefore, the Coastal Commission is the coastal development permit issuing entity for development on that parcel and the standard of review is Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

##### **Unpermitted Development**

The applicant is proposing to remove existing non-conforming and unpermitted development on the bluff consisting of a graded path with stone steps leading to a graded gravel sitting area seaward of the bluff edge and a 2-foot wide pathway at the northern property line seaward of the

bluff edge leading to a side gate. This development is located seaward of the bluff edge and/or on the bluff face and does not meet the minimum 10-foot setback requirements for ancillary structures (Exhibit #3, page 2 of 6). The area will be restored to pre-existing conditions and revegetated consistent with the conditions of this permit.

### Prior Permit History

At its January 1985 hearing, the Commission approved CDP 5-85-679(Linden and Hubbard) for the construction of a maximum 6' tall concrete seawall across the two adjacent lots of 4639 Brighton Road (subject site) and 4645 Brighton Road (Exhibit #6). The seawall was approved to protect existing development (single family homes) on each lot. There is little discussion in the CDP staff report documenting the need for the seawall, the report simply states, "The project consists of construction of a seawall designed to protect the existing single family residences and rear yard area from erosion due to tidal action and storm surf. The Commission therefore finds that the project as proposed is consistent with Section 30235 of the Coastal Act." However, there is a lengthy discussion regarding public access and the project was approved with a special condition to provide a lateral access easement along this Cameo Shores cove beach. A 10-foot wide private community association vertical accessway exists along the westerly property boundary of 4639 Brighton Road and the upcoast property at 4621-4633 Brighton Road (a single home spanning 3 lots). This 10-foot accessway comprised of two 5-foot easements from each property, however, already had an easement for exclusive use by the members of the homeowners association; and therefore, the applicant at that time was unable to provide use of the same accessway for vertical access by the public.

The following year at the March 1986 Commission hearing, the Commission approved Administrative Permit No. 5-86-075(Tarantello) for extension of the of the 6-foot high concrete seawall approved under CDP 5-85-679 to include the foot of the bluff at 4651 Brighton Way, the second residence downcoast from the subject site at 4639 Brighton Road, also with the Special Condition to provide a lateral access easement along this Cameo Shores cove beach. The seawall was constructed as one continuous seawall protecting all three blufftop residences.

At its November 2005 hearing, the Commission approved CDP 5-05-196 for the demolition of the residence at 4651 Brighton Way, the most downcoast residence protected by the seawall and construction of a new one story plus basement single family residence, garage, hardscape and landscape improvements. No work was proposed to the existing seawall. The new development however, does not rely on the existing seawall for protection from coastal hazards.

## **B. GEOLOGIC STABILITY/SHORELINE PROTECTIVE DEVICES**

### Coastal Act Policies

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

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms...*

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.*

City of Newport Beach Land Use Plan Policies:

*4.4.3-3. Require all new bluff top development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.*

*4.4.3-4. On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.*

*4.4.3-7. Require all new development located on a bluff top to be setback from the bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. To assure stability, the development must maintain a minimum factor of safety of 1.5 against landsliding for the economic life of the structure.*

*Policy 4.4.3-8. Prohibit development on bluff faces...*

*4.4.3-13. Require new development adjacent to the edge of coastal bluffs to incorporate drainage improvements, irrigation systems, and/or native or drought-tolerant vegetation into the design to minimize coastal bluff recession.*

*4.4.3-14. Require swimming pools located on bluff properties to incorporate leak prevention and detection measures.*

*Policy 4.4.3-17. Identify and remove all unauthorized structures, including protective devices, fences, and stairways, which encroach into coastal bluffs.*

*2.8.6-9. Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

*2.8.6-10. Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).*

#### Project Site Geotechnical Report

The applicant submitted a geotechnical study by Coast Geotechnical, Inc. dated January 26, 2011 which describes the parcel as relatively level off the street to the bluff edge, then descending down the 20' bluff at varying grades (2:1 to near vertical grades) to an approximate 10' tall seawall at the toe of the bluff at the beach protecting the existing residence. The coastal bluff along the ocean frontage of the lot is approximately 30-feet in height.

The site is underlain by predominantly fine grained thinly bedded sedimentary rocks of the Monterey formation which is overlain by minor artificial fill soils about 12-18" below existing grade. Bedrock encountered was found to be firm to very hard and do not exhibit geologic planar weaknesses considered adverse to the site stability. Slope stability analyses were performed on the subject site and on the overall slope of which the subject site is a part. The coastal bluff slope was shown to have a factor of safety of 1.5 or greater for gross stability under static and seismic conditions. The potential for small rock zones to fail due to slope steepness and weathering does exist. The applicant provided an addendum to the geotechnical report dated April 22, 2011 in which Coast Geotechnical, Inc. clarifies that as a conservative measure, the gross stability analysis they conducted assumed that the existing seawall was not present; as represented in the use of bedrock shear strength values only in their stability analysis. If the seawall had been incorporated into the stability analysis, a layer of significantly higher shear strength would have been utilized to represent the concrete strength of the seawall. Therefore, the site can be considered grossly stable without the existing seawall.

Furthermore, the report states that lateral retreat along the base of the bluff was considered unlikely due to the presence of the existing seawall. The geotechnical investigation included a review of historic aerial of the site from 1946, 1952, 1972 1980, 2003 and 2005, significant bluff retreat was determined not to have occurred in the past fifty years at this site. Quantitative analysis of long term bluff retreat is only as reliable as the data available from which to extrapolate a linear historical retreat rate. Adequate data is not available for this site. The report concluded that the proposed new residence and site improvements will not be affected by bluff retreat over the course of its design life of 75 years.

It's inherently difficult to determine what might have happened to a coastal bluff if a seawall had not been built. It seems clear that the existing seawall has provided the existing home with some protection from erosion, and that this protection is more than would have been provided without the wall. The amount of possible erosion or bluff retreat is uncertain. There is a general report from 2007, prepared by the Drs. Hapke and Reid of the USGS, entitled, Historic Coastal Cliff Retreat along the California Coast, USGS Open File No. 2007-1133. This report does not provide site specific analysis, but does provide information on general trends. For the Corona del Mar area of the coast, the average annual long-term bluff retreat rates seem to have been between 0.1 to 0.2 m/yr. Assuming the retreat has been at the lower rate, of 0.1 m/yr, there could be up to 2.5 meters (approximately 8 feet) of retreat over the 25 year period that the seawall has been in place (1986-2011). The wall will continue to provide protection from the adverse effects of wave action for as long as the wall is in place and functioning properly. Assuming the wall stays in place for the entire 75 year period of the design life of the proposed new residence, the site will have minimal risk for long-term adverse bluff retreat. However, assuming the wall is no longer effective at preventing

erosion, a significant amount of bluff retreat, approximately 16 feet of back yard area and building setback could be lost in the next 50 years if erosion starts to follow the general regional trends at the time the new development is built. This is a potential worst case scenario for the site, assuming that there will be no future expectations of protection from the seawall.

While the existing seawall provides protection from waves and bluff retreat, the proposed new residence has been designed and setback so that no additional seawall or other shoreline protective device will be needed to protect the development over the course of its design life.

An addendum to the geotechnical report by Coast Geotechnical dated June 22, 2011, describes the existing seawall as “having performed in the manner intended without visible deterioration and states that the wall appears to be poured in place reinforced concrete with a foundation embedded in resistant bedrock. From a geologic perspective, the wall has performed as intended and does not exhibit visible indicators normally associated with deterioration such as spalling, wear, pitting, open cracks, etc. Some rusting is evident of the exposed steel plates and bolts. The lifespan of structural concrete is based on many parameters and is dictated based on design, construction, quality control and environmental conditions of the structure. Based on an understanding of design and construction practices of the late 1980’s [when the wall was constructed] the lifespan of a reinforced concrete structure is judged to have a realistic lifespan of between 75 and 100 years.”

### Bluff Setbacks

In this area, the Commission typically requires that principal structures and major accessory structures such as guesthouses and pools be setback at least twenty-five feet from the bluff edge and that accessory structures that do not require structural foundations such as decks, patios and walkways to be sited at least ten feet from the bluff edge. The purpose of these setbacks is to minimize the potential that the development will contribute to slope instability by limiting the encroachment of development seaward to the bluff edges and to prevent the need for construction of revetments and other engineered structures to protect new development on coastal bluffs, as per Section 30253 of the Coastal Act. If ancillary structures are threatened by erosion it is understood that they will be relocated rather than protected by structural means. Prior actions in the area (e.g. CDP No. 5-04-013-[Primm] and No. 5-04-035-[Hoff]), require such setbacks, as does the 2005 City of Newport Beach LUP update. A 2005 update to the City of Newport Beach certified LUP requires all new bluff top development located on a bluff subject to marine erosion be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. As proposed, the residence is setback 25-feet from the bluff edge and new accessory structures are sited within deck/patio stringline and more than 10 feet from the bluff edge, except for existing non-permitted, non-conforming elements beyond the bluff edge that the applicants are proposing to retain.

