

January 7, 2013

**RECEIVED**  
South Coast Region

JAN 8 2013

California Coastal Commission  
South Coast District  
200 OceanGate, 10th Floor  
Long Beach, California 90802-4416

CALIFORNIA  
COASTAL COMMISSION

attention: John Del arroy  
Coastal Program analyst at  
South Coast District Office  
Permit number 5-88-784-A3

Dear Sir:

We recommend that Vista Pacifica Inc. engage  
the services of a licensed firm to  
establish the property line of their  
Property prior to the construction of a  
new fence.

We are residents of Sunset Shores  
Homeowners directly next to their  
property. We do not want to have their  
fence cross our property line.

Very truly yours

*Kenneth J. Muller*

Low A Muller

410 "M" CORTO LANE

SACLEMENTE, CA 92672

- 949-492-8449

**CALIFORNIA COASTAL COMMISSION**

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



January 8, 2013

**ADDENDUM**

**TO:** COMMISSIONERS AND INTERESTED PERSONS

**FROM:** SOUTH COAST DISTRICT STAFF

**SUBJECT:** ADDENDUM TO **ITEM F10A**, COASTAL DEVELOPMENT PERMIT AMENDMENT APPLICATION 5-88-784-A3, FOR THE COMMISSION MEETING OF JANUARY 9-11, 2013

**I. CHANGES TO THE STAFF REPORT:**

Additions are marked in **bold underline text**. Deletions are marked in ~~strike-through text~~.

**A. Letter of Opposition.**

On 1/7/2013 Commission staff received a letter of opposition (attached to this addendum) from Jeff Huston and Doris Patterson, owners of units on the subject site. The letter raises the following issues:

- 1) Paths on the site were not intended for use by the public, and not required by the Deed Restriction.

In response to this comment, Staff recommends the Commission insert the following into the findings as the second to last paragraph of page 13:

...surrounding the entrance to the pathway, the location of the pathway in regards to a public viewing easement, and issues regarding protection of the public access on the site.

**In its approval of CDP number 5-88-784, the Commission found that there was substantial evidence supporting a finding of existing prescriptive rights of public access to the site which could be protected through the creation of easements for a public viewing area and a vertical access stairway. Therefore, the Commission imposed Special Conditions 1 and 2 of the original permit which required the applicant to offer an easement for public viewing purposes to and along the bluff edge and required the applicant to offer to dedicate an easement providing vertical access to the shoreline. The Commission's action on the original permit, finding that substantial evidence supported the public access and recreation conditions, is final and no one challenged its final decision in court. As such, the prior permit is valid and the conditions imposed under that permit cannot be challenged under this permit amendment application. The applicant is now proposing to bring the existing**

development approved under the original permit into compliance with the public access and recreation conditions imposed under the original permit. As described above, the residential structure was completed in 2001, at which time it also appears that the accessway to the beach was constructed and opened for public access, and a pathway to and along the bluff edge for a viewpoint was constructed. However, the pathway to the bluff edge was also fenced and gated at its entrance point, all of which had not been permitted by the Commission. The applicant has proposed the removal of the unpermitted existing gate/fence and the installation of a new gate/fence. As mentioned previously, gates and fences have potential negative effects to public access. In order to offset these potential negative effects, the applicant has proposed to improve public access by maintaining the continued use of the access paths on the site, improving landscaping on the site, extending the blufftop viewing path, and creating two new blufftop viewing areas.

2) The proposed project does not protect rights of private property owners, as required by Coastal Act Section 30210 and 30214.

In response to this comment, Staff recommends the Commission insert the following into the findings as the second to last paragraph of page 15 of the staff report:

...Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and obligations imposed on the use and enjoyment of the land.

Prior to the approval of CDP number 5-88-784, a prescriptive rights survey showed that the site was unfenced and was historically used for viewing the coastline from the blufftop, and for beach access via a trail leading down the bluff. To protect public access on the site, the Commission required both a viewing area along the bluff edge and a vertical public accessway (to be accessible during “typical daylight hours”), to be recorded against the property. The proposed project, as conditioned, would protect the rights of the public to access the site while maintaining residential use of the subject property. While the opponents couch their opposition under the language of Sections 30210 and 30214 of the Coastal Act, the predominant tone of the opposition letter seems to stem from allegedly not receiving adequate notice from the sellers of their units, when they bought their units, of the required access and recreation conditions on the property under the terms of the original CDP. The original CDP established the public access and recreation requirements as a condition for development of the condo units. As mentioned above, the Commission action on the original permit is final and the opponents cannot now claim that the original conditions requiring public access are now inconsistent with sections 30210 and 30214 of the Coastal Act, twenty-four years after that final action on CDP number 5-88-784.

3) The proposed project would require extensive grading along the bluff and rerouting of existing drainage. Project should be postponed until detailed engineering plans have been prepared.

In response to this comment, Staff recommends the Commission insert the following into the findings as the first paragraph of Section D, Hazards, on page 16 of the staff report.

*...Air Resources Board as to each particular development.*

**The proposed project does not include any grading. Should grading be proposed for the site, a new permit would be required pursuant to Special Condition 3 of the original permit which requires a Coastal Development Permit for new development on the site, including grading. Coastal Act Section 30253 requires that stability and structural integrity be maintained. To ensure that the proposed blufftop construction of an extension of a pathway does not result in geologic instability, the Commission imposes Special Condition 12, which requires the final revised plans to be reviewed and approved by a licensed landscape architect and geotechnical engineer.**

Modify the first and second sentences of Special Condition 12 as follows

12. **Final revised plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT , the applicant shall submit for the review and approval of the Executive Director a set of final revised project plans **which have been reviewed and approved by a licensed landscape architect and geotechnical engineer. The plans shall be** in substantial conformance with the plans received in the Commission's office on...

4) The project should be postponed until approval of Environmental Impact Study

As stated on page 17 of the staff report: "In this case, the City of San Clemente is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of San Clemente determined that the proposed development is ministerial or categorically exempt on March 22, 2010."

## **B. Costs and Attorneys Fees**

Make the following changes to pages 8 and 16 of the staff report, to protect the Commission from liability for costs and attorneys fees from future litigation.

Modify the second full paragraph on page 2 of the staff report as follows:

Therefore, staff is recommending APPROVAL of proposed permit amendment 5-88-784-A3 with ~~TEN (10)~~ **ELEVEN (11)** SPECIAL CONDITIONS regarding: 1) Prior

conditions; 2) Maintenance of Public Access on the site; 3) Future Impacts of Proposed Fence and Gate; 4) Final Revised Plans; 5) Public Access Signage Plan; 6) Revised Landscaping Plan, 7) Phasing of Construction; 8) Assumption of risk for the development; 9) Condition Compliance; and 10) Deed Restriction referencing the special conditions of the permit-, **and 11) Liability for Costs and Attorneys Fees**

Add Special Condition 19 at the bottom of page 8 of the staff report:

**19. Liability for Costs and Attorneys Fees. By acceptance of this permit, the Applicants agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than Vista Pacifica Incorporated against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit amendment. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.**

Insert the following findings just before the last sentence of Section D, Hazards, on page 16 of the staff report:

... To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes, the development has been conditioned to require the landowner or any successor-in-interest assume the risk of undertaking the development.

**Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 19, requiring reimbursement of any costs and attorneys fees the Commission incurs “in connection with the defense of any action brought by a party other than Vista Pacifica Incorporated challenging the approval or issuance of this permit amendment.”**

As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

### C. Clarifications and Improvements to Special Conditions

Make the following changes to Special Conditions 11, 12, 14, and 17 of the staff report to improve the clarity of the conditions and to address concerns raised by the applicant regarding their ability to carry out the conditions of the permit:

11. **Future Impacts of Proposed Fence and Gate.**

A. Strict compliance with this permit by all parties subject thereto is required. Failure to comply with any term or condition of this permit will constitute a violation of this permit and may be addressed as such by the Commission.

B. In addition, upon written notice by the Executive Director of any impediment to accessing the blufftop viewing area, including but not limited to: any deviation from the hours during which the gate is open as provided in Special Condition 12, placement of structures or material on the pathway to the blufftop viewing area, and changes to the gate or fence structure as approved in Special Condition 12 or landscaping which is inconsistent with Special Condition 14, the applicant agrees to immediately remedy those deficiencies to restore public access to the site. Within ~~45~~ **30** calendar days of the date of **delivery of** written notice **given by USPS certified mail** by the Executive Director of deficiencies in public access to the blufftop viewing area caused by, or associated with, the operation of the gate and fence to the public viewing area, the applicant or successor in interest shall have remedied those deficiencies to the satisfaction of the Executive Director. By acceptance of this Permit Amendment, the applicant agrees, on behalf of itself and all successors and assigns, to remove the proposed gate and fence if a deficiency in public access described in the written notice have not been remedied within **30 calendar days of the date of delivery of** ~~45 calendar days of the date of~~ written notice **given by USPS certified mail**, except that this deadline may be extended in writing by the Executive Director for good cause.

C. If non-compliance with the terms and conditions of the permit occurs, including, but not limited to denial of public access required by this permit, nothing in this condition shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, pursuant to the Coastal Act as a result of the lack of compliance with this permit.

12. **Final revised plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director a set of final revised project plans **which have been reviewed and approved by a licensed landscape architect and geotechnical engineer. The plans shall be** in substantial conformance with the plans received in the Commission's office on May 8, 2012, but shall have been revised to ensure that 1) the gate incorporates a mechanism that automatically **puts the gate into the 'open's position during the day, but which may be put in the 'closed' position at night, as defined by part 4 of this condition, below** ~~and closes the gate;~~ 2) in the event of a malfunction of the opening-

closing mechanism the gate defaults to an open position, 3) that the final gate and fence design will be substantially similar to the format of the plans received on May 8, 2012 with a 5 foot high gate and fence with widely spaced vertical bars and one horizontal bar at the top and bottom with no material located between the bars, and 4) the final plans shall contain the following requirement:

Time Locked Gate. Prior to the start of each calendar year, the automatic timer shall be set by the applicant or successors in interest to open at the earliest projected sunrise during the year, and shall be set to lock at the time of the latest projected sunset during the year, as determined by NOAA (see <http://www.esrl.noaa.gov/gmd/grad/solcalc/>), and shall remain in those settings throughout the duration of the calendar year up to the start of Daylight Savings Time. The timer shall again be changed to account for Daylight Savings Time at the beginning and end of that period, setting the gate to open and lock in the same manner as before the Daylight Savings Time adjustment.

#### 14. Revised Landscaping Plan

##### A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT

AMENDMENT, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Revised Landscape Plan, prepared by a licensed landscape architect that includes the following:

(1) The plan shall demonstrate that:

- (a) All landscaping **that shall be installed** within the ~~area subject to this permit amendment~~ **area of the new fence and gate, the new bluff overlook areas, and expanded blufftop viewing path** shall consist of native or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “*noxious weed*” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). Any existing landscaping within the area subject to this permit amendment that doesn’t meet the above requirements shall be removed;
- (b) Proposed landscaping shall not adversely impact public views of the entry point to the path leading to the public viewpoint, nor public views from the public view area along the bluff top. All landscaping within the above described area shall be comprised of plant species that, at maximum growth (width/height), do not reduce, obstruct, or in any way interfere

with, public views. The required Revised Landscape Plan shall provide information regarding the maximum height and width of the proposed new landscaping vegetation. Landscaping shall be trimmed/maintained such that impacts upon public views are avoided. Once planted, if the Executive Director determines that any landscaping within the area described above is causing an impact upon public views, the applicant shall modify or replace such landscaping with different plant species that meet the requirements of this special condition, as directed by the Executive Director;

(2) The plan shall include, at a minimum, the following components:

~~(a) Two (2) full size copies of a map, to scale, showing the type, size, and location of all plant materials that will be installed in the area of the fence, gate, overlook areas, and expanded blufftop viewing path on the developed site, the and related irrigation system modifications (if any); topography of the developed site, and all other landscape features, and~~

~~(b) A schedule for installation of plants.~~

**B.** The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

17. **Condition Compliance.** Within ~~90~~ **180** days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant in writing for good cause, 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. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.



Name: Jeff Huston (Unit 101 Vista Pacifica): **Opposed**

**RECEIVED**

Name: Doris Patterson (Unit 102 Vista Pacifica): **Opposed**

January 4, 2013

JAN 7 2013

**FILE COPY**

Honorable Commissioners,

CALIFORNIA  
COASTAL COMMISSION

We the undersigned are the owners of units 101 and 102 who have lived at Vista Pacifica in San Clemente since the building was first occupied in October 2001. We are in opposition to this proposed Plan (the Plan) in the Permit Application that is being considered by the Commission.

### **Background**

1. Units 101, 102, 103 and 105 are ground floor units directly affected by any changes to the public viewing area. The Developer erected a fence/gate sometime after the building inspectors left probably to help sell units 103 and 105. The units are located at the public entrance and were the last to sell because of the lack of privacy as a concern.
2. The paths that encircle the building were required by the fire department for entrance and as well as emergency homeowner exits. They were not intended as viewing paths or required in the Deed Restriction of 1990.
3. The Developer told the homeowners that the gate would have an electric timer for public viewing access during daylight hours. A timer was never installed and a sign was never posted. This was reported by homeowners to the Board, but no action was taken.
4. The gate did not become open to the public until the Board received notice from the Coastal Commission of the fence violation in February 2010.
5. Certain members of the Board feel the fence needs to stay for night time security which is the basis for this Permit Application. However, the gate has been unlocked for 24 hour periods for the past 2 years and the homeowners have not had any problems or police reports to justify the added costs or liabilities that this Plan will add if implemented. A security camera with motion detector and light would be more prudent and effective than a 5' high fence.

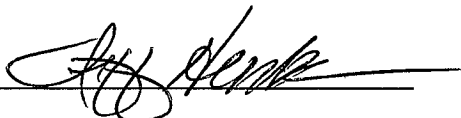
### **Opposition to the Plan**

We are opposed to the proposed Plan submitted by the Board of Vista Pacifica for the following reasons with reference to Exhibits A, B, C and D attached.

1. The building viewing area is in conformance to the Deed Restriction of 1990 with the exception of the fence and gate which we have always wanted simply removed. We feel our rights were violated by the Board for not making us or other homeowners aware of the violation notice that was issued by the Coastal Commission in February 2010. We did not receive notice from the Board on this matter until 15 months later in June 2011.
2. On April 16, 2012 the majority of homeowners voted to take down the fence and stop any further actions or expense on this matter that has exceeded \$50k in cost to date. Owners also

found out at this time that the gate was kept locked, with knowledge of the Board, for 10 years prior to receiving the violation notice from the Coastal Commission.