As complete demolition of the existing residence and redevelopment of the site is proposed, it is reasonable and prudent to require the entire development comply with Commission and City bluff setback policies. Removal of existing, unpermitted flagstone and steps on the bluff and restoration of the area to the natural grade is therefore necessary to comply with the policies of the Certified LUP and the policies of the Coastal Act. The applicant proposes and **Special Conditions 1 and 2** requires submittal of final revised plans, showing the proposed residence setback twenty-five feet from the bluff edge, all backyard ancillary improvements adhering to the 10-foot bluff edge setback, and the plans clearly marking existing unpermitted and non-conforming development beyond the bluff edge at the 30’ elevation contour line which the applicant proposes to remove and restore the natural bluff. Furthermore, **Special Condition 6** requires final plans to be consistent with all recommendations contained in the geologic engineering reports cited in this staff report.

### Protective Devices

Section 30253 of the Coastal Act requires that new permitted development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be recommended for approval and deemed consistent with Section 30253 of the Coastal Act *if* projected bluff retreat would affect the proposed development and necessitate construction of a protection device. If new development necessitates future protection, the landform and shoreline processes could continue to be altered by the presence of a protective system.

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.

If not for the information provided by the applicant that the site is safe for development without reliance on the existing seawall for bluff stability and/or maintenance/augmentation thereof and without reliance on any future shoreline or bluff protective devices, the Commission could not conclude that the proposed development will not in any way “require the construction of future protective devices that would substantially alter natural landforms along bluffs and cliffs.” The proposed new bluff-top development appears to “*assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area*” on the basis of available information and is therefore consistent with Coastal Act section 30253.

The Commission approved construction of a continuous seawall to protect this and two more adjacent downcoast existing residences in 1985 from damage caused to the bluff from storm waves. That seawall remains in place. However, the new residence has been sited and designed such that it does not rely on the existing seawall for bluff stability. The applicant’s geotechnical consultant has indicated that the site is grossly stable without reliance on the existing seawall and that while the existing seawall does provide protection from erosion forces caused by wave action that the proposed project is setback substantially from the bluff and should be safe for the life of the project (75 years). Therefore, the new proposed single-family residence will not rely on the existing seawall.

The existing seawall protects three bluff top residences along this small cove beach, the subject site at 4639 Brighton Road and two downcoast sites at 4645 Brighton Road and 4651 Brighton Road and was permitted as a single wall by a single coastal development permit. Coastal Development Permit (CDP) 5-05-196 was issued in November, 2005 for the re-development of 4651 Brighton Road. The findings in that CDP state that the new proposed new bluff top development does not rely on the existing seawall for stability or protection; however, the applicant did not propose to remove his portion of the seawall. However, as it has been stated in the geotechnical reports for both 4639 and 4651 Brighton Road that the new development on these sites does not rely on the existing seawall, it is feasible to consider measures to remove the seawall as it is no longer necessary to protect existing development. The seawall on the portion of

the subject site may not be maintained and/or augmented in order to protect the new development now being approved. The seawall may remain to protect the development for which it was approved to protect (e.g. development on the middle residence at 4645 Brighton Road).

However, **Special Condition 3** requires the applicant to agree to remove the existing shoreline protective device on the subject property, and to cooperate in the removal of shoreline protective devices on the adjacent property when and if, at a future time, the existing shoreline protective device falls into a state of disrepair and can be safely removed without jeopardizing the existing development on the adjacent parcel at 4645 Brighton Road. Further, in acknowledgment that the shoreline protective device is no longer necessary to protect the proposed development because the applicants have designed its proposal in a manner that ensures its structural safety without relying on the shoreline protective device, the applicants are strongly encouraged to remove the shoreline protective device bordering its seaward property line. Therefore, to further this goal, if the property owner at 4645 Brighton Road proposes to demolish the existing development on that parcel and redevelop that site in a manner not relying on the existing seawall on that parcel, the applicants agree, by acceptance of this permit, to collaborate with the property owner at 4645 Brighton Road, at the time he or she submits an application for a coastal development permit to redevelop the site, and consider the removal of the shoreline protective device spanning the subject parcel and the adjacent parcel at 4645 Brighton Road. The individual and/or a joint cooperative effort for the removal should occur to restore the shoreline's natural processes.

To minimize the project's potential future impact on shoreline processes, **Special Condition 3** prohibits maintenance of the existing seawall and/or augmentation of it for purposes of protecting the subject proposed new development and precludes the applicant from applying for future coastal development permits for maintenance of the existing seawall in order to protect the proposed new development. The condition also prohibits the construction of any future bluff or shoreline protective device(s) to protect the new development approved pursuant to Coastal Development Permit No. 5-11-019 including, but not limited to, the residence, foundations, patios, spa and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. **Special Condition 3** prevents the construction of new blufftop or shoreline protective devices such as revetments, seawalls, caissons, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the beach and/or bluff .

Section 30251 of the Coastal Act requires that permitted development be sited and designed to minimize the alteration of natural land forms. Development, which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, visual resources and shoreline processes. Therefore, only as conditioned does the project conform to Sections 30253 and 30251(2) of the Coastal Act.

#### Site Drainage

Regarding drainage on the site, the geotechnical report states, "Existing drainage is poorly controlled. Site development shall incorporate designed drainage and shall correct any site drainage problems." Furthermore, the report recommends, "Positive drainage should be planned for the site. The structure should utilize roof gutters and downspouts tied directly to yard drainage. Drainage shall not be directed onto or over slopes."



The applicant is proposing engineered drainage improvements consisting of a new 4" diameter perforated drain lines encased by filter fabric and gravel at the base of all raised planters and retaining walls tied to drainage system. Roof drains are also to be tied directly to drainage system. Drain lines lead directly to storm drain connection at frontage road and away from the bluff. The proposed drainage plan is included as Exhibit 3, page 4 of 6. The drainage plan was reviewed the Commission's staff geologist and deemed to be the most feasible design for the site.

#### Spa Protection Plan

The project Hardscape Plan shows how the on site roof and surface runoff will be directed away from the bluff face toward Brighton Road which will assist in preventing damage to the structural stability of the bluff. However, there is an added potential for water infiltration into the bluff due to the proposed spa and water feature on the coastal bluff side of the lot. If water from the proposed spa/water feature is not properly controlled there is a potential for slope failure due to the infiltration of water into the bluff slope. The potential for water infiltration into the slope should be minimized. This can be achieved by various methods, including having the proposed spa double lined and installing a leak detection system to prevent the infiltration of water into the slope due to possible leaks. Prior to permit issuance, a spa protection plan incorporating mitigation measures (i.e., a double lined spa, spa overflow drain pipe connected to the on-site drain system and leak detection system) for potential geologic instability caused by leakage from the proposed spa must be submitted for review and approval by the Executive Director. Therefore, the Commission imposes **Special Condition 7**, requiring submittal of a spa protection plan.

#### Future Development

The proposed 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 at the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability of the coastal bluff, the Commission imposes **Special Condition 4**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-11-019) or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping, fencing and maintenance/augmentation to and removal of existing shoreline protective devices.

#### 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 10** requiring that the property owner record a deed restriction against the property so as to notify all prospective future property owners of the terms and conditions of approval to which they will also be required to adhere. It thus ensures that future owners of the property will be informed of the conditions as well as of the risks and the Commission's immunity for liability. As conditioned, the project is required to provide an appropriate set-back from the bluff edge; prohibit maintenance and/or augmentation of the existings seawall to protect the proposed development and/or construction of new protective devices (such as blufftop or shoreline protective devices) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Only as conditioned, does the Commission find that the development conforms to the requirements of Section 30251 and Section 30253 of the Coastal Act regarding the siting of development in a hazardous location.

**C. Marine and Land Resources**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

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

City of Newport Beach Land Use Plan Policies:

*Policy 4.4.3-13. Require new development adjacent to the edge of coastal bluffs to incorporate drainage improvements, irrigation systems, and/or native or drought tolerant vegetation into the design to minimize coastal bluff recession.*

*Policy 4.4.3-15. Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.*

**Bluff Habitat**

The City of Newport Beach Certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation on coastal bluffs. Coastal bluffs act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of coastal bluffs. As such, the quality of bluff habitat must be assessed on a site-by-site basis.

The coastal bluff on the subject site is considered degraded due to the presence of ornamental, non-native plant species. No portion of the applicant's site contains resources that rise to the level of ESHA. The applicant does not propose any vegetation removal or landscaping of the bluff face. Landscaping is proposed on the bluff top.