3. The Plan was kept confidential and never discussed with owners of units 101 or 102 who are the most directly impacted if the current Plan is approved. The Plan was also never presented to the majority of other homeowners for review to qualify the costs and liabilities.
4. The public that now visits spreads out uniformly across the bluff. The Plan creates a new prominent "Lookout" at the end of the new path (Exhibit A: Overlook Point #1) where the majority of people visiting will now want to conjugate. This would unreasonably adjoin to the private 8' x 10' deck of unit 101 which only has a 35' bluff frontage. Unit 103 has a 78' bluff frontage where Outlook Point #2 is a noninvasive 25' from unit 103's property.
5. This Plan will have a major effect on the property values and the peaceful enjoyment of private space of both units 101 and 102 with little impact on any other homeowners.
6. As addressed in Section 30210 of the Coastal Code this Plan does not protect the property rights of private property owners equally as given to others in the complex and Section 30214 in regard to being unreasonably close to the proximity of residential units.
7. The Plan also reestablishes a public nuisance and eventual bluff damage where the public will regain direct access to the Old Beach Trail which was used prior to the stairway being built on the East side of the building. This currently is being managed successfully by homeowners of units 101 and 102. With the added traffic and no bluff fence, there is no way for homeowners to control this effectively without hiring a daytime security guard to manage, maintain and protect both personal property and public safety.
8. The Plan requires a path extension across an area that is only 12' from the building to the berm of the bluff as shown in the 2000 site drawing (Exhibit C). A 5' wide path across this area would be impossible without extensive grading of the bluff and berms. The path would also require the relocation of a major drainage pipe that now takes water runoff from the bluff to the street and would remove 70% of established landscaping in front of units 101 and 102.
9. This Plan should not be considered for approval until an Environment Impact Report and a study on the effect to homeowners is completed with detailed engineering drawings that are more accurate than the "sketch" presented in the Plan (Exhibit D). It is not to scale or approved by the City and leaves out major critical specifications.
10. The owners of unit 101 and 102 have arranged to take legal action if this Plan is approved and implemented.



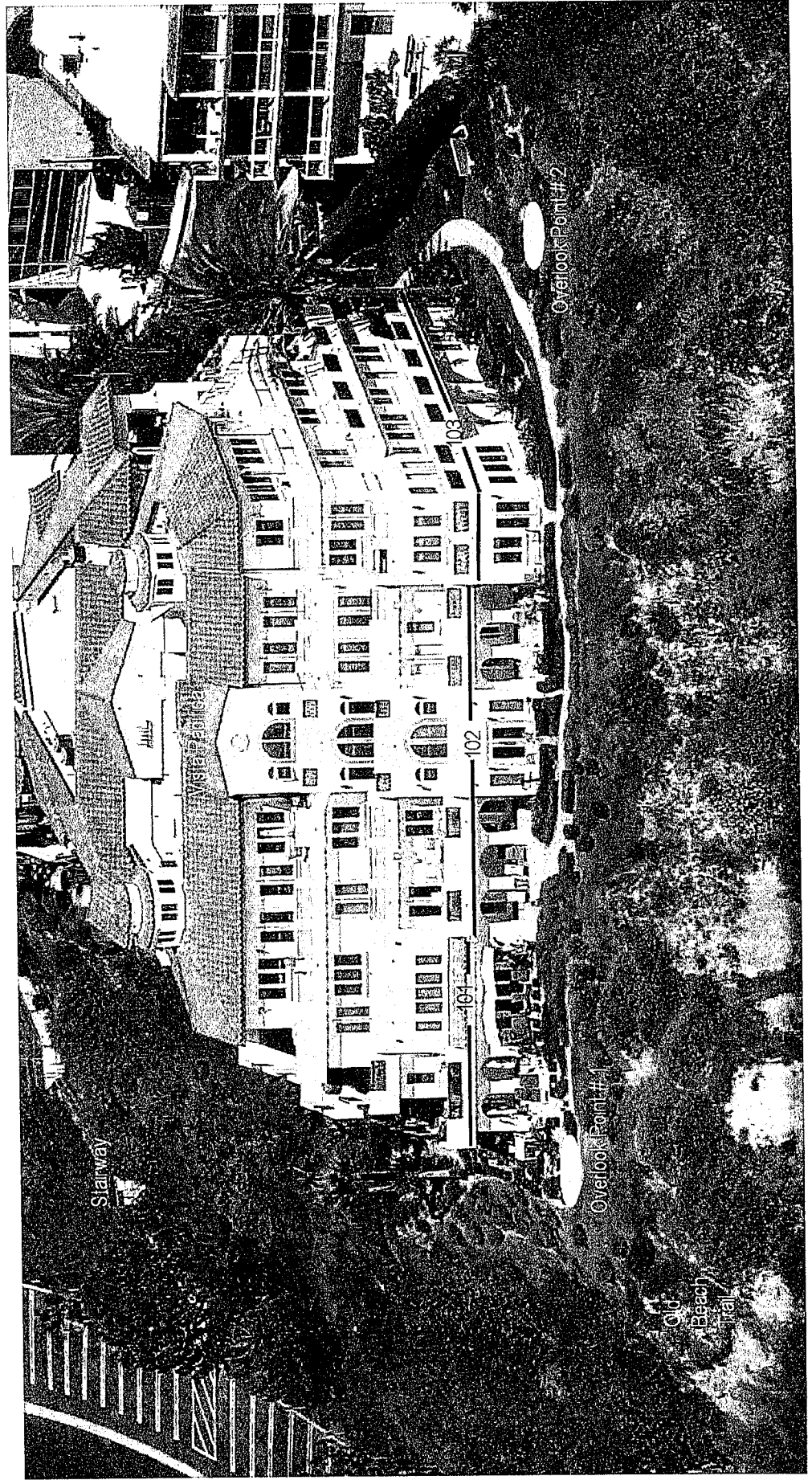
Jeff Huston  
412 Arenoso Lane, #101  
San Clemente, CA 92672  
Tel: 760-809-0300



Doris Patterson  
412 Arenoso Lane, #102  
San Clemente, CA 92672  
Tel: 949-683-4494

# Exhibit A

## Vista Pacifica Aerial View

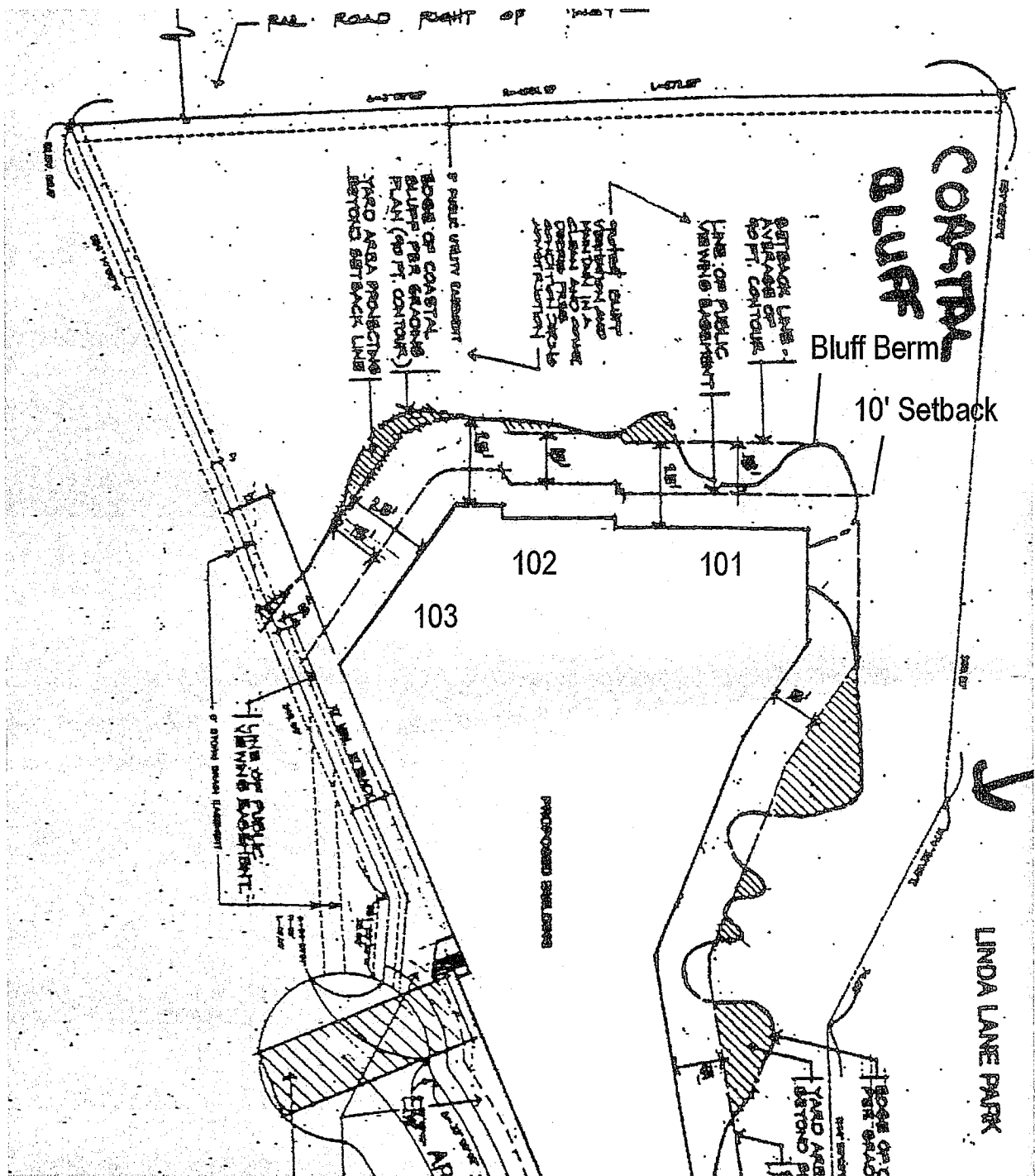


## Exhibit B

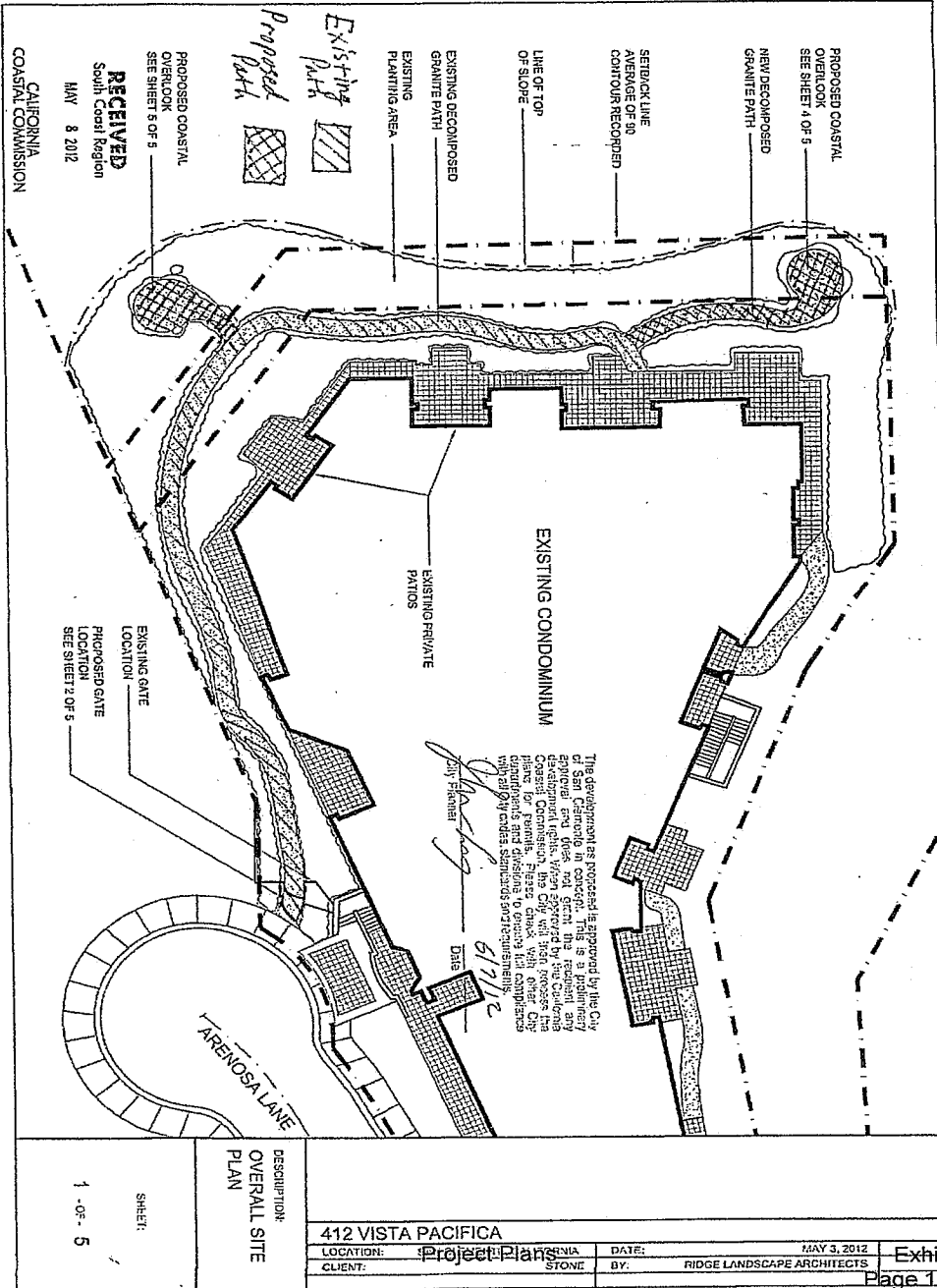
### Old Beach Trail



## Vista Pacifica



# Exhibit D



**CALIFORNIA COASTAL COMMISSION**

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



# F10a

Filed:	5/8/2012
180th Day:	11/4/2012
270th Day:	2/2/2013
Staff:	J. Del Arroz-LB
Staff Report:	12/20/2012
Hearing Date:	1/11/2013

## STAFF REPORT: PERMIT AMENDMENT

**Amendment Application No.:** 5-88-784-A3

**Applicant:** Vista Pacifica Inc.

**Location:** 412 Arenoso Lane, San Clemente (Orange County)

**Description of Project Previously Approved, As Amended:** Construction of a 38 foot high, 23 unit condominium project with subterranean parking garage and 74 spaces, deed restriction for public viewing to and along the 25 foot blufftop setback, a vertical public access easement from Arenoso Lane to Linda Lane Park, and 22,600 cubic yards total grading on a blufftop lot.

**Description of Proposed Amendment:** Removal of existing unpermitted 6-ft. 8 in.-high steel fence and gate across an access to a public viewpoint and installation of new 5 ft.-high steel fence and time-locked gate, extension of existing blufftop path to viewpoint, creation of 2 new blufftop viewing areas, and modification to landscaping.

**Staff Recommendation:** Approval with conditions.

---

## SUMMARY OF STAFF RECOMMENDATION:

The blufftop viewing area on the subject site was created pursuant to Special Condition 1 of CDP 5-88-784 to protect public prescriptive rights to access the blufftop for viewing the ocean. The applicant is proposing to remove an existing unpermitted fence and gate located at the entrance to the public viewing area, and its replacement with a new lower and wider gate and fence, and public

access improvements consisting of extensions to the existing blufftop viewing path, two new viewing areas at the blufftop, and new landscaping.

Gates and fences across accessways generally raise issues with regard to consistency with the Public Access sections of the Coastal Act. However, in this case staff has been able to work with the applicant to address the problems raised by the proposed development, and has come to a solution that is consistent with the public access provisions of the Coastal Act given the unique circumstances of the site. Those unique circumstances include: 1) the proposed project would result in a gate being installed on the site but would not result in additional restrictions on the hours of access to the public viewing area, 2) the gate would not restrict vertical access to the beach, 3) the project will provide a protocol by which the applicant agrees to remove the gate if non-compliance with the terms and conditions of this permit is not remedied within the time period specified below, and 4) as conditioned, the project would result in an improvement in public access on the site through addressing existing deficiencies related to visibility of the accessway, vegetation on the site, location of the pathway in regards to a public viewing easement, and protection of public access on the site.

Therefore, staff is recommending APPROVAL of proposed permit amendment 5-88-784-A3 with TEN (10) SPECIAL CONDITIONS regarding: 1) Prior conditions; 2) Maintenance of Public Access on the site; 3) Future Impacts of Proposed Fence and Gate; 4) Final Revised Plans; 5) Public Access Signage Plan; 6) Revised Landscaping Plan, 7) Phasing of Construction; 8) Assumption of risk for the development; 9) Condition Compliance; and 10) Deed Restriction referencing the special conditions of the permit.

#### **PROCEDURAL NOTE:**

##### **A. Coastal Development Permit Amendments**

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166. The Executive Director has determined that the proposed amendment is a material change to the development previously approved, therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

##### **B. Standard of Review**

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente only has a certified Land Use



Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan may be used for guidance.

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## APPENDICES

Appendix A - Substantive File Documents

## EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plans

Exhibit 3 – Staff Report for 5-88-784, 5-88-784-A1, and 5-88-784-A2

Exhibit 4 – Accepted Tract Map

Exhibit 5 – Aerial Photo from June 1987.

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 5-88-784-A3 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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:

*The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.*

## II. STANDARD CONDITIONS

This permit amendment is granted subject to the following 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

These conditions supplement the previously adopted Conditions (numbers 1 through 8); This permit amendment is granted subject to the following special conditions:

9. **Prior conditions.** Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-88-784, as amended through –A2, remain in effect.
10. **A. Maintenance of Public Access.** By acceptance of this Permit Amendment, the applicant agrees, on behalf of itself and all successors and assigns, to maintain continued and uninterrupted public pedestrian access, during typical daylight hours as established pursuant to Special Condition 1 of CDP 5-88-784, along the existing and proposed trail extending from Arenoso Lane to and along the blufftop and to the proposed coastal overlook areas along the blufftop, as depicted on the final plans approved by the Executive Director, pursuant to Special Conditions 12, 13, and 14, and as generally depicted on Page 1 of Exhibit 2 to the staff report dated December 20, 2012, the area of which is more formally described in an exhibit attached to the NOI for this permit amendment as required in subsection B of this special condition. The public access shall be provided notwithstanding the privacy buffer acknowledged under Special Condition 1 of original permit 5-88-784.

**B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT AMENDMENT,** the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition 10, as generally described above and shown on Page 1 of Exhibit 2 attached to this staff report.

11. **Future Impacts of Proposed Fence and Gate.**

**A.** Strict compliance with this permit by all parties subject thereto is required. Failure to comply with any term or condition of this permit will constitute a violation of this permit and may be addressed as such by the Commission.

**B.** In addition, upon written notice by the Executive Director of any impediment to accessing the blufftop viewing area, including but not limited to: any deviation from the hours during which the gate is open as provided in Special Condition 12, placement of structures or material on the pathway to the blufftop viewing area, and changes to the gate or fence structure as approved in Special Condition 12 or landscaping which is inconsistent with Special Condition 14, the applicant agrees to immediately remedy those deficiencies to restore public access to the site. Within 15 calendar days of the date of written notice by the Executive Director of deficiencies in public access to the blufftop viewing area caused by, or associated with, the operation of the gate and fence to the public viewing area, the applicant or successor in interest shall have remedied those deficiencies to the satisfaction of the Executive Director. By acceptance of this Permit Amendment, the applicant agrees, on behalf of itself and all successors and assigns, to remove the proposed gate and fence if a deficiency in public access described in the written notice have not been remedied within 15 calendar days of the

date of written notice, except that this deadline may be extended in writing by the Executive Director for good cause.

C. If non-compliance with the terms and conditions of the permit occurs, including, but not limited to denial of public access required by this permit, nothing in this condition shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, pursuant to the Coastal Act as a result of the lack of compliance with this permit.

12. **Final revised plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director a set of final revised project plans in substantial conformance with the plans received in the Commission's office on May 8, 2012, but shall have been revised to ensure that 1) the gate incorporates a mechanism that automatically opens and closes the gate; 2) in the event of a malfunction of the opening-closing mechanism the gate defaults to an open position, 3) that the final gate and fence design will be substantially similar to the format of the plans received on May 8, 2012 with a 5 foot high gate and fence with widely spaced vertical bars and one horizontal bar at the top and bottom with no material located between the bars, and 4) the final plans shall contain the following requirement:

Time Locked Gate. Prior to the start of each calendar year, the automatic timer shall be set by the applicant or successors in interest to open at the earliest projected sunrise during the year, and shall be set to lock at the time of the latest projected sunset during the year, as determined by NOAA (see <http://www.esrl.noaa.gov/gmd/grad/solcalc/>), and shall remain in those settings throughout the duration of the calendar year up to the start of Daylight Savings Time. The timer shall again be changed to account for Daylight Savings Time at the beginning and end of that period, setting the gate to open and lock in the same manner as before the Daylight Savings Time adjustment.

13. **Public Access Signage Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for review and approval of the Executive Director a detailed signage plan that identifies existing and proposed signage in the vicinity of the project. The signage plan, which shall be reviewed and approved by the City of San Clemente, shall direct the public to the public viewing area and vertical accessway on the project site. Signs shall be located and sized such that they are clearly visible to passing pedestrians and vehicles. The applicant shall work with the City to identify signs that are incompatible with the presence of the public viewpoint and vertical accessway and shall cooperate with the City in their removal. Signs and displays on or adjacent to the subject site that are not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

14. **Revised Landscaping Plan**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit for the review and approval of the Executive Director, two (2) full size sets of a Revised Landscape Plan, prepared by a licensed landscape architect that includes the following:

(1) The plan shall demonstrate that:

- (a) All landscaping within the area subject to this permit amendment shall consist of native or non-native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “*noxious weed*” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). Any existing landscaping within the area subject to this permit amendment that doesn’t meet the above requirements shall be removed;
- (b) Proposed landscaping shall not adversely impact public views of the entry point to the path leading to the public viewpoint, nor public views from the public view area along the bluff top. All landscaping within the above described area shall be comprised of plant species that, at maximum growth (width/height), do not reduce, obstruct, or in any way interfere with, public views. The required Revised Landscape Plan shall provide information regarding the maximum height and width of the proposed landscaping vegetation. Landscaping shall be trimmed/maintained such that impacts upon public views are avoided. Once planted, if the Executive Director determines that any landscaping within the area described above is causing an impact upon public views, the applicant shall modify or replace such landscaping with different plant species that meet the requirements of this special condition, as directed by the Executive Director;

(2) The plan shall include, at a minimum, the following components:

- (a) Two (2) full size copies of a map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system (if any), topography of the developed site, and all other landscape features, and
- (b) A schedule for installation of plants.

**B.** The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

15. **Construction/Development Phasing.** Construction/installation of the proposed extension of the existing blufftop path to the public viewpoint, the two (2) new blufftop viewing areas, the modification to landscaping, and the public access signs, in accordance with the final plans approved by the Executive Director pursuant to Special Conditions 12, 13 and 14, shall be phased so that these access, viewpoint, landscape and sign improvements are completed and are open and available to the public as soon as possible, but no later than prior to or concurrent with installation of the fence and gate that was approved by this coastal development permit amendment.
16. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit amendment, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit amendment 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.
17. **Condition Compliance.** Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant in writing for good cause, 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. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
18. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the Executive Director's review and approval, documentation demonstrating that the landowner(s) has/have executed and recorded against the parcel(s) owned by the applicant that are governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, 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 amendment 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 amendment. 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 amendment shall continue to restrict the use and enjoyment of the subject property so long as either this permit amendment 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:**

##### **A. PROJECT LOCATION & DESCRIPTION OF PROJECT AMENDMENT**

The project site is located at 412 Arenoso Lane, a coastal bluff top lot between the first public road and the sea in the City of San Clemente, Orange County. The site, which is currently developed with a 23 unit condominium complex, is located approximately 0.2 miles north of the San Clemente Pier. The bluff on the site is adjacent to the San Clemente Coastal Trail, the Orange County Transportation Authority (OCTA) railroad and the sandy beach below. Residential development is located to the northeast and southeast of the subject site. To the northwest lies Linda Lane Park, which connects to the Coastal Trail and the sandy beach.

The coastal bluffs in San Clemente are not subject to direct wave attack because they are separated from the beach by the railroad tracks and right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to weathering caused by wind, rain, soils susceptible to erosion, and rodent burrowing, and human induced erosion caused by irrigation, improper site drainage and grading.

Public access is located at the subject site, and is also located at the Pier Bowl Area, located approximately 0.2 miles to the south of the site, and at Linda Lane Park, located approximately 100 feet to the north of the site. As described further in the Prior Permit Actions section below, the Commission required a public vertical accessway and a public access to a public viewing area on the subject site as a condition of approval for CDP 5-88-784. Vertical access is located on the most inland portion of the subject site, where a public stairway leads from Arenoso Lane to Linda Lane Park and from there to the Coastal Trail and sandy beach beyond. The public viewing area is located at the bluff edge near the southern property line of the site, and provides views of the beach and ocean, and consists of 1) an easement area which was accepted by the City of San Clemente (Exhibit 4), and 2) a pathway which travels from Arenoso Lane to the Southwest out to the bluff edge, and then turns right to travel northeast along the bluff top (Exhibit 2).

However, as constructed, the pathway does not coincide with the easement area as depicted in the recorded easement document. The easement starts at the edge of the public sidewalk adjacent to Arenoso Lane and leads to the bluff edge via a 5 foot wide strip directly adjacent to the southwest property line. Once at the bluff, the easement then turns to the northwest and continues in a 15 foot wide area that runs generally along the bluff edge (Exhibit 4). The pathway out to the bluff edge is not located wholly within the easement area, but rather meanders in and out of the easement area. An unpermitted gate and fence is located at the entrance to the public viewing area at the Arenoso Lane cul-de-sac. The fence is 6-feet 8 inches high and the gate is 6 feet 8 inches high and 3 feet 2 inches wide. The fence and gate are composed of vertical bars and wire mesh, which allows a limited amount of vision into the public viewing area.

##### Description of Amendment:

The applicant states that a gate and fence are necessary at the entrance to the public viewing area to ensure public safety, to prevent members of the public from climbing down the bluff face, and for the security of the residents on site.

The proposed amendment includes: 1) the removal of the existing unpermitted 6-ft. 8 in.-high steel fence and gate located approximately 15 feet from the curb of Arenoso Lane, constructed across the access to the public viewpoint, and the installation of a new 5 ft.-high steel fence and time-locked gate located approximately 10 feet from the curb; 2) a new approximately 40 foot long extension of the existing blufftop viewing path along the bluff top; 3) creation of 2 new overlook areas along the bluff top, and 4) removal of existing visually obtrusive landscaping at the entrance to the blufftop viewing path and its replacement with native California shrubs. The proposed gate includes an automatic timer that will be set prior to the start of each year to open, daily, at the time of the earliest sunrise and to lock at the time of the latest sunset.

#### Prior Permit Actions

In November 1988, the Commission approved CDP 5-88-784 (Abbott) for the construction of a 30 unit condominium with subterranean parking garage and 22,600 cubic yards of grading. One of the major issues involved with the permit was the protection of prescriptive rights of access on the subject site. A prescriptive rights survey showed that the site was unfenced and was historically used for viewing the coastline from the blufftop, and for beach access via a trail leading down the bluff. To protect public access on the site, the Commission required both a viewing area along the bluff edge and a vertical public accessway (to be accessible during “typical daylight hours”), to be recorded against the property. Other major issues associated with the property included: protection of visual resources from Arenoso Lane, geologic stability, and the restoration of eroded areas along the bluff face. Special Conditions for this project included requirements regarding: 1) creation of a public viewing easement; 2) Offer to dedicate an easement for public pedestrian access to the shoreline from Arenoso Lane to Linda Lane Park; 3) Future development will require a new coastal development permit; 4) Assumption of risk for the development; 5) Restoration of the bluff; 6) Revised plans to move the vertical accessway from the bluff edge to the western portion of the property; and 7) Conformance with geologic recommendations.

Amendment No. 5-88-784-A1 was approved by the Commission in April 1990 to reduce the width of the vertical accessway from 20 feet to a width varying between 5 and 20 feet. One special condition was imposed to record the revised configuration of the vertical accessway.

In September 1998 the Commission approved Amendment No. 5-88-784-A2 to reduce the number of units on the site from 30 to 23 and to increase the number of parking spaces from 69 to 74. No change to the footprint, height, or amount of grading occurred. One special condition was imposed to notify the applicant that prior permit conditions were still effective.

The applicant successfully recorded a public viewing easement and vertical access easement prior to issuance of the permit in 1990, which were accepted by the City of San Clemente. At some time after issuance of the permit, the applicant commenced development when site grading occurred consistent with the approved plans in CDP 5-88-784. After grading occurred, the site was fenced off and no residential construction or construction of the required public access improvements commenced until sometime after approval of the second permit amendment, in 1998. According to the applicant, completion of the residence occurred in 2001, at which time the existing gate and fence located at the entrance to the public viewing area were installed.