To decrease the potential for coastal bluff instability, deep-rooted, low water use, plants, preferably native to coastal Orange County 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 soils. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. Reducing the amount of irrigation water used can address both geologic stability issues as well as water quality/dry-weather urban runoff issues. Therefore, 'drought tolerant' or 'low to ultra low water use' plants should only be used with no permanent in-ground irrigation system installed on the bluff side of the lot, only temporary above ground irrigation to establish plantings. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Additionally, since the proposed development is adjacent to a coastal bluff where the protection and enhancement of habitat values is sought, the placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org>) and California Native Plant Society ([www.CNPS.org/](http://www.CNPS.org/)) in their publications. The Commission typically requires that applicants utilize native plant species, particularly along coastal bluffs. In the areas on the coastal bluff side of the lot, landscaping should consist of plant species native to coastal Orange County only. Elsewhere on the site, while the use of native plants is still encouraged, non-native plant species that are drought-tolerant and non-invasive may be used.

The applicant has submitted a planting plan (Exhibit 3, page 5 of 6) for proposed improvements on the bluff top demonstrating a mix of "low water use" trees and plants such as Argentine Mesquite, Pineapple Guava, Juniper, Agave, Salvia, and Rosemary and "medium/high water use" trees and plants such as Monterey Cypress, Weeping Fig, Papyrus, Wax-Leaf Privet and Indian Laurel. Therefore, the Commission imposes **Special Condition 2**, requiring a revised Landscaping Plan, to consist of all native, non-invasive and low-water use plants on the bluff side of the lot and use of low-water use and either native or non-native plants on the rest of the site. The applicant is not proposing any vegetation removal or re-landscaping of the existing non-native vegetation on the bluff, however, **Special Condition 2** also requires the applicant to revegetate the restored bluff grades after the proposed removal of the existing non-conforming and unpermitted development seaward of the bluff edge.

Project Impacts on Water Quality

The protection of water quality is an important aspect of the Coastal Act. Water from the project site will flow into the City's storm drain system ultimately draining to the Pacific Ocean. Beach closures occurring throughout Orange County, are typically attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

During construction, the applicant will be required to implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the storm drain system leading to the ocean **Special Condition 8**. Permanent drainage control measures are essential in order to decrease irrigation or rain runoff from flowing over the canyon slope. After construction, roof and surface runoff from new impervious areas will be directed to a new underground drainage system and away from the coastal bluff. **Special Condition 1** requires submittal of final plans including final drainage plans.

Therefore, only as conditioned does the Commission find that the proposed project conforms to Sections 30230, 30231, 30240 of the Coastal Act and the City's Certified LUP Policies.

#### **D. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without benefit of the required coastal development permit, including grading beyond the bluff edge for the installation of steps leading down the bluff to a graded and graveled level pad and a 2-foot wide pathway leading to a gate accessing the existing public walkway seaward of the bluff edge at the southwestern property line. All work occurred on the bluff face or within 50 feet of the edge of a coastal bluff. Consequently, even though considered to be improvements normally associated with a single-family residence, due to the proximity to the coastal bluff, the work that was undertaken constitutes development that requires a coastal development permit.

The applicant indicated that the bluff steps and graded pad were constructed by a previous owner. According to the grant deed, the property was purchased by the applicant in May 2010. Aerial photographs from the California Coastal Records Project of the site taken September 2008 show a thickly vegetated undisturbed bluff top with no development on the bluff face. Aerial photographs from the California Coastal Records Project of the site taken September 2010, some months after purchase by the applicant show a distinct change to the bluff in the area that is currently a graded seating area (Exhibit #5). It appears that vegetation along the bluff top and bluff face was removed and the site was undergoing development seaward of the bluff edge. At this time, staff does not have access to the site or current site photographs of the bluff, however, a graded seating area seaward of the coastal bluff is clearly depicted on the submitted site plan. The applicant is proposing to remove all non-conforming, unpermitted development seaward of the bluff edge, restore the bluff to original grade and re-vegetate.

**Special Conditions 1 and 2** require revised project and landscaping plans showing the existing steps down the bluff and graded sitting area circled and clearly marked *"this element proposed to be removed and area restored to pre-existing conditions."* Similarly, a graded 2-foot wide path within 10-feet of the bluff edge which extends seaward of the bluff edge as identified at the 30' elevation contour line along the north property line is also required to be circled and clearly marked *"this element proposed to be removed and area restored to pre-existing conditions."* The final revised project plans must also be in substantial conformance with the plans submitted for Commission review and clearly show a 25-foot setback for the primary structure and a minimum

10-foot bluff setback for proposed bluff-side ancillary development (i.e., steps, walkways, patios and spa).

Additionally, to ensure that the unpermitted development components of this application are resolved in a timely manner, **Special Condition 9** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The unauthorized development proposed for removal must then be removed within 90 days of issuance of the coastal development permit, and revegetation of the area must occur within 90 days of removal of the development. The Executive Director may grant additional time for good cause.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified Newport Beach LUP was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

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

Section 30212(a)(2) of the Coastal Act states, in pertinent part:

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

The proposed project is located within the “Cameo Shores” community located between the sea and the first public road paralleling the sea. There is no locked gate at the community entrance. Public access through the streets of this community does currently exist. However, the vertical walkway/accessway from the street (Brighton Road) to the cove beach at this site is gated and locked, thereby providing beach access only to residents of the community (members of the homeowners association). Yet, there is an existing lateral public access easement which has been accepted by the City of Newport Beach along this entire cove beach which spans in front of 4639, 4645 and 4651 Brighton Road as conditioned by CDP 5-85-679(Linden and Hubbard) and CDP 5-86-075(Tarantello) up to the mean high tide.

The nearest public access to the beach is located approximately one mile downcoast at Crystal Cove State Beach (Exhibit #4). The proposed development on an existing residential lot, will not affect the existing public access conditions.

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. LOCAL COASTAL PROGRAM**

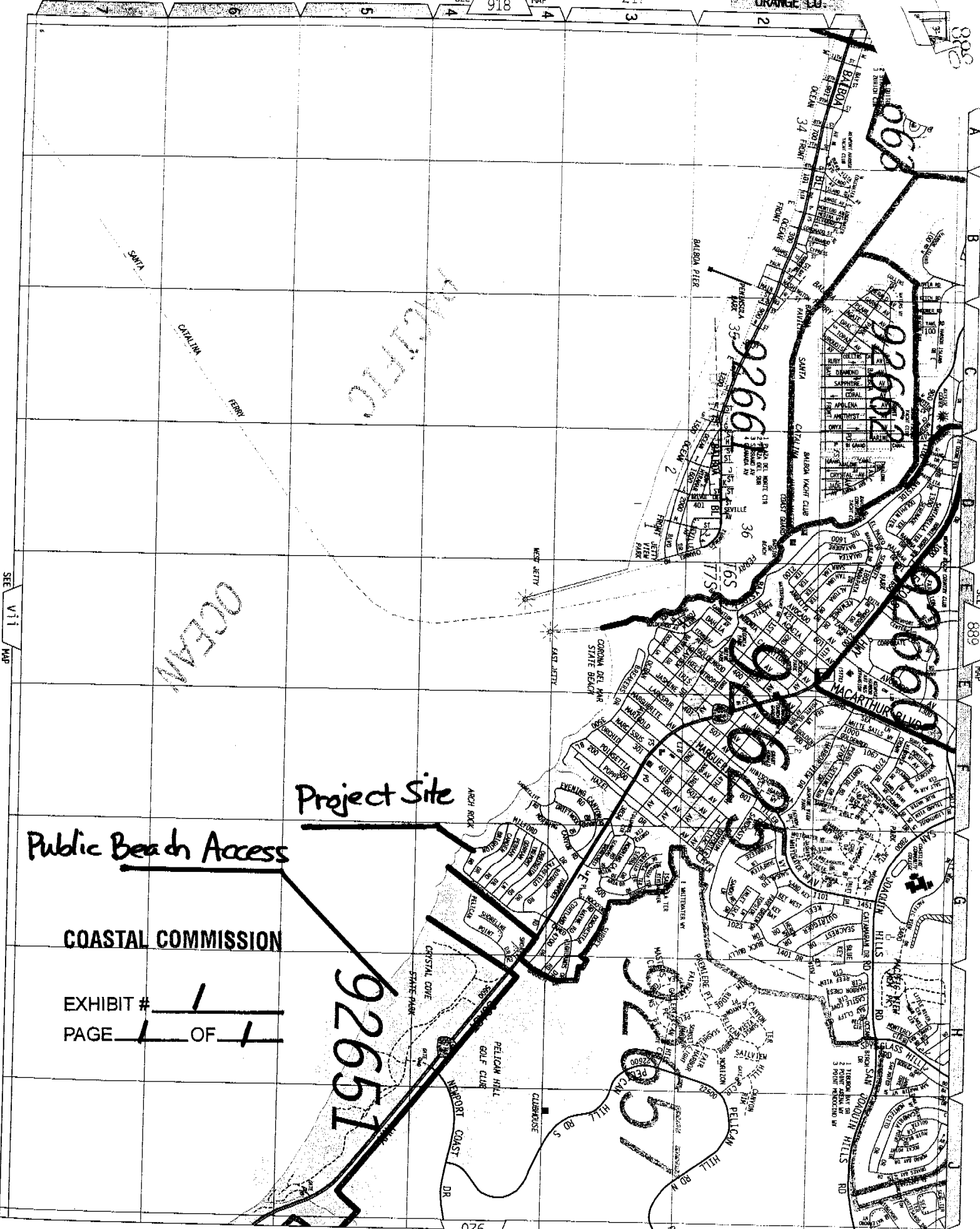
Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005 and in October 2009. As conditioned, the portion of the proposed development which is being approved is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The City of Newport Beach is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA as a Class 3-A (construction of single-family residence). As such, the project is exempt for CEQA’s requirements regarding consideration of mitigation measures and alternatives. The Commission, however, has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding geologic hazards. These special conditions require: 1) submittal of revised final plans; 2) submittal of revised final landscaping plans; 3) no maintenance and/or augmentation of the existing shoreline protective device (for purposes of protecting the development subject to this permit), no new future bluff or shoreline protective devices and future removal of seawall; 4) future development; 5) assumption of risk; 6) conformance with geotechnical recommendations; 7) spa protection plan; 8) construction best management practices, 9) condition compliance; and 10) a deed restriction against the property referencing all of the Special Conditions contained in this staff report.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with the requirements of the Coastal Act and CEQA.