In July 2009, Commission staff discovered that a locking gate and fence had been constructed on the pathway leading from the Arenoso Lane cul-de-sac to the blufftop viewing area. At the time of the site visit, the gate was open to accommodate maintenance workers, but appeared to otherwise be locked at all times. In a subsequent visit to the site, in October 2009, the gate on the site was found closed and locked. During the time of these visits, no signs were visible identifying that the gated area was open to the public. Special Condition 1 of CDP 5-88-784 states that any erection of structures within the easement is prohibited without written approval from the Commission. Special Condition 3 states that any future improvements on the site will require a new Coastal Development Permit. The Commission did not approve the existing fence and gate. Therefore, Commission staff determined that the fence and gate were unpermitted development. In February 2010, Commission staff sent a Notice of Violation of the Coastal Act, informing the applicant that the gate and fence had been constructed without a Coastal Development Permit, and stating that the fence needed to be either removed or the applicant needed to request an amendment to the permit. On April 26, 2010 Commission staff received the subject amendment application, and on May 8, 2012 the application was deemed complete.

## **B. PUBLIC ACCESS**

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30214 of the Coastal Act states (in relevant part)

*(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.*

### History of Public Access on Site

As described above, Commission staff conducted a prescriptive rights survey which identified two main historical public uses of the subject site before the Commission acted on CDP 5-88-784 (See Exhibit 5, which depicts the site in June 1987). First, members of the public would travel across the site to the bluff edge in order to view the ocean and sunsets. Second, the public would climb down trails across the bluff face to reach the beach. In its approval of CDP 5-88-784, the Commission found that there was substantial evidence supporting a finding of existing prescriptive rights of public access to the site which could be protected through the creation of easements for a public viewing area and a vertical access stairway. Therefore, the Commission imposed Special Condition 1, which required the applicant to offer an easement for public viewing purposes to and along the bluff edge, and Special Condition 2, which required the applicant to offer to dedicate an easement providing vertical access to the shoreline. As described above, the residential structure was completed in 2001, at which time it also appears that the accessway to the beach was constructed and opened for public access, and the pathway to and along the bluff edge for a viewpoint was constructed. However, the pathway to the bluff edge was also fenced and gated at its entrance point.

### Fences / Gates

Section 30210 requires that maximum access and recreational opportunities shall be provided for all people to carry out the requirements in the California Constitution of ensuring that no individual, partnership or corporation claiming or possessing the frontage/tidal lands of navigable waters shall be permitted to exclude the right of way to such water whenever it is required for any public purpose. Fences and gates which restrict access typically present challenges for ensuring that maximum access to navigable waters, consistent with Coastal Act Section 30210, is provided. In this particular case, the most relevant issues are: 1) a physical and visual impediment to access, 2) creation of a perception that the gated area is not open to the public; and 3) presence of the gate raises the chances that access to a public viewpoint will be negatively impacted in the future.

Gates and fences restrict access to an area and present a physical and visual barrier between the public and the area they wish to access. Gates physically restrict access to the public by making the public pass through the gate. The Oxford Dictionary defines a gate as “a hinged barrier used to close an opening in a wall, fence, or a hedge.”<sup>1</sup> In some cases this has the potential to unduly restrict access, as in the case where a gate is heavy enough or not wide enough to prevent members of the public with impaired mobility the ability to pass through the gate. Gates can also prevent visual access to an area, as the material of the gate prevents members of the public from seeing the accessway which is located beyond the gate. The gate can thus serve as a visual separation between the area of unrestricted access (i.e. the public street) and the area of restricted access (i.e. the area past the gate). The Oxford Dictionary defines a gate as “a barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to *prevent or control access* or escape.”<sup>2</sup> (emphasis added) Thus, the presence of a gate and fence creates the impression that the area beyond the gate is restricted to the public, and that public access into that area is either not desired or available. Public access signage may help with ensuring that the public is aware of

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<sup>1</sup> <http://oxforddictionaries.com/definition/english/gate>.

<sup>2</sup> <http://oxforddictionaries.com/definition/english/fence?q=fence>.

public accessways, but this may not be enough to counteract the impression created by the gate and fence that public access is not available. The presence of thick and/or tall vegetation can contribute to these problems, as they obscure the presence of the accessway and/or signs. The presence of a gate and fence on a site also presents a challenge for future enforcement of the Coastal Act. A lack of maintenance of the gate, changes in the property owner or the employees on site, or addition of a simple lock and chain all have the potential to close access on a designated accessway and require a significant input of agency staff time to resolve.

#### Proposed Development

The proposed project includes the removal of the existing unpermitted 6'8" high gate and fence, and its replacement with a new gate and fence that is lower, at 5 feet high, closer to the public street by approximately 5 feet, and which has a gate that is 4 feet wide instead of 3' 2" wide. Other improvements proposed by the applicant include alterations to landscaping at the entrance to the public viewing area, two additional overlook areas at the bluff top, and an extension of the existing pathway along the bluff top (Exhibit 2)

In general, gates and fences across accessways may raise issues with regard to consistency with the Coastal Act. However, in this case staff has been able to work with the applicant to address the problems raised by the proposed development, and has come to a solution that is consistent with the public access provisions of the Coastal Act given the unique circumstances of the site. First, in its approval of CDP 5-88-784, the Commission set limits on the usage of the public viewing area, restricting its usage to "typical daylight hours". This was found to be consistent with the pattern of documented historical use of the viewpoint on the bluff top. Unlike other projects that may be proposing gates, the proposed project would install a gate but would not result in an additional restriction on the hours of access to the public viewing area beyond the existing Commission-approved hours of access. If appropriately conditioned to improve public access and to ensure that impacts to the public's ability to use the access do not occur, construction of a fence and gate could be consistent with the requirement for maximum access in Coastal Act Section 30210.

Second, while the project would maintain access to a public viewing area, considered a recreational opportunity for purposes of Coastal Act Section 30210, a gate and fence on the subject site would not restrict the public's right to access state waters and the public beach. Existing public access to the beach exists at the vertical access stairway located at the northern portion of the subject property.

Third, the proposed development would also address deficiencies present in the existing access condition related to the visual permeability of the gate and fence, amounts of vegetation surrounding the entrance to the pathway, the location of the pathway in regards to a public viewing easement, and issues regarding protection of the public access on the site

#### Proposed Gate and Fence

The existing gate and public access sign is partially obscured by a municipal streetlight and is not easily visible to the public. As proposed, the new gate would be located closer to the public street so that this public entry point is more visible to pedestrians and others passing by in vehicles. The

proposed new gate would be lower, at 5' high, and does not include wire mesh between the vertical bars, to allow more visibility over and through the gate and fence.

The existing gate has an electric timer to lock and unlock the gate in the morning and evening. The applicant is proposing to set the new gate on an automatic timer as well, and is proposing to set the timer prior to the start of the calendar year to open and close based on the earliest sunrise time and latest sunset time for the duration of the calendar year up to Daylight Savings Time, and to again set the timer when Daylight Savings Time occurs. However, although the proposed gate would be lower than the existing gate, and unlocked during the daytime, it would still be in the 'closed' position during the daytime giving the perception that the public viewing area is an area subject to restricted access during the day. Therefore, to ensure that unrestricted physical and visual access to the public viewing area exists, the Commission imposes Special Condition 12, requiring the applicant to submit a set of revised plans for the proposed gate and fence which ensures that 1) the proposed gate incorporates a mechanism that automatically opens and closes the gate; 2) in the event of a malfunction of the opening mechanism the gate defaults to an open position, and 3) that the final gate and fence design is sufficiently visually permeable. Finally, to ensure that construction of the fence and gate does not give the impression of a private walkway, the Commission imposes Special Condition 13, requiring the applicant to submit a final signage plan to identify the location of the existing public viewing area and vertical accessway for the public, and require the applicant to help identify any signs in the vicinity of the project that may be inconsistent with usage of the viewing area and vertical accessway. Special Condition 13 would also ensure that installation of signs not included within the signage plan would require an amendment to this permit, unless the Executive Director determines that no amendment is required.

#### Vegetation

Existing vegetation at the entrance to the viewing area currently consists of small ornamental trees and shrubs which obscure sight of the access pathway from the public street. The proposed landscaping plan would remove this vegetation and install native California shrubs consisting of Ceanothus, Baccharis, and Artemisia. However, the proposed landscaping species could reach heights that would block views to the accessway. Therefore, the Commission imposes Special Condition 14, requiring the applicant to submit a revised landscaping plan which ensures that landscaping will consist of low growing species that will not impact views of the accessway.

#### Location of Pathway

As mentioned previously, the existing pathway is not entirely located within the recorded easement that provides the access to the blufftop viewing area. The easement area is depicted as an area 5 feet wide located directly adjacent to the southwest property line. The existing paved pathway, on the other hand, meanders in and out of that 5 foot wide easement area. CDP 5-88-784 specifically states that public access shall be allowed to the bluff top for viewing purposes, and the applicant has constructed the existing pathway for that purpose. However, the discrepancy between the location of the existing pathway and the location of the easement means that there is not full protection of public access out to the blufftop viewing area. Therefore, to ensure continued and uninterrupted public access to the blufftop viewing area, the Commission imposes Special Condition 10, which requires the applicant to agree on behalf of itself and all successors to maintain public access to the

area of the existing and proposed pathway as shown on page 1 of Exhibit 2 and Special Condition 18, which requires the applicant to record a deed restriction referencing the special conditions of this permit amendment.

Although the existing pathway does allow access out to the bluff edge for viewing, the existing pathway along the bluff top itself is a small narrow path which only travels along a portion of the bluff top and does not take advantage of the entire length of the easement along the bluff top. The proposed development includes the installation of two new coastal overlook areas, to provide a larger area for viewing, and the extension of the access path along the entirety of the bluff top. These proposed improvements would improve the ability of the public viewing area to serve the public.

#### Long Term Protection of Access

To ensure that the proposed gate does not create the potential for future problems with maintenance of public access on the site, the Commission imposes Special Condition 10, 11, and 18. Special Condition 10 requires the applicant to agree to maintain access on the site in the area of the existing and proposed pathway. Special Condition 11 creates a protocol by which the applicant agrees to remove the gate and fence if they result in impacts to public access on the site and if those impacts are not addressed within 15 calendar days of written notice. 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 18, which requires that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and obligations imposed on the use and enjoyment of the land.

As conditioned to 1) maintain public access on the site, 2) prevent future impacts of the gate and fence on public access, 3) revise plans for the gate and fence, 4) improve signage directing the public to access areas, 5) revise landscaping on the site, 6) phase construction to avoid impacts to public access, and 7) record a deed restriction on the site, the proposed project would result in an improvement to public access on the site. As conditioned, the project would not result in creation of an obstacle to public use of the pathway, or a perception that the gated area is off-limits to the public. Instead, as conditioned, the project would open up views into the pathway and would include additional signage to identify the area as being open to the public. As conditioned, the project would ensure that the public access to the viewing area is protected and maintained in the future, and would improve public access through the addition of two new overlook areas on the site. The project, as conditioned would not result in an additional constraint on the right of the public to access the viewing area, but instead would encourage the public to access the site between the earliest sunrise and latest sunset times throughout the year. Therefore, as conditioned, the project is consistent with Coastal Act Sections 30210, 30211, and 30214

## **D. HAZARDS**

Coastal Act Section 30253 states:

*New development shall do all of the following:*

*(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(b) 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.*

*(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.*

Development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes, the development has been conditioned to require the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

## **E. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject property without the required coastal development permit, including construction of a fence and locked gate across a public access leading to a public view area along the bluff top. This application provides for the complete removal of the existing unpermitted fence and gate and the installation of a revised fence and gate which as modified by Special Conditions 12, 13, and 14, would ensure consistency with the public access provisions of the Coastal Act.

In order to ensure that the unpermitted development component of this application is addressed in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions as a prerequisite to the issuance of this permit, as required by Special Condition 17 within 90 days of Commission action, with the Executive Director able to extend this deadline for good cause. Only as conditioned is the proposed development consistent with the Coastal Act.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

**F. LOCAL COASTAL PROGRAM**

The proposed development, as conditioned, 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3.

Section 30604(a) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

As conditioned, the proposed project will conform with Coastal Act Sections 30210, 30211, 30214, and 30253. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

In this case, the City of San Clemente is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of San Clemente determined that the proposed development is ministerial or categorically exempt on March 22, 2010. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

5-88-784-A3 (Vista Pacifica Inc.)

## APPENDIX A SUBSTANTIVE FILE DOCUMENTS

City of San Clemente Certified Land Use Plan

City of San Clemente Approval in Concept dated May 7, 2012

Coastal Development Permit No. 5-88-784, and Amendments No. 5-88-784-A1 and 5-88-784-A2.

Accepted Tract Map for 412 Arenoso Lane dated July 1989.