Project Site

Public Beach Access

COASTAL COMMISSION

EXHIBIT # 1 OF 1  
PAGE 1 OF 1

92651



# Advanced Listing Services

Ownership Listings & Radius Maps

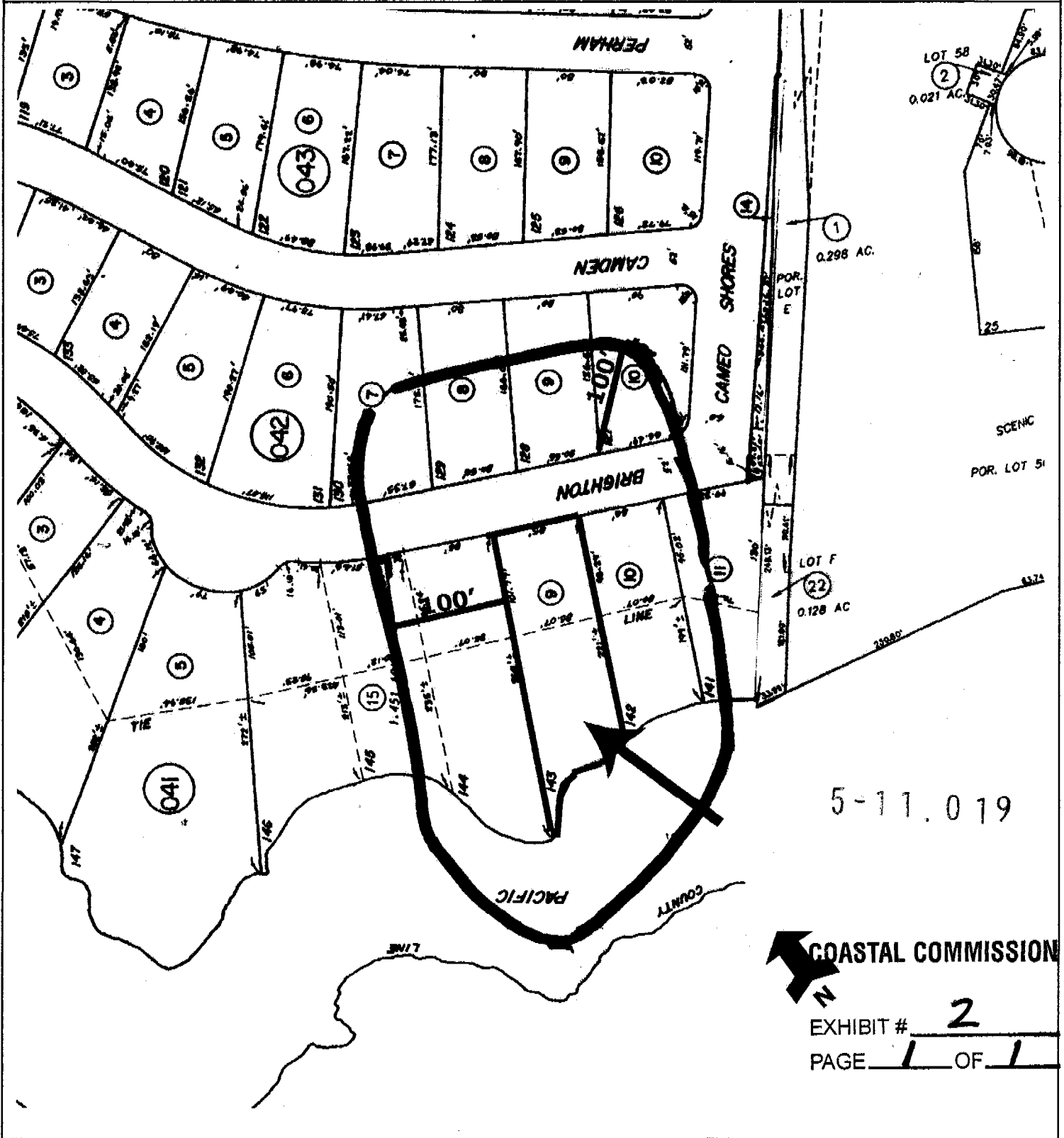
P.O. Box 2593 • Dana Point, CA • 92624

Office: (949) 361-3921 • Fax: (949) 361-3923

www.Advancedlisting.com

Subject APN: 475-041-09  
100' Radius

Address: 4639 Brighton Rd  
Corona Del Mar Ca 92625



 COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1





Charles E. Light - Architect

1450 S. Main Street, 101  
Newport Beach, CA 92660  
P: (949) 435-8135  
F: (949) 435-1116

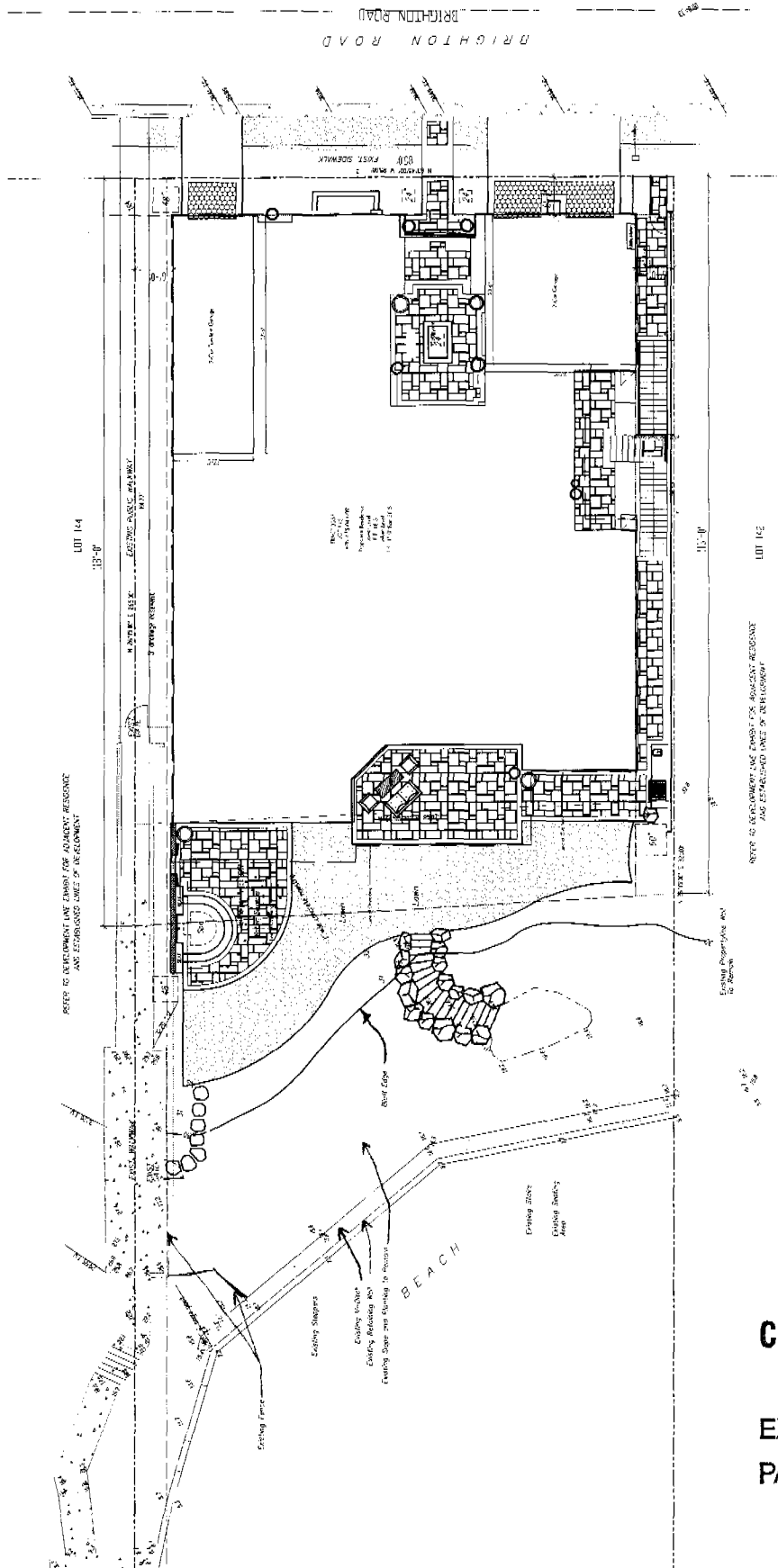
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Hogan Residence  
4639 Brighton Road  
Newport Beach • California • 92625