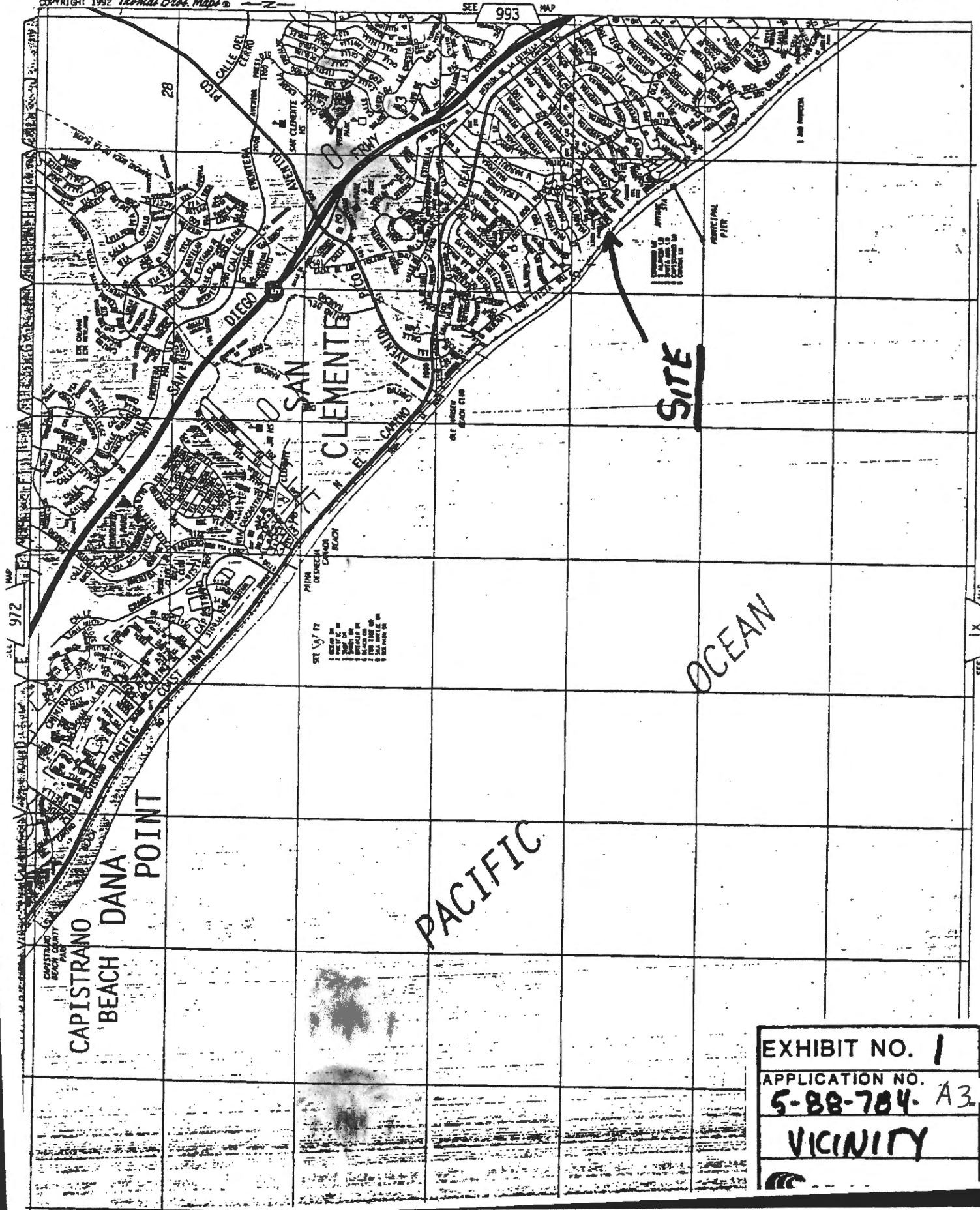
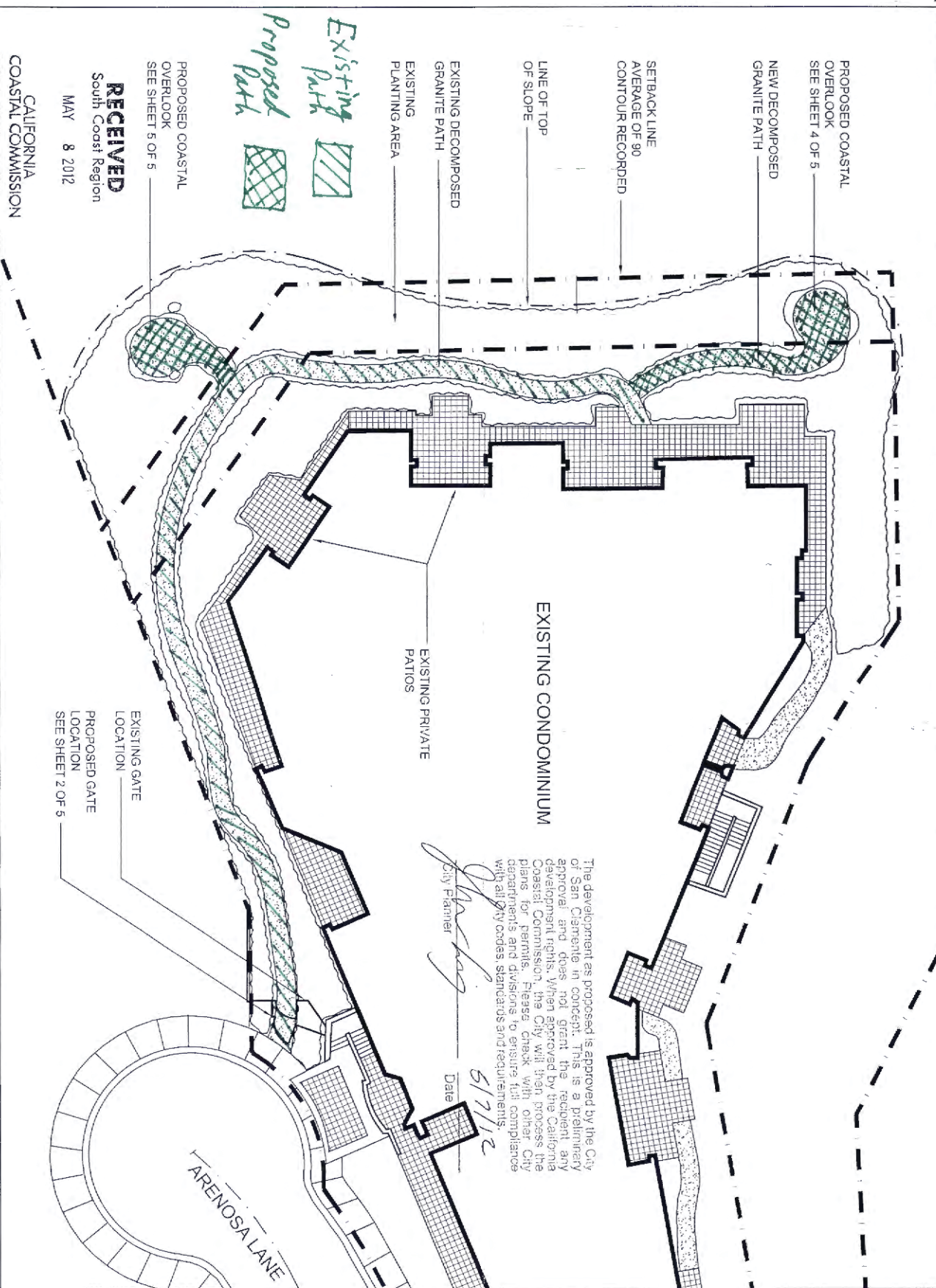


EXHIBIT NO. 1

APPLICATION NO.

5-88-784-A3

VICINITY



The development as proposed is approved by the City of San Clemente in concept. This is a preliminary approval and does not grant the recipient any development rights. When approved by the California Coastal Commission, the City will then process the plans for permits. Please check with other City departments and divisions to ensure full compliance with all city codes, standards and requirements.

*[Signature]*  
 City Planner  
 Date 6/7/12

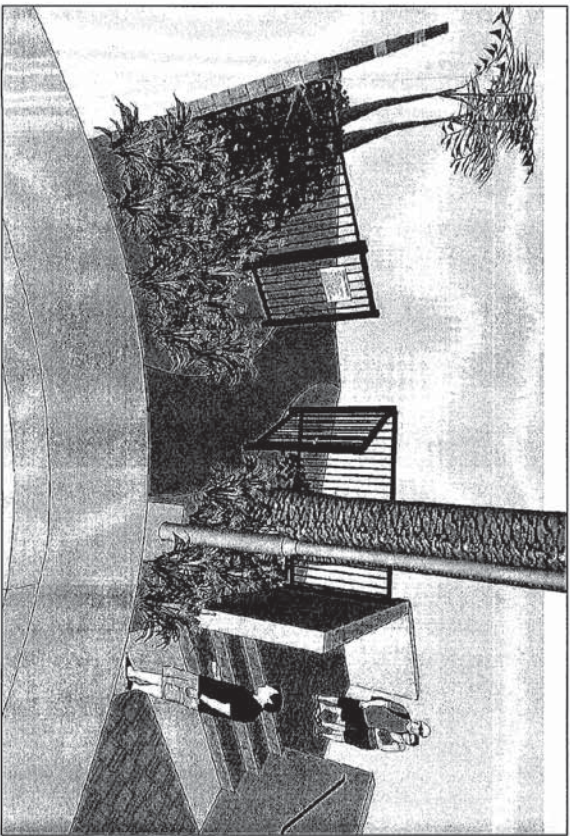
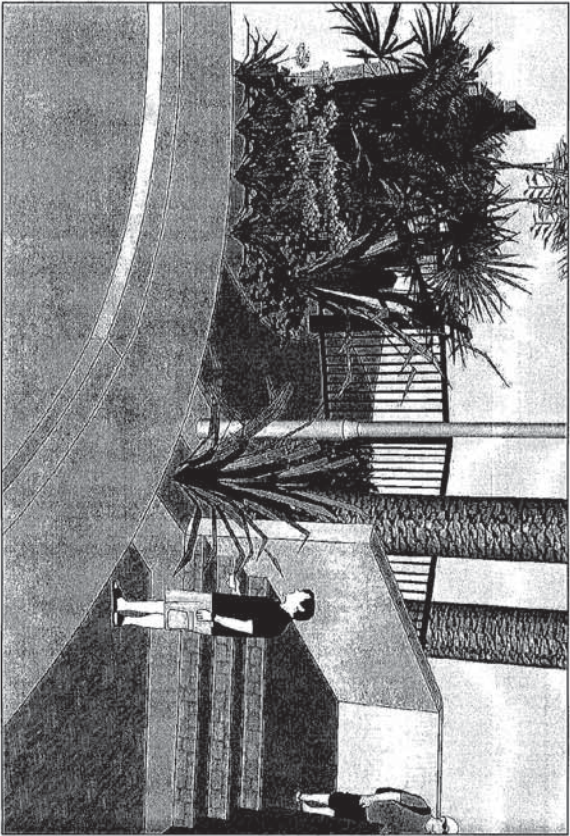
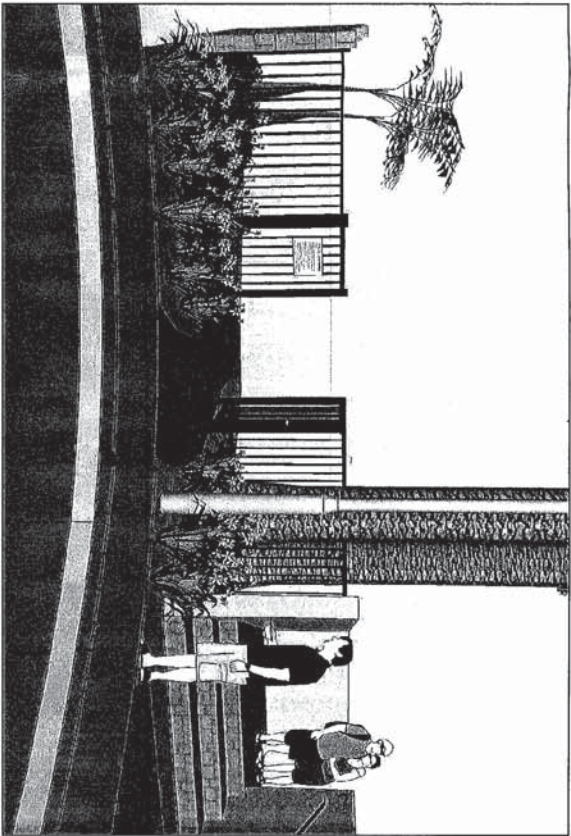
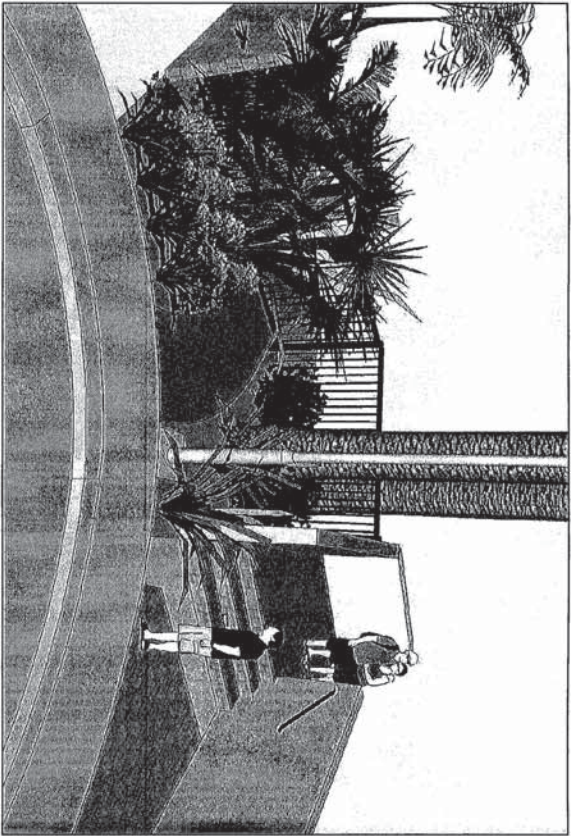
412 VISTA PACIFICA

LOCATION: 412 VISTA PACIFICA, SAN CLEMENTE, CA 92672  
 CLIENT: PROJECT PLANS  
 DATE: MAY 3, 2012  
 BY: RIDGE LANDSCAPE ARCHITECTS

DESCRIPTION:  
 OVERALL SITE PLAN

SHEET:  
 1 - OF - 5





EXISTING CONDITION

PROPOSED CONDITION

412 VISTA PACIFICA

LOCATION: SAN CLEMENTE, CALIFORNIA

CLIENT: STONE

DATE:

BY:

MAY 3, 2016

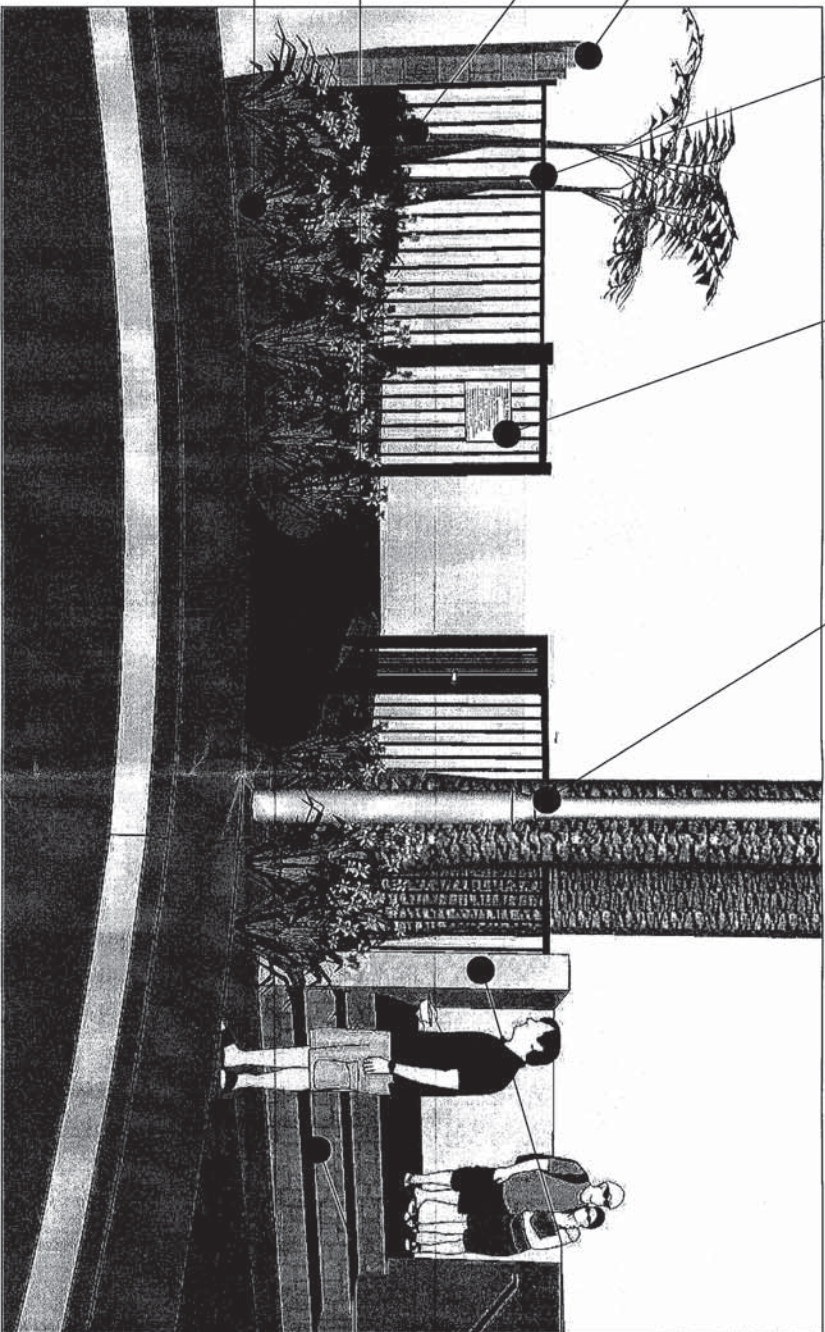
RIDGE LANDSCAPE ARCHITECTS

DESCRIPTION:  
GATE  
RENOVATION  
ELEVATIONS

SHEET:

2 - OF - 5





- 1 EXISTING BRICK WALL
- 2 WROUGHT IRON GATE AT WATER EASEMENT
- 3 INCREASE WIDTH OF GATE TO 4'-0" WIDE
- 4 LOWER FENCE AND GATE TO 5'-0" HIGH
- 5 COASTAL OVERLOOK TRAIL SIGN
- 6 EXISTING STREET LIGHT
- 7 EXISTING STUCCO WALL
- 8 EXISTING STEPS
- 9 NEW NATIVE CALIFORNIA SHRUBS, CEANOOTHUS, BACCHARIS, AND ARTEMESIA

412 VISTA PACIFICA

LOCATION:	SAN CLEMENTE, CALIFORNIA	DATE:	MAY 3, 2018
CLIENT:	STONE	BY:	RIDGE LANDSCAPE ARCHITECTS

DESCRIPTION:  
GATE  
RENOVATION  
ELEVATIONS

SHEET:  
3 - OF - 5





1 EXISTING DECOMPOSED GRANITE TRAIL

2 EXISTING PLANTING

3 BLUFF EDGE



4 NEW OVERLOOK AREA - DECOMPOSED GRANITE PAVING

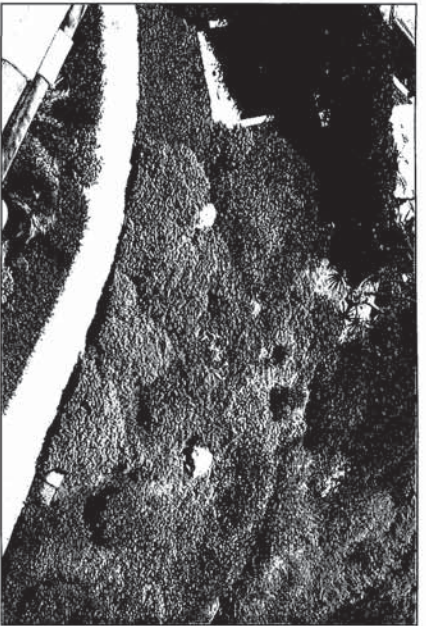
PROPOSED CONDITION

412 VISTA PACIFICA			
LOCATION:	SAN CLEMENTE, CALIFORNIA	DATE:	MAY 3, 2011
CLIENT:	STONE	BY:	RIDGE LANDSCAPE ARCHITECTS

DESCRIPTION:  
TRAIL  
EXTENSION &  
OVERLOOK

SHEET:  
4 - OF - 5





EXISTING CONDITION



PROPOSED CONDITION

- 1 EXISTING DECOMPOSED GRANITE TRAIL
- 2 NEW OVERLOOK AREA - DECOMPOSED GRANITE PAVING

- 3 EXISTING PLANTING
- 4 BLUFF EDGE

412 VISTA PACIFICA

LOCATION: SAN CLEMENTE, CALIFORNIA  
CLIENT: STONE

DATE: MAY 3, 2011  
BY: RIDGE LANDSCAPE ARCHITECTS

DESCRIPTION:  
OVERLOOK

SHEET:  
5 - OF - 5

*W 7.5a*

## CALIFORNIA COASTAL COMMISSION

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

Filed: 06-25-98  
49th Day: 08-13-98  
180th Day: 12-22-98  
Staff: RMR-LB *RMR*  
Staff Report: 08-18-98  
Bearing Date: September 8-11, 1998  
Commission Action:



### STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-88-784A2

APPLICANT: Roy Lindorf                      AGENT: Alan Block

PROJECT LOCATION: 412 Arenoso Lane, San Clemente, Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 38 feet high, 30 unit condominium project with subterranean parking garage and 69 spaces, deed restriction for public viewing to and along the 25 foot blufftop setback, a vertical public access easement from Arenoso Lane to Linda Lane Park, and 22,600 cubic yards total grading on a blufftop lot.

DESCRIPTION OF AMENDMENT PREVIOUSLY APPROVED: Modify special condition number 2 to reduce width of vertical access easement to 5 feet at its narrowest point. The easement is located on the inland property boundary and leads from Arenoso Lane down the coastal canyon to Linda Lane Park.

DESCRIPTION OF AMENDMENT: Reduction in density from 30 condominium units to 23 units and the addition of five parking spaces. The footprint and height of the previously approved project will remain the same. No additional grading is proposed.

LOCAL APPROVALS RECEIVED: Approval in concept from the City of San Clemente Community Development Department

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, Coastal Development Permit 5-88-784 (Abbott), 5-88-784-A (Kurosawa Co.)

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PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

ISSUES OF CONTROVERSY:

The proposed development is a reduction in density of an already approved project. The permit was issued and activated by the development consisting of the grading, however, no construction had commenced on the residences. There are no known issues of controversy. The applicant is in agreement with the special conditions.

STAFF NOTE:

The original permit and amendment (5-88-784 & 5-88-784-A) were activated when the site grading (22,600 cubic yards of cut) was done following issuance of the permit in 1990. However, residential construction did not commence and the site has remained a fenced, large hole in the ground. None of the public improvements required in the permit (public access easement, deed restricted public view improvements, and signage) were implemented, however, they were not required to be implemented concurrent with grading of the site.

This permit amendment concerns a reduction in density and residential plan redesign only. All other components of previous approved development remain the same.

STAFF RECOMMENDATION:

The Staff recommends the Commission adopt the following resolution:

I. Approval With Conditions

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the proposed amendment, as conditioned, is consistent with the requirements 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, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions

1. Prior Conditions

Unless specifically altered by this amendment, all regular and special conditions attached to permits 5-88-784 and 5-88-784-A remain in effect.



## II. Findings and Declarations

The Commission hereby finds and declares:

### A. Project Description

The applicant is proposing to construct a four level, 23 unit, 61,489 square foot condominium project with 74 parking spaces. The project plan includes landscaping with native plants. No additional grading is proposed. Site grading was done under the previous permit.

The proposed development is a reduction of residential units from 30 to 23, involves entirely new building plans and is therefore considered a material change. It should be noted that although the project involves a reduction in density and can therefore be viewed as a beneficial change, it is still a material change.

Development on the first floor consists of a total of 7 units (4 three-bedrooms, 2 two-bedrooms, and 1 one-bedroom) for a total of 13,101 square feet. The second floor consists of 6 units (4 three-bedrooms and 2 two-bedrooms) for a total of 14,407 square feet. The third floor consists of 1 four-bedroom, 1 one-bedroom and 3 three-bedrooms) for a total of 12,358 square feet. The fourth floor consists of 5 units (4 three-bedrooms and 1 one-bedroom) for a total of 10,955 square feet.

Thirty-nine parking spaces will be provided on level 1 and 35 parking spaces on level 2 for a total of 74 parking spaces. The prior project included 69 parking spaces. The new project has seven fewer residential units with 5 more parking spaces. Therefore, the parking is adequate and exceeds both City of San Clemente and Coastal Commission parking standards.

Both the previously approved project and the proposed project include two parking levels and four levels of residential space. The building footprint for both is equivalent. The proposed development does not impact previous public access and viewing dedications.

The proposed development is located on a coastal bluff and a coastal canyon to the northwest. To the northeast and east are existing condominium buildings. To the southwest are the railroad tracks, the beach and ocean. To the north and northwest adjacent to the property is Linda Lane Park, a primary coastal beach access point, with parking and a small playground. The site is located between two major coastal access points, the San Clemente Pier and Linda Lane Park.

### 2. Project History

#### Coastal Development Permit 5-88-784

This permit was approved in 1988 and issued in 1990 for construction of a 30 unit condominium project with a subterranean parking garage and 66 parking stalls. The project was approved with seven special conditions: public viewing deed restriction, vertical access easement, future development, assumption of risk, restoration plan, revised plans, and plans conforming with geologic recommendations.

The project was approved with a 25 foot blufftop setback and a 15 foot canyon setback. The staff report included a discussion of public access. The original plans submitted by the applicant included plans for a trail down the coastal bluff (see Exhibit 2 of staff report 5-88-784A). The trail down the bluff face was not approved. The staff report included findings that there was historic public use of the site for beach access and ocean viewing. However, the project approved by the Commission included a public accessway down the coastal canyon to Linda Lane Park, instead of a stairway down the coastal bluff. Relocation of the stairway from the bluff to the canyon eliminated potential geotechnical and visual impacts associated with bluff staircases. However, the project was approved with a 5 foot vertical access to the 25 foot coastal bluff setback which was to remain as a public view easement. Staff report 5-88-784 is attached as Exhibit 4. Exhibit 5 of staff report 5-88-784 shows the approved public access viewing deed restricted area.

Special condition number 1 is the public viewing deed restriction. This condition states that the applicant shall record a deed restriction providing an easement for public viewing purposes from the terminus of Arenoso Lane to and along the 25 foot blufftop setback, but no closer than 10 feet to any residential unit. The condition also requires that the deed restricted area be signed, informing the public that the area is open to the public during typical daylight hours and that any landform alteration, vegetation removal or erection of any structures within the deed restricted area shall be prohibited without the approval of the California Coastal Commission.

Special condition number 2 required a 20 foot wide vertical public access easement from Arenoso Lane on the inland property boundary line extending down into the coastal canyon and connecting with Linda Lane Park. The special condition included language that the accessway be signed and that it remain open during typical daylight hours.

Special condition number 6 was for submittal of revised plans relocating the public beach accessway from the coastal bluff face to the inland property boundary as described in special condition 2 above. Exhibit 2 of staff report 5-88-784 [see Exhibit 4] shows where the bluff stairway was originally proposed.

#### Coastal Development Permit 5-88-784-A

This CDP amendment was approved by the Commission in April 1990 and issued in June 1990. The amendment modified the width of the vertical easement on the inland property boundary from a fixed 20 foot width to a width varying from 5 to 20 feet. The width of the vertical easement across the applicant's property would be five feet.

#### B. Public Access

Sections 30211 and 30212 of the Coastal Act provide that development not interfere with the public's right to access the beach and that vertical access from the first public road to the shoreline be provided except where it is inconsistent with public safety, protection of fragile coastal resources or where adequate access exists nearby.

The public access and viewing easement components of the previously approved permits are not altered by this amendment. Plans submitted by the applicant

show the 5 foot vertical access from Arenoso Lane to the 15 foot wide bluff top viewing area and the 5-to-20 foot wide public access easement across the applicant's property from Arenoso Lane to Linda Lane Park. The previous applicant has complied with the necessary deed restrictions and special condition number 1 of this permit informs the applicant that all previous conditions not affected by this amendment remain in effect.

The previous permits were conditioned to be consistent with the access and recreation policies of the Coastal Act. Special condition 1 of this staff report states that all previous conditions of staff reports 5-88-784 and 5-88-784-A shall remain in effect.

The applicant is not proposing any changes in the previous special conditions requiring public access or deed restricting specific areas for viewing access by the public. The proposed development consists of a reduction in density of the proposed residential development from 30 condominiums to 23 and an increase in on-site parking. No other development is proposed. Therefore, the Commission finds that the proposed development is consistent with the access and recreation policies of Chapter 3 of the Coastal Act.