Site Plan

Job Number: 1005  
Scale: 1/4" = 1'-0"  
Date: 5-11  
DCD Number: 5-11  
Coastal Permit No: 5-311

SP1



REFER TO SUBMITTALS AND RECORDS FOR ADJACENT RESIDENCE AND ESTABLISHED LINES OF DEMARCATION

EXISTING OBSERVATION WELL BY ADJACENT RESIDENCE

COASTAL COMMISSION

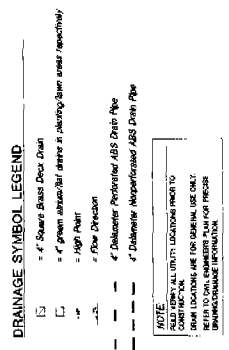
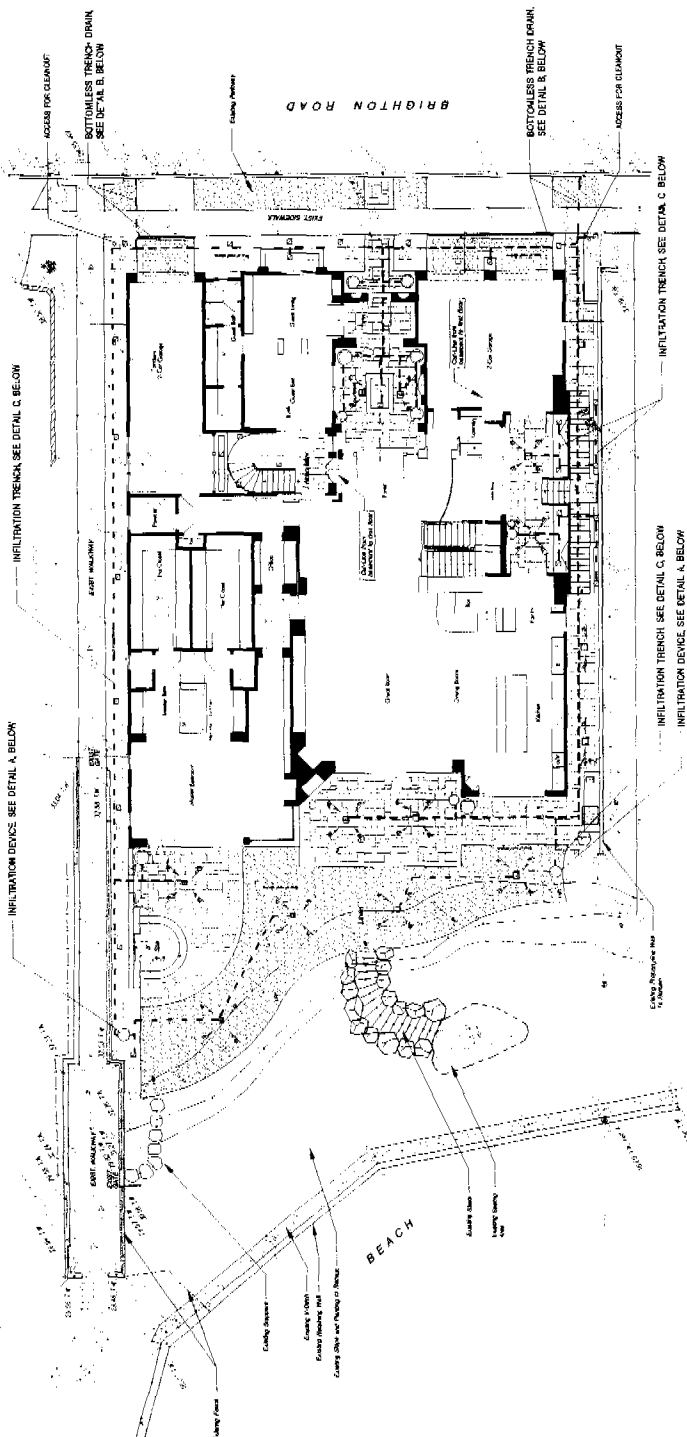
EXHIBIT # 3  
PAGE 1 OF 6



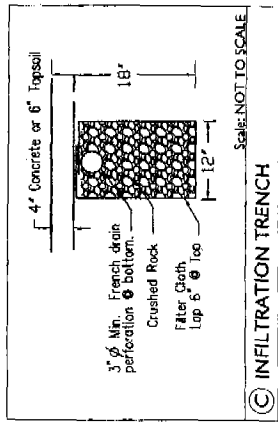
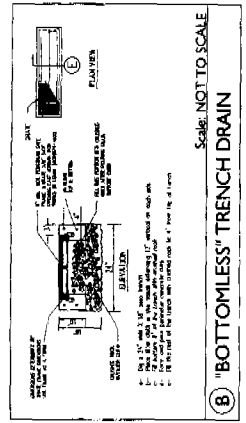
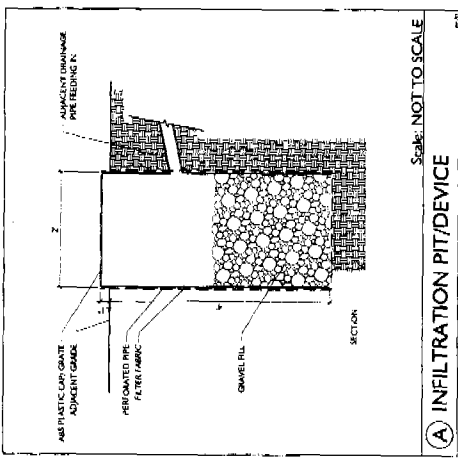




Scale	1/4" = 1'-0"
Date	March 15, 2018
Drawn by	LS
Checked by	LS
Project No.	5470017
Client	LS



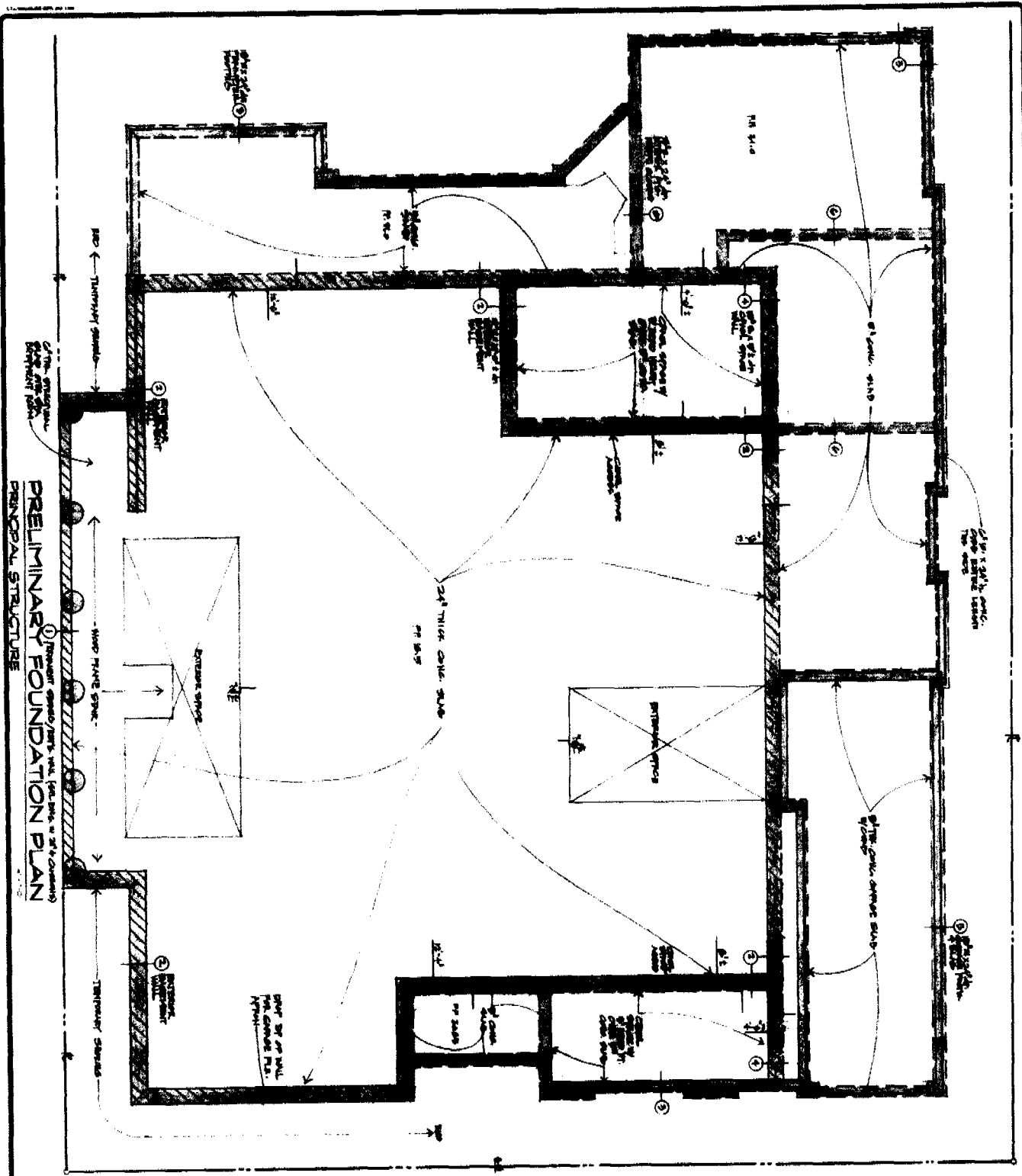
- GENERAL LANDSCAPE GRADING NOTES:**
1. THE CONTRACTOR SHALL SLOPE ALL FINISH SURFACE ON GRADE A MINIMUM OF ONE (1) PERCENT.
  2. THE CONTRACTOR SHALL SLOPE ALL PLANTING AREAS A MINIMUM OF TWO (2) PERCENT TO NEAR DRAINING.
  3. FINISH GRADE IN PLANTING AREAS SHALL BE ONE (1) INCH BELOW ADJACENT FINISH SURFACE UNLESS OTHERWISE NOTED.
  4. THE FINAL LOCATION OF DRAINAGE AND DRAIN INLETS SHALL NOT INTERFERE WITH FUTURE LOCATIONS OF TREES, PALMS AND SHRUBS.
  5. REFER TO THE PROJECT CIVIL ENGINEERS PLANS FOR ALL GROUND LEVEL PROJECT GRADING.
  6. ALL FINISH SURFACES AT BUILDING ENTIREMENTS SHALL SLOPE AWAY FROM STRUCTURE.
  7. PRIOR TO CONSTRUCTION, CONTRACTOR SHALL VERIFY ALL UTILITY LOCATIONS, EXISTING DRAINAGE STRUCTURES, STREET IMPROVEMENTS AND FINISH FLOOR ELEVATIONS.
  8. NOTIFY THE LANDSCAPE ARCHITECT IMMEDIATELY UPON ANY DISCREPANCIES.



**COASTAL COMMISSION**

EXHIBIT # 3  
 PAGE 4 OF 6



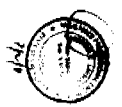


**PRELIMINARY FOUNDATION PLAN**  
PRINCIPAL STRUCTURE

**COASTAL COMMISSION**

EXHIBIT # 3  
PAGE 6 OF 6

- 1. FOUNDATION PLAN
- 2. FOUNDATION PLAN
- 3. FOUNDATION PLAN
- 4. FOUNDATION PLAN
- 5. FOUNDATION PLAN
- 6. FOUNDATION PLAN
- 7. FOUNDATION PLAN
- 8. FOUNDATION PLAN
- 9. FOUNDATION PLAN
- 10. FOUNDATION PLAN



S-1	DATE	
	SCALE	
PROJECT	HOGAN RESIDENCE	
DESIGNER	HAROLD LARSON	
CHECKER		
APPROVER		

**PRELIMINARY FOUNDATION PLAN**

**HOGAN RESIDENCE**

4539 BRIGHTON ROAD  
NEWPORT BEACH, CALIFORNIA

harold larsen structural design  
1437 garnette laguna beach, california 92651  
949 487 8203 fax 949 487 4871

NO.	REVISION





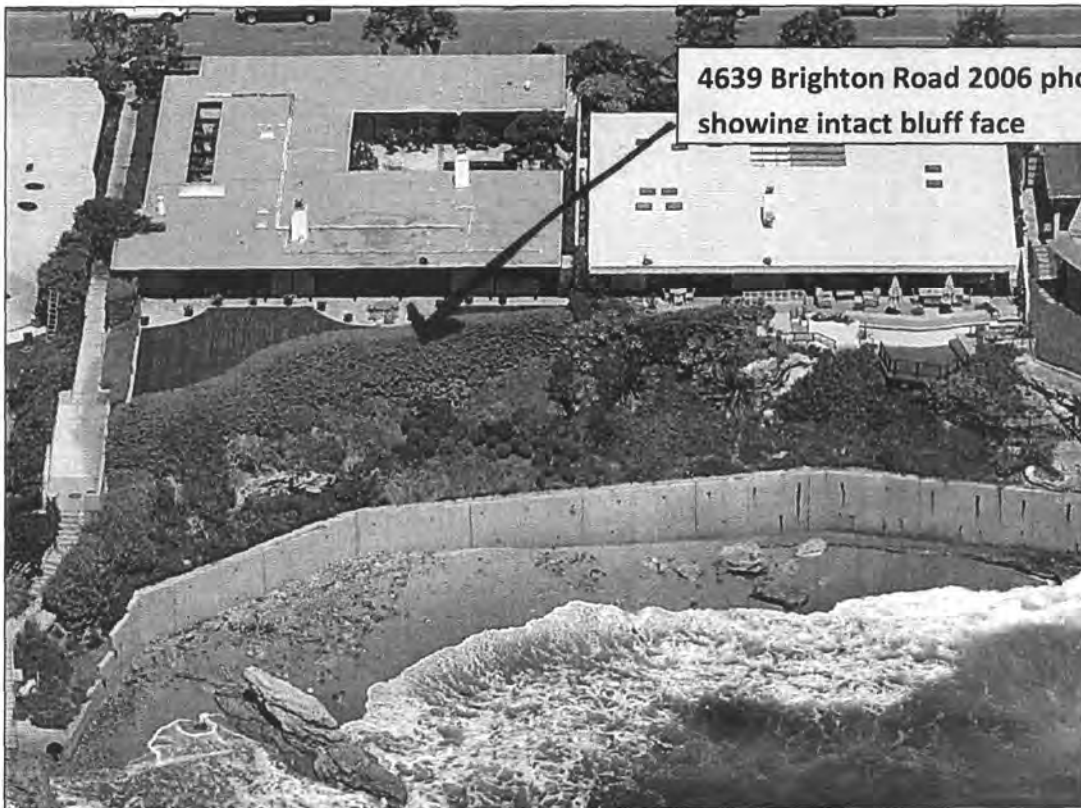
**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 2





4639 Brighton Road 2010 photograph showing grading of the bluff face



4639 Brighton Road 2006 photograph showing intact bluff face

COASTAL COMMISSION

EXHIBIT # 5  
PAGE 2 OF 2

# COASTAL COMMISSION

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 590-5071

EXHIBIT # 6

PAGE 1 OF 18

5-85-679 PG:wr



December 19, 1986

## COASTAL DEVELOPMENT PERMIT

No. 5-85-679

Page 1 of 3

On January 8, 1986 the California Coastal Commission granted to Milton Linden this permit for the development described below, subject to the attached Standard and Special conditions.