#### D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998 the Commission certified with suggested modifications the IP portion of the Local Coastal Program. To date the local government has not adopted the Commission's suggested modifications. Therefore, the LCP is not fully certified. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding public access. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

#### D. Consistency with the California Environmental Quality Act (CEQA).

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the public access policies of the Coastal Act. Mitigation measures; a special condition requiring that the special conditions of previous permits remain in effect, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed development is consistent with the public access policies of the Coastal Act. Staff Report on Previous Amendments

finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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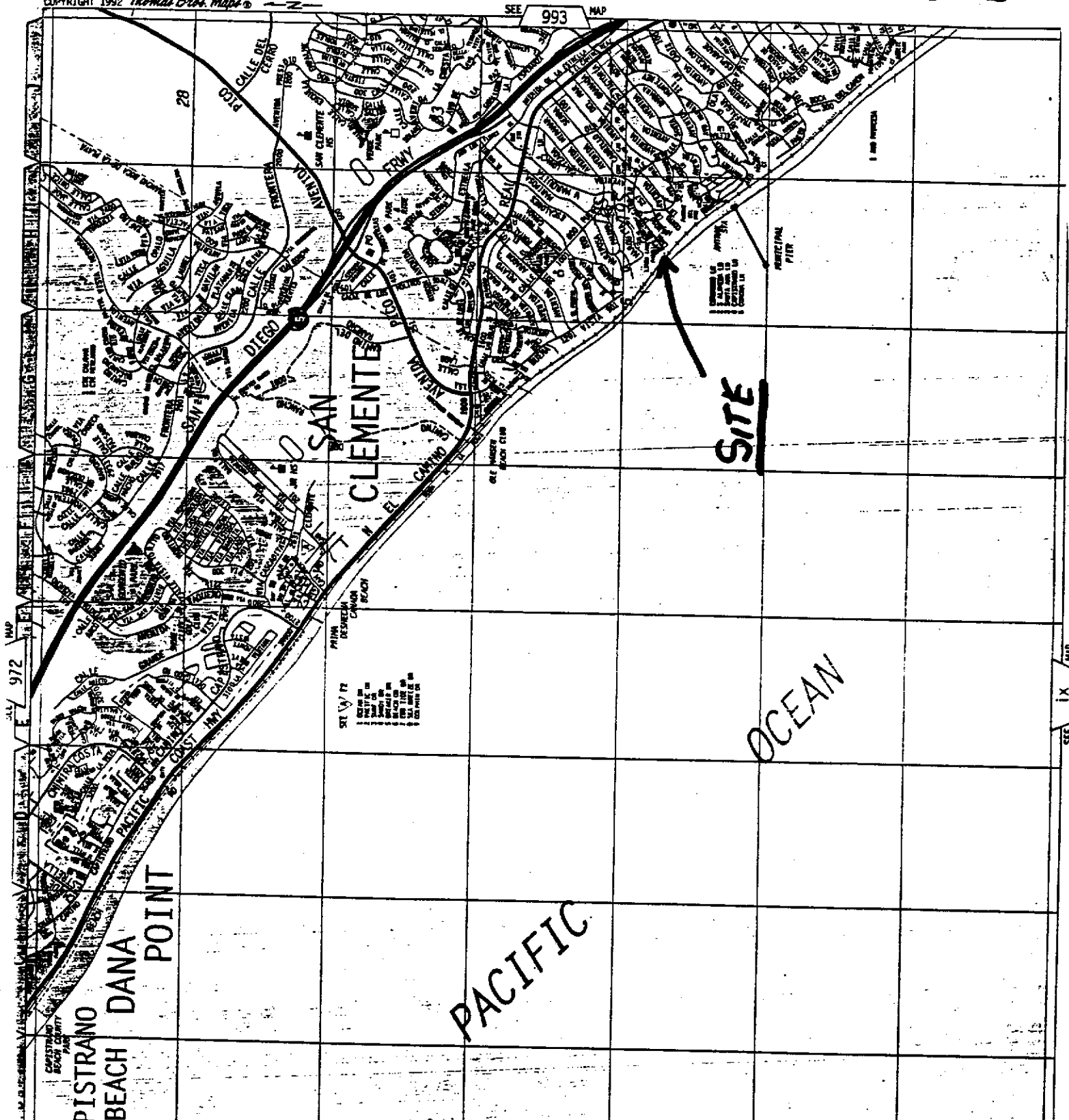


EXHIBIT NO. 1  
APPLICATION NO.  
5-88-784- A2  
VICINITY  
Exhibit 3  
Page 7 of 29



# **PRELIMINARY SITE PLAN**

**VISTA PACIFICA VILLAS**  
**SAN CLEMENTE, CALIFORNIA**

உயர்நீதிமன்றம்

EXHIBIT NO. 2  
APPLICATION NO.  
S-88-784-A2  
SITE PLAN  
Exhibit 3  
Page 8 of 29  
California Coastal Commission

**CALIFORNIA COASTAL COMMISSION**

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

Filed: March 14, 1990  
49th Day: May 2, 1990  
180th Day: September 10, 1990  
Staff: V. Komie ✓  
Staff Report: March 21, 1990  
Hearing Date:  
Commission Action:

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: 5-88-784A

APPLICANT: U.S. Kurosawa Co., Inc. AGENT: Jordan-Vall

PROJECT LOCATION: Southwest end of Arenoso Lane, San Clemente

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 30 unit condominium project with subterranean parking garage, public walkway down bluff face, and 22,600 cubic yards of total grading on a blufftop lot.

DESCRIPTION OF AMENDMENT: To modify Special Condition number 2 to reduce width of vertical access easement to 5 feet at its narrowest point.

LOCAL APPROVALS RECEIVED: none

SUBSTANTIVE FILE DOCUMENTS:

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

Staff Reports for Previous Amendments

<b>EXHIBIT NO. 3</b>
APPLICATION NO. <b>5-88-784 A2</b>
STAFF REPORT

## II. Special Conditions

The following condition is a revision of the original condition #2 on the approved permit and replaces it.

### 1. Vertical Access

Prior to issuance of 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 public pedestrian access to the shoreline. The document shall provide that, prior the acceptance of the offer the applicant and subsequent homeowner's association shall maintain the accessway and that it will remain open to the public during typical daylight hours. Any accepting agency or private association may also limit access to daylight hours through an access management plan submitted for review and approval of the Executive Director. The accessway shall be properly signed to acknowledge the availability for use by the public. Said signing shall be submitted for the review and approval of the Executive Director. The easement shall be twenty feet (20) wide at the canyon along the western boundary at the property line bordering Linda Lane Park narrowing to accomodate the structures location to a width of five (5) feet at Arenoso Lane. The exact location of the easement shall take into consideration public safety needs and the rights of nearby property owners to privacy and shall be approved by the Executive Director prior to recording. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. 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 for the date of recording.

**NOTE:** Unless specifically altered by the amendment, all conditions attached to the previously approved permit remain in effect.

## III. Findings and Declarations.

The Commission hereby finds and declares as follows:

### A. Project Description and Background:

On November 18, 1988 the Commission approved permit 5-88-784 for construction of a 30 unit condominium project with subterranean parking garage. The project is located on a blufftop beachfront and canyon fronting parcel in San Clemente. On the canyon side property line is Linda Lane Park, a public park with beach access and parking.

Because the applicants are proposing to amend a condition on the approved permit this amendment request must be considered a material amendment and be heard by the Commission.



Conditions imposed on the permit included two public easements. One of the easements was for a 15 foot wide public viewing easement along the beachside bluff. The applicants had originally submitted plans for a public stairway down the beach fronting bluff but the Commission preferred to eliminate the stairway to preserve the bluff yet allow for public viewing. The other easement was for a 20 foot wide vertical access easement along the landward property line to allow pedestrian traffic access to Linda Lane Park which in turn would allow beach access. Other conditions imposed on the permit included future development, assumption of risk, restoration plan (landscaping and revegetation), revised plans eliminating the originally proposed public access stairway down the beachfront bluff face and geologic recommendations.

The property and project has changed hands and a transfer of the permit has been submitted to the Commission. The new applicants are proposing to modify the condition for the vertical access into Linda Lane Park to allow for a narrower access easement behind the building along the non-beachfront property line. The narrowest point is at the street and is proposed to be five (5) feet wide.

#### **B. Public Access:**

Sections 30211 and 30212 of the Coastal Act provide that development not interfere with the public's right to access to the beach and that vertical access from the first public road to the shoreline be provided except where it is inconsistent with public safety, protection of fragile coastal resources or where adequate access exists nearby.

The project as approved by the Commission adequately met the public access requirements of the Coastal Act. However, the applicant believes that, inadvertently, the discussion regarding the modification of the vertical access condition was not heard at the Commission meeting when the permit was approved. This amendment request is to rectify that oversight. The applicant contends that a 20 foot wide easement would require a redesign of the project which will consist of a reduction in the building size that would eliminate necessary parking; and that the easement proposed is adequate to meet the intent of the access easement.

The expected users of the access easement are local inhabitants on foot. Beachgoers with vehicles can park at Linda Lane Park and walk to the beach from there.

By providing that the easement is wider in the canyon area it will make it possible for construction of a stairway and insure public safety. The easement space behind the building is adequate for any expected foot traffic. Because parking is located in the building where it abuts the easement there should be no issue with privacy for the condominium owners. The access will conveniently serve the occupants of the project. As long as the other aspects of the condition are met, such as signing to alert the public to the availability for use of the walkway, the proposed easement will adequately serve the intent of the original vertical access condition. Therefore, the Commission finds that the modified access condition is consistent with section 30211 of the Coastal Act for providing access from the nearest public road and the shoreline (vertical access).

C. Local Coastal Program:

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having local jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The San Clemente Land Use Plan was conditionally certified on April 29, 1987. As conditioned, the proposed development will not create adverse impacts and is consistent with the policies contained in the LUP. Therefore, the Commission finds that approval of the proposed development will not prejudice the the City's ability to prepare a Local Coastal Program Implementation Program for San Clemente which is consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

39210

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 590-9071



Filed: 10/3/88  
49th Day: 11/21/88  
180th Day: 4/1/89  
Staff: G. Timm  
Staff Report: 11/3/88  
Hearing Date: 11/18/88  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-88-784

APPLICANT: Suzanne Abbott

AGENT:

PROJECT LOCATION: Southwest end of Arenoso Lane, San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a 30 unit condominium project with subterranean parking garage, public walkway down bluff face, and 22600 cubic yards total grading on a blufftop lot

Lot area:	1.6 acre
Parking spaces:	69
Zoning:	R-4
Plan designation:	Med-High Density Residential (24 du/acre)
Project density:	20 du/acre
Ht abv fin grade:	38 feet

LOCAL APPROVALS RECEIVED: Approval of Use Permit and Tentative Tract Map, Approval in Concept - City of San Clemente

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, May 11, 1988

**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending approval of the proposed development with special conditions which address scenic resources and public views, public access and recreation, and geologic stability.

Staff Reports for Previous Amendments

<b>EXHIBIT NO. 4</b>
APPLICATION NO. <b>5-88-784 A2</b>
<b>STAFF REPORT</b>
<b>-784</b>
California Coastal Commission

Exhibit 3  
Page 13 of 29

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development 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, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

I. Standard Conditions: See Attachment X.

III. Special Conditions.

This permit is subject to the following special conditions:

1. Public Viewing Easement

Prior to transmittal of the Coastal Permit the applicant shall record a deed restriction against the subject property which provides an easement for public viewing purposes to and along the bluff edge. Said easement shall run along the east side of the subject property from the terminus of Arenoso Lane to and along the bluff edge and shall extend a minimum of 25 feet inland from the bluff edge, but no closer than ten feet to any residential unit. The deed restriction shall stipulate that signing will be provided at the Arenoso Lane Cul de Sac, that the easement will remain open to the public during typical daylight hours and that any landform alteration, vegetation removal or erection of any structures (other than the placement of benches) within the easement shall be prohibited without the written approval of the California Coastal Commission or its successor in interest.

The deed restriction shall be free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and shall be in a form and content acceptable to the Executive Director.

2. Vertical Access

Prior to transmittal of the coastal development 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 public pedestrian access to the shoreline. The document shall provide that, prior to the acceptance of the offer, the applicant and subsequent homeowner's association shall maintain the accessway and that it will remain open to the public during typical daylight hours.

accepting agency or private association may also limit access to daylight hours through an access management plan submitted for the review and approval of the Executive Director. The accessway shall be properly signed to acknowledge the availability for use by the public. Said signing shall be submitted for the review and approval of the Executive Director. The easement shall be twenty (20) feet wide and extend from Arenoso Lane into the canyon along the western boundary of the property to the property line bordering Linda Lane public park. The exact location of the easement shall take into consideration public safety needs and the rights of nearby property owners to privacy and shall be approved by the Executive Director prior to recording. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. 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.

### 3. Future Development

Prior to transmittal of the permit the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit No. 5-88-784 is for the approved development only and that any future improvements or additions on the property including clearing of vegetation or grading (except as permitted herein) will require a new coastal development permit from the Commission or its successor agency. The deed restriction shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant or landowner.

### 4. Assumption of Risk

Prior to transmittal of permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from wave action, slope failure, soil erosion and/or expansive soils, and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

### 5. Restoration Plan

Prior to transmittal of coastal permit, the applicant shall submit, for the review and approval of the Executive Director, a landscaping and revegetation plan for the proposed development site prepared by a qualified landscape architect which provides that:

- (a) The blufftop and edge and all existing slopes on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. All landscaping shall consist of native, drought resistant plants to minimize the need for irrigation and to screen or soften the visual impact of development. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage.
- (b) A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of the proposed development to minimize the effects of run-off and erosion. The run-off control systems shall be designed to prevent any increase in site run-off over pre-existing peak flows. All drainage shall be directed away from foundation and slope areas via non-erosive devices to storm drain facilities on the street.

#### 6. Revised Plans

Prior to transmittal of the coastal permit, the applicant shall submit, for the review and approval of the Executive Director, revised plans which relocate the proposed public walkway from the bluff edge and face on the southern boundary of the property to the canyon slope on the western edge of the property in order to provide access via Linda Lane Park to the public beach consistent with special condition No. 2. The exact location of the walkway shall be determined in consideration of public safety needs and the rights of nearby private property owners to privacy.

#### 7. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Feasibility Investigation Report dated February 22, 1988 by Eberhart & Stone, Inc. regarding the proposed development shall be incorporated into all final design and construction including grading, foundations and drainage and all plans must be reviewed and approved by the consultant prior to commencement of development. Prior to commencement of development the applicant shall submit evidence to the Executive Director of the consultant's review and approval of all final design and construction plans.

#### IV. Findings and Declarations.

The Commission hereby finds and declares:

##### A. Project Description

The applicant is proposing to construct a 30 unit condominium project, 35 ft. above existing grade, on a vacant 1.6 acre coastal blufftop lot overlooking the public beach and pier in San Clemente. The project will consist of six levels including two levels for a subterranean parking garage with 69 parking spaces. Approximately 22,600 cubic yards of grading is proposed for the

parking garage. No grading is proposed on the bluff edge or slopes, however. A walkway down the bluff face to the beach is proposed for public use. The site is bordered on the northwest by a coastal canyon adjacent to Linda Lane and a public parking lot which provides access to the public beach.

Vegetation on the slopes of the bluff and canyon consists of grasses, ice plant, small bushes and cacti. All slopes show signs of past erosion. The slope overlooking the beach is 75 to 85 feet high and the slope gradient varies from 3:1 to 1.5:1 with localized near vertical areas. The top of the bluff has been graded in the past and contains little vegetation. Drainage on the site is generally to the southwest and northwest down the bluff and canyon slopes.

The subject site is bordered on the north and east by multi-family residential structures consistent in size and scale to the proposed structure. The site is designated as Medium-High Density Residential (24 du/acre) in the City's certified Land Use Plan and, as proposed, the project is consistent with this designation (20 du/acre). Due to concerns raised by nearby residents, Commission staff, City staff and public officials concerning view blockage, public views, geologic stability and access, the project, over the course of several public hearings before the City, has been scaled down from 55 to 30 units, set back from the bluff edge a minimum of 25 feet and terraced back from the skyline to reduce the visual impact and reduce view blockage. Development of the site raises issue with the Coastal Act due to its visibility from the beach, pier, and Linda Lane Park and the fact that substantial evidence exists regarding prior historic use of the blufftop and slopes for viewing and access to the beach.