Description: Construction of a maximum of 6' 0" high concrete seawall across two adjacent lots.

Site: 4639 Brighton Road, Corona del Mar  
4645 Brighton Road, Corona del Mar

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
Executive Director

By: Ravener  
Title: Staff Analyst

### ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

Application No. 5-85-679

EXHIBIT # 6  
PAGE 2 OF 18

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

SPECIAL CONDITIONS:

See attached

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See Attachment X.

III. SPECIAL CONDITION:

1. Lateral Access.

Prior to transmittal of the permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the vertical face of the seawall.

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description.

The application is to construct a maximum of 6' 0" high seawall across two bluff lots in the Camio Shores area. One single family residence exists on each lot. The new seawall will connect the existing gabions at the southerly end of the project.

# FILE COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, Governor

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 590-5071

## COASTAL COMMISSION



EXHIBIT # 6 FILED: 9/27/85  
PAGE 4 OF 18 49th DAY: 11/15/85  
180th DAY: 4/3/86  
STAFF: PA P.Gupta:do  
STAFF REPORT: 12/19/85  
HEARING DATE: 1/7-10/85

### REGULAR CALENDAR

#### STAFF REPORT AND RECOMMENDATION

Application No. 5-85-679

Applicant: Milton Linden Agent: Westland Associates  
4639 Brighton Road Trust  
Corona del Mar, CA  
  
R. D. & Joan Hubbard  
4645 Brighton Road  
Corona del Mar, CA

Description: Construction of a maximum of 6' 0" high concrete seawall across two adjacent lots.

Lot Area: 33,280 square feet

Site: 4639 Brighton Road, Corona del Mar  
4645 Brighton Road, Corona del Mar

#### SUMMARY:

Staff recommends approval with a lateral access easement condition.

#### Substantive File Documents:

1. The effectively certified Land Use Plan of the City of Newport Beach.

#### STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

- I. Approval with Condition.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS: See Attachment X.

III. SPECIAL CONDITION:

1. Lateral Access.

Prior to transmittal of the permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the vertical face of the seawall.

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description.

The application is to construct a maximum of 6' 0" high seawall across two bluff lots in the Camio Shores area. One single family residence exists on each lot. The new seawall will connect the existing gabions at the southerly end of the project.

EXHIBIT #

6

PAGE

6

OF

18

B. Local Coastal Program.

The City of Newport Beach Land Use Plan (LUP) received final certification from the Commission in May of 1982. The City's certified LUP designates the project site as low density residential. The proposed retaining wall on the project site is designed to protect an existing single family residence and rear yard and is therefore consistent with the City's Land Use designation.

In addition to the Land Use designation contained in the City's certified Land Use Plan, the City's LUP includes the following public access policies relevant to the project:

4. Public access in coastal areas shall be maximized consistent with the protection of natural resources, public safety, and private property rights.
5. Lateral access shall be provided in new development by means of dedication of easements for public access along the beach and bay shoreline except where adequate access already exists or where the provision of access is inconsistent with public safety or the protection of fragile coastal resources. This provision shall be required except in the following cases: repair and maintenance activities or replacement of structures destroyed by natural disaster. In addition, improvements to any structure or demolition and reconstruction of single-family residences would be exempt from lateral access easements requirements unless floor areas, height and bulk is increased by more than 10% or such improvements interfere with currently existing public views, block a public accessway, or cause further encroachment of the structure seaward or toward the edge of the bluff (PRC 30212). Specifically, easements would be required: (1) Seaward of the toe of existing bluffs, or vegetation lines where new development is proposed on existing developed or undeveloped lots, and (2) Seaward of proposed new seawalls or other shoreline protective devices (consistent with Administrative Regulations Section 13242, California Coastal Commission Regulations, Title 14, California Administrative Code regarding repair and maintenance of seawalls).
6. Vertical access from the nearest public roadway to the shoreline shall be provided in new development by means of dedication of easements except where adequate access exists nearby or where provision of access is inconsistent with public safety or the protection of fragile coastal resources. Protection of fragile coastal resources means that said resources shall not be degraded either from the development of accessways themselves or from increased use of specific shoreline areas. Criteria used to evaluate the need for additional accessways and the adequacy of existing accessways include consideration of locations for accessways in areas which would be most heavily used in light of their proximity to major concentrations of users, while

considering the need to provide accessways at frequent intervals to avoid overuse at individual locations. Of equal importance is the need to avoid impacts to fragile coastal resources (bluffs, tidepools, etc.) and to utilize areas where support facilities can accommodate the accessway (available parking). Also, criteria include consideration of sites where the least amount of improvement would be required to make the access point useable, and accessways to remote sites (pocket beaches) where alternative access along the shoreline would not be available.

7. Policies 4, 5, and 6 shall be implemented in such a way that it takes into account the need to regulate the time, place, and manner of public access, depending upon such circumstances as:
  - a) The capacity of the site to sustain use and at what intensity.
  - b) The fragile resources of the area.
  - c) The proximity to adjacent residential uses.
  - d) The security of the upland and adjacent water uses.
  - e) The need to provide for the collection of litter.

The project is located in Camio Shores, a private community on a coastal bluff with a small cove and beach. The public access does not exist to and along the coast at this cove. A 10-foot wide private community association vertical access exists along the westerly property boundary of the Linden residence and 5-foot of the access is on the applicant's property. However, an access easement has been given for exclusive use by the members of the association; therefore, the applicant is unable to provide use of the same accessway by the public.

The project does not provide any lateral access along the cove; therefore, the Commission finds that the project, as proposed, is inconsistent with the referenced policies of the LUP. However, the Commission further finds that the project as conditioned to provide vertical access along the coast, is consistent with the referenced policies of the LUP.

#### C. Standard of Review.

The City of Newport Beach Land Use Plan (LUP) received final certification from the Commission in May of 1982. Certification of the City's Land Use Plan was a major step toward completion of the City's Local Coastal Program (LCP). The City is now in the process of preparing the zoning and implementation phase of its LCP. After full certification of the City's Local Coastal Program, the City will be the primary agency responsible for the issuance of coastal permits. Also, after certification of the City's LCP, the Coastal Commission will be



EXHIBIT # 6  
PAGE 8 OF 18

responsible for the review of appeals and the issuance of coastal permits only in areas of original jurisdiction (i.e., tidelands, submerged lands and public trust lands).

The Coastal Act in Section 30604(a) states, in part:

Section 30604.

(a) 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).

Therefore, while the Commission considers all relevant policies and Land Use designations contained in the City's certified Land Use Plan, until final certification of the City's Local Coastal Program, the standard of review will continue to be the policies of Chapter 3 of the Coastal Act.

D. Shoreline Structures.

The Coastal Act in Section 30235 states:

Section 30235.

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

The project consists of construction of a seawall designed to protect the existing single family residences and rear yard area from erosion due to tidal action and storm surf. The Commission therefore finds that the project as proposed, is consistent with Section 30235 of the Coastal Act.

E. Public Access.

The Coastal Act contains strong policy provisions in Sections 30210 and 30212, requiring public access to and along the shore in new development projects. However, the requirement for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes...and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted, shall be provided subject to certain conditions.

Section 30210

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

Section 30212 of the Coastal Act contains policy provisions regarding the location and type of public access to be provided:

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(4) The reconstruction or repair of any seawall, provided, however, that the reconstructed or repair seawall is not seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the Commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the Commission determines that the activity will have an adverse impact on lateral public access along the beach.

**COASTAL COMMISSION**

(c) Nothing in this division shall restrict public access nor shall be excuse the performance of duties and responsibilities of public agencies which are required by Section 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

EXHIBIT # 6  
PAGE 10 OF 18

In addition to the above provisions of the Coastal Act, Section 30214 (a) addresses the time, place and manner of public access. Section 30214(a) states:

**Section 30214**

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

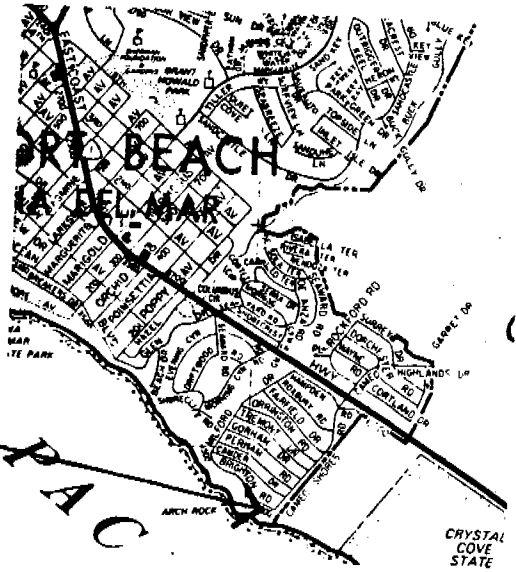
Additionally, the Legislature has expressed its intent that the Commission balance the rights of the individual property owner with the public's constitutional right of access to the coast. Section 30214(b) states:

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Thus, under the policies of the Coastal Act, where the Commission determines that shoreline projects constitute new development, access is required. The Legislature has determined that certain categories of development are not "new development" for application of the access policy contained in Section 30212. These exceptions are listed in Section 30212 of the Coastal Act and include "the reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not seaward of the location of the former structure." The applicants' projects involve construction of a new seawall. The beach coverage by the proposed developments constitute an increase in use of the subject parcels and warrant a determination by the Commission that they are "new development" pursuant to Section 30212 (b) of the Act. The Commission finds that the proposed development is "new development" which generates burdens on public access opportunities. The Commission further finds that the project as conditioned to provide lateral public access is consistent with the referenced policies of the Coastal Act.

COASTAL COMMISSION

EXHIBIT # 6  
PAGE 12 OF 18



PROJECT LOCATION

PACIFIC

EXISTING VERTICAL COMMUNITY ACCESS

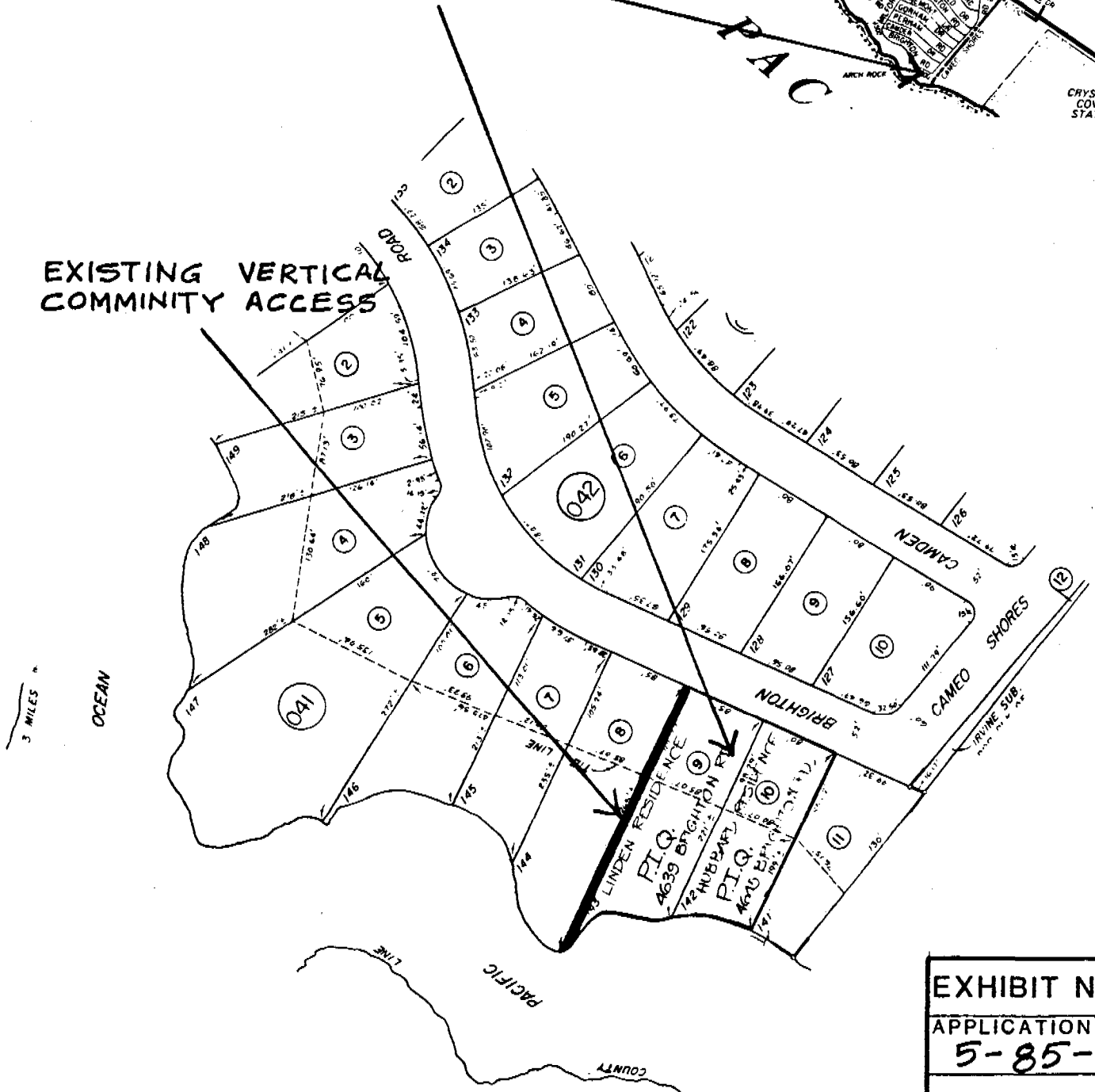


EXHIBIT NO. 1  
APPLICATION NO.  
**5-85-679**

To: Permit Applicants  
From: California Coastal Commission  
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

# Memorandum

COASTAL COMMISSION

January 2, 1986

FILE COPY

EXHIBIT # 6

PAGE 14 OF 18

**TO:** Commissioners and Interested Persons  
**FROM:** South Coast District Office *C.C.*  
**SUBJECT:** Commission Hearing of January 8, 1986  
5-85-679 (Linden & Hubbard) - Item 6c

The Commission staff recommendation for this item should be corrected as follows:

Page 2, III Special Conditions should be amended to add the following condition:

*2b.* State Lands Commission Review.

Prior to transmittal of permit, the applicant shall obtain written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands are involved in the development and all permits required by the State Land Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 390-5071

PG:wr



Date: 11/19/86  
Permit No. 5-86-075

PERMIT AUTHORIZATION

Mr. R. and Mrs. D.L. Tarantello  
4651 Brighton Road  
Corona Del Mar, Ca. 92625

## COASTAL COMMISSION

EXHIBIT # 6  
PAGE 15 OF 18

Dear Applicant:

Please be advised that you are hereby authorized to proceed with development of your project, permit number 5-86-075, which was reported to the Commission on March 13, 1986. Development of your project is subject to compliance with all terms and conditions specified in the Administrative Permit which was sent to you on March 7, 1986.

Should you have any questions please contact our office.

PETER DOUGLAS  
Executive Director

by: [Signature]  
Title: Staff Analyst



## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
 745 WEST BROADWAY, SUITE 380  
 NEWPORT BEACH, CA 90802  
 (310) 590-5071

Page 1 of 1  
 Date: February 21, 1986  
 Permit Application No. 5-86-75 PG 11



COASTAL COMMISSION

ADMINISTRATIVE PERMITEXHIBIT # 6PAGE 16 OF 18

APPLICANT: Mr. &amp; Mrs. D.L. Tarantello

PROJECT DESCRIPTION: Construction of a new 6' high concrete seawall across a lot in Camio Shore area to protect the existing residence and the rearyard area.

PROJECT LOCATION: 4651 Brighton Road, Newport Beach.

## EXECUTIVE DIRECTOR'S DETERMINATION:

Pursuant to PRC Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, 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, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

Additional reasons for this determination, and for any special conditions, may be discussed on the reverse (Page 2).

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

Thursday, March 13, 1986 9:00 a.m.

Ramada Hotel Airport/North 6333 Bristol Parkway, Culver City, Ca. 90230

IMPORTANT - Before you may proceed with development the following must occur:

For this permit to become effective you must sign Page 2 of the enclosed duplicate acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development.

PETER DOUGLAS  
 Executive Director

by: [Signature]  
 Title: Staff Analyst

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 acceptance of the terms and conditions, is returned to the Commission office. EXHIBIT # 6  
PAGE 17 OF 18
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

This project is an extension of a seawall approved by the Commission (5-85-679) with a similar lateral access condition. The applicant agrees with the condition. This project basically follow the same contour line and does not encroach onto the beach. The Executive Director therefore determines that the project, as condition to provide irrevocably offer to dedicate lateral access easement, in consistent with chapter 3 of the Coastal Act.

SPECIAL CONDITIONS:

See attached

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date of Signing

COASTAL COMMISSION

SPECIAL CONDITIONS

EXHIBIT # 6  
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1. Lateral Access.

Prior to transmittal of the permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line to the vertical face of the seawall.

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

After you have signed and returned the duplicate copy of this Administrative Permit, you will be receiving the legal forms to complete (with instructions) from our San Francisco office. When you receive the documents, if you have any questions, please call Debbie Benrubi at (415) 543-8555.