#### B. Blufftop Development

Section 30253 of the Coastal Act provides in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. . . .

In addition, Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those

designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed development is to be located on a coastal bluff which is visibly subject to erosion from wave and wind action. A geology report has been prepared for the subject site which indicates that portions of the site contain highly expansive soils and that the slopes are subject to erosion and may require stabilization. The report does conclude that the site is feasible for development provided that certain recommendations are incorporated into final design and construction plans regarding grading, foundations, drainage, and landscaping. Recommendations include landscaping to control erosion and setting development away from the slopes.

The proposed development raises concerns regarding the potential impacts, including those associated with landscaping and irrigation runoff, on bluff stability. Studies have shown that development on bluffs has the potential to significantly exacerbate the natural process of erosion which may contribute to landslides and/or severe erosion. Erosion rates have been shown to be greater when structures are placed on or over the bluff face. Rain water running off such structures over time tends to undercut and erode the area of the bluff beneath the structure.

In past actions the Commission has routinely required a 25 foot setback from the bluff edge as a special condition, when necessary, to protect the fragile bluff edge from damage during construction as well as to protect the structure from the hazards created by erosion of the bluff over time. Setting the proposed structure at least 25 feet away from the bluff edge is intended to reduce the potential problems related to slumping and erosion of the bluff edge and face for the expected life of the proposed structure. The setback also serves to screen or soften the visual impact of development along the coast and to help preserve the natural landform quality along the coast. In this situation the visual impact of the proposed development could be very severe without adequate setbacks and other controls due to the site's visibility from the public beach, pier area and Linda Lane Park. In this situation the proposed project has been setback a minimum of 25 feet and greater from the bluff edge.

The City's Certified Land Use Plan (LUP) contains the following policies concerning blufftop development:

3. Proposed development on blufftop lots shall be set back at least 25 feet from the bluff edge, or set back in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development. This minimum setback may be altered to require greater setbacks when required or recommended as a result of a geotechnical review.
5. New permanent structures shall not be permitted on a bluff face, except for ~~for fire access, stairways, or emergency~~ <sup>for fire access, stairways, or emergency</sup> to provide public beach access where no feasible alternative means of public access exists.



The LUP also establishes a design review process which establishes a standard of review which reflects the intent of Section 30251.

Many residents of an adjacent multi-unit residential structure to the southeast have objected to the proposed development because it will block private upcoast views of some units and have requested that the project be required to conform to a stringline rather than a 25 foot setback. Staff has concluded that a stringline would not be an appropriate method to establish the setback in this particular situation, however. This is because if a stringline were to be used, it would eliminate a large part of the flat pad area on one side and allow development to encroach beyond the bluff and canyon edges on the western portion of the property and, therefore, permit intrusion into the public viewshed. Additionally, the traditional approach to utilizing a stringline is to regulate infill development where sites are bordered by nearby structures on either side. In this case, the nearest structure to the northwest is located over 400 feet away, across the coastal canyon. Therefore, staff believes that a 25 foot setback would be more effective in protecting public views from the beach and adjacent park as well as provide additional protection from erosion of the bluff and potential geologic hazards. Further, the Commission has found in numerous past permit decisions that private view blockage is not a Coastal Act issue. Some residents have complained of public view blockage from Arenoso Lane as it descends toward the bluff. Public views from the bluff edge, however, can be protected by providing a public viewing easement to and along the bluff which will be discussed in greater detail in the following section.

Because the proposed development site is highly visible from the beach and canyon park, is visually degraded due to erosion on the bluff and canyon slopes and because development of the site could contribute to further erosion of the site, however, staff is recommending that the applicant be required to provide a landscaping and bluff restoration plan for the project site which utilizes native, drought resistant plant species indigenous to the area in order to minimize the need for irrigation, control erosion and screen or soften the visual impact of the development. In addition, staff is recommending that the applicant be required to submit revised plans which relocate the proposed public walkway from the bluff face to a more suitable location along the canyon edge which would eliminate the potential adverse visual and structural impacts associated with development on the bluff face as discussed above. Further, a special condition is required to insure that all future development on the subject site (which might normally be exempt from permit requirements) be subject to a coastal permit in order to protect existing visual resources and geologic stability.

Finally, the Coastal Act recognizes that new development may involve the taking of some risk. In this situation, the coastal bluff has clearly been subject to erosion from wave and or wind action and runoff. When development in areas of potential or identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's property rights. In the past, storm damage to structures located on coastal bluffs as well as on the beach have resulted in public cost (Staff Reports from Previous Amendments emergency repairs etc.) in the millions of dollars in Los Angeles and Orange County alone. Because the risks associated with the proposed development cannot be

completely eliminated in this situation, staff is recommending that the Commission require the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The waiver, or applicant's assumption of risk, when executed and recorded as a deed restriction on the property will show that the applicant and any future owners are aware of any potential hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

Based on the foregoing discussion, the Commission finds that, only as conditioned, to adhere to specific landscaping requirements, relocate the proposed public stairway, and record deed restrictions regarding future development of the site and liability, is the proposed development consistent with Sections 30251 and 30253 of the Coastal Act and the applicable policies contained in the City's certified LUP.

#### C. Public Access

The following Coastal Act policies are applicable to the proposed development relative to public access:

##### Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. (emphasis added)

##### 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.

##### 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.

(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.

(c) In carrying out the public access policies of this article, the commission, regional commissions, and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

As mentioned, the proposed development consists of the construction of a 30-unit condominium project on a vacant coastal bluff. The project raises issue with the above mentioned policies of the Coastal Act because it is one of the few remaining blufftop parcels overlooking the ocean in San Clemente and because there are existing unimproved trails or pathways along the blufftop and down the bluff face to the beach which, according to evidence submitted, has been historically used to acquire public views and access to the beach. Many letters and/or signed petitions have been received from local residents indicating that they have used the bluff for ocean viewing for 5 to 25 years. As proposed, the development would directly impede access to the site and the views provided by covering the blufftop and or obstructing access to the bluff edge unless special conditions are required to insure the provision of public access to and along the bluff. As mentioned, the applicant is proposing to construct a walkway down the bluff face to the beach for use by residents of the proposed structure as well as the general public. This walkway would eliminate the need to use the existing paths down the bluff face to the beach which are steep and erosion scarred and, through continued use, could contribute to further erosion and bluff instability, thus endangering the stability of the project itself.

The City's certified Land Use Plan contains the following policy regarding the provision of both visual and physical access to the shoreline which is applicable to the proposed development:

14. New development lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline.
- (c) Where no beach area exists and a residential development of greater than 20 units is proposed along a shore front bluff top lot, public access for view purposes shall be provided rather than lateral access along the shoreline. Such access shall run along the bluff edge, and shall extend a minimum of 25 feet inland from the bluff edge, but no closer than ten feet to any residential unit.

The LUP permits modifications to the recommended bluff top viewing areas in order to maintain public safety, habitat values and the rights of private property owners. As indicated, evidence suggests that the blufftop has historically been used by the public to obtain views up and down the coast.

Based on available evidence, staff believes that the proposed development will have a direct impact on public use of the property for access to the beach or the blufftop vista point. The necessary landscaping and revegetation of the bluff face and the applicant's desire to eliminate or minimize physical access down the bluff to minimize hazards associated with erosion as well as public safety will restrict or eliminate access to the pathways previously used by the public. In order to safely develop the site it is necessary to revegetate the bluff face and restrict its use. In addition, construction of the project will clearly block previously available public views unless measures are taken to provide public access to the bluff. Therefore, in order to protect the potential prescriptive rights of access to the shoreline and the blufftop vista point pursuant to Section 30211 of the Coastal Act, staff is recommending that the Commission require the applicant to record an offer to dedicate a vertical access easement and a deed restriction which provides for a public view easement along the bluff with an appropriate accessway. In regards to the vertical access easement and the proposed stairway on the bluff face, staff is recommending that the stairway be relocated to the canyon slope on the northwest slope of the property to mitigate both the visual and geotechnical impacts associated with the project as discussed in the previous section. Accordingly, staff is recommending that the vertical access dedication be provided in the same location. The exact location shall be determined in consideration of public safety needs and private property rights of adjacent landowners. This requirement is further justified because an accessway at this location would provide access to Linda Lane park and an LUP designated vertical accessway to the public beach via a storm drain tunnel rather than over and across the railroad tracks at grade level as presently obtained. It should be pointed out that past access to the site has not been blocked by a gate or fence to prevent the public from obtaining access and only recently have signs been posted on the site prohibiting trespassing and indicating it is private property. Further, there is no indication that any attempt has been made on the part of the property owner to discourage use of

the site. The proposed development is clearly inconsistent with Section 30211 since it will physically block an existing public viewpoint and eliminate existing trails to the beach which have been historically used. Without the requirement for an offer to dedicate a vertical access easement and a deed restriction to provide a public viewing easement there is no guarantee that the potential rights acquired through prior historic use will be protected. In addition, in order to prevent any future ancillary development (which might normally be exempt from permit requirements) which might have potential adverse impacts on public access and views it is necessary to require that all future improvements or development on the site be subject to a coastal permit from the Commission or its successor agency. This requirement will resolve any future potential conflicts between the public access policies of the Coastal Act and Section 30610 which exempts certain types of development in favor of protecting public prescriptive rights as required by Section 30007.5 of the Coastal Act. This policy provide that conflicts between one or more policies of the Coastal Act shall be resolved in a manner most protective of coastal resources.

Based on the preceeding discussion the Commission finds that, only as conditioned, to record an offer to dedicate a vertical access easement, and deed restrictions to provide a public viewing easement and insure that all future development obtain a coastal permit, is the proposed development consistent with Sections 30251 and 30253 of the Coastal Act.

#### D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988. Among the policies contained in the certified LUP are those discussed in the preceding sections regarding the proposed development. The Commission finds that the proposed project, as conditioned, is consistent with the policies of the certified LUP and will not prejudice the ability of the City to prepare a certifiable Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

7777A

Attachment X

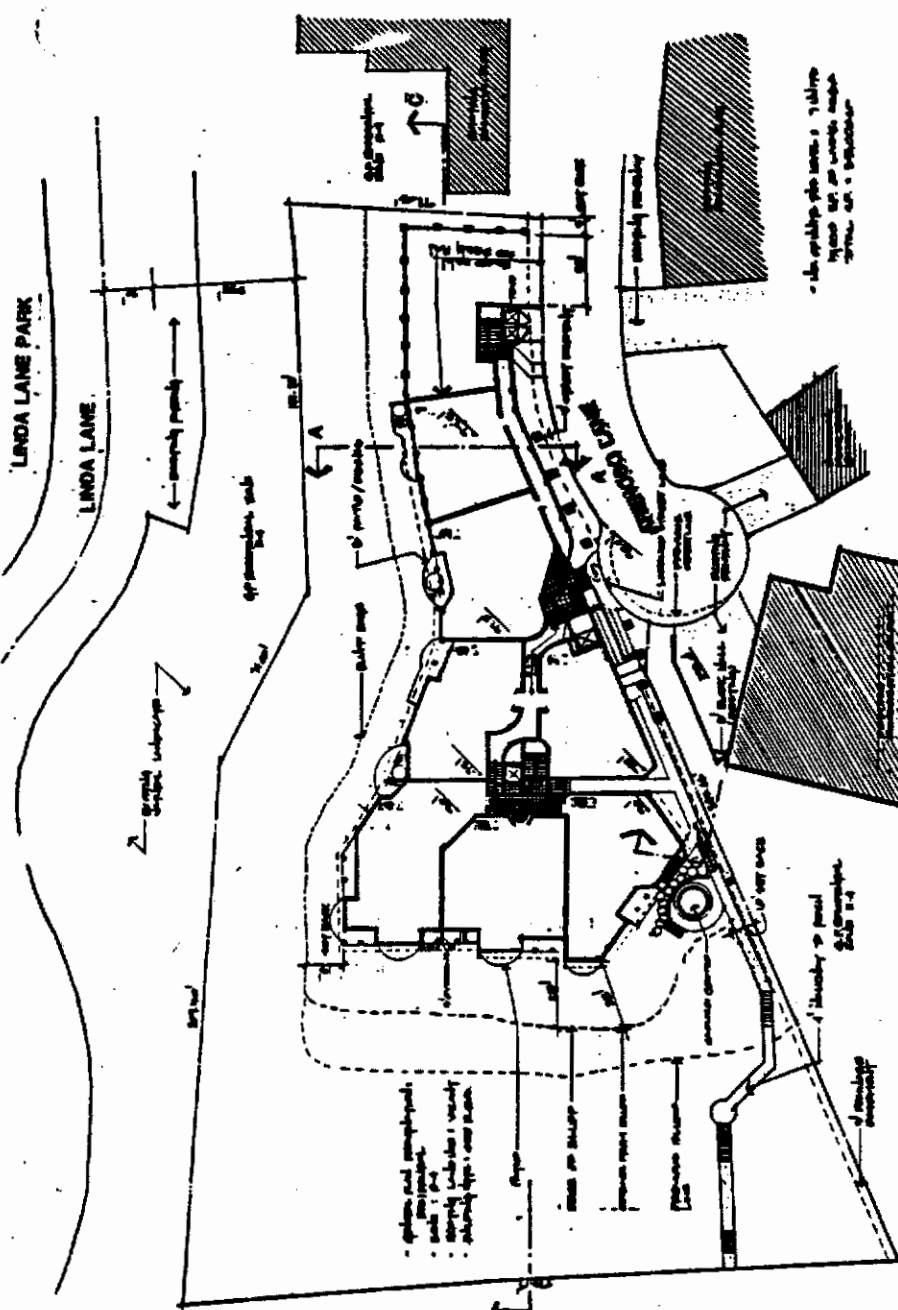
To: Permit Applicants  
From: California Coastal Commission  
Subject: Standard Conditions

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 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. 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 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.



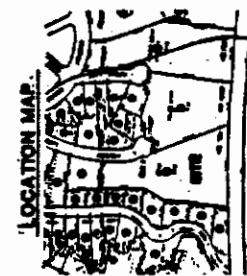


**SITE PLAN / FIRST FLOOR**  
7/6/05

**ARENOSO VILLAS  
SAN CLEMENTE, CA  
TOWN & COUNTRY DEVELOPMENT**

**JORDAN ARCHITECTS INC.**  
9218 E. MCQUINN BLVD. D  
IRVINE, CALIFORNIA 92618-4000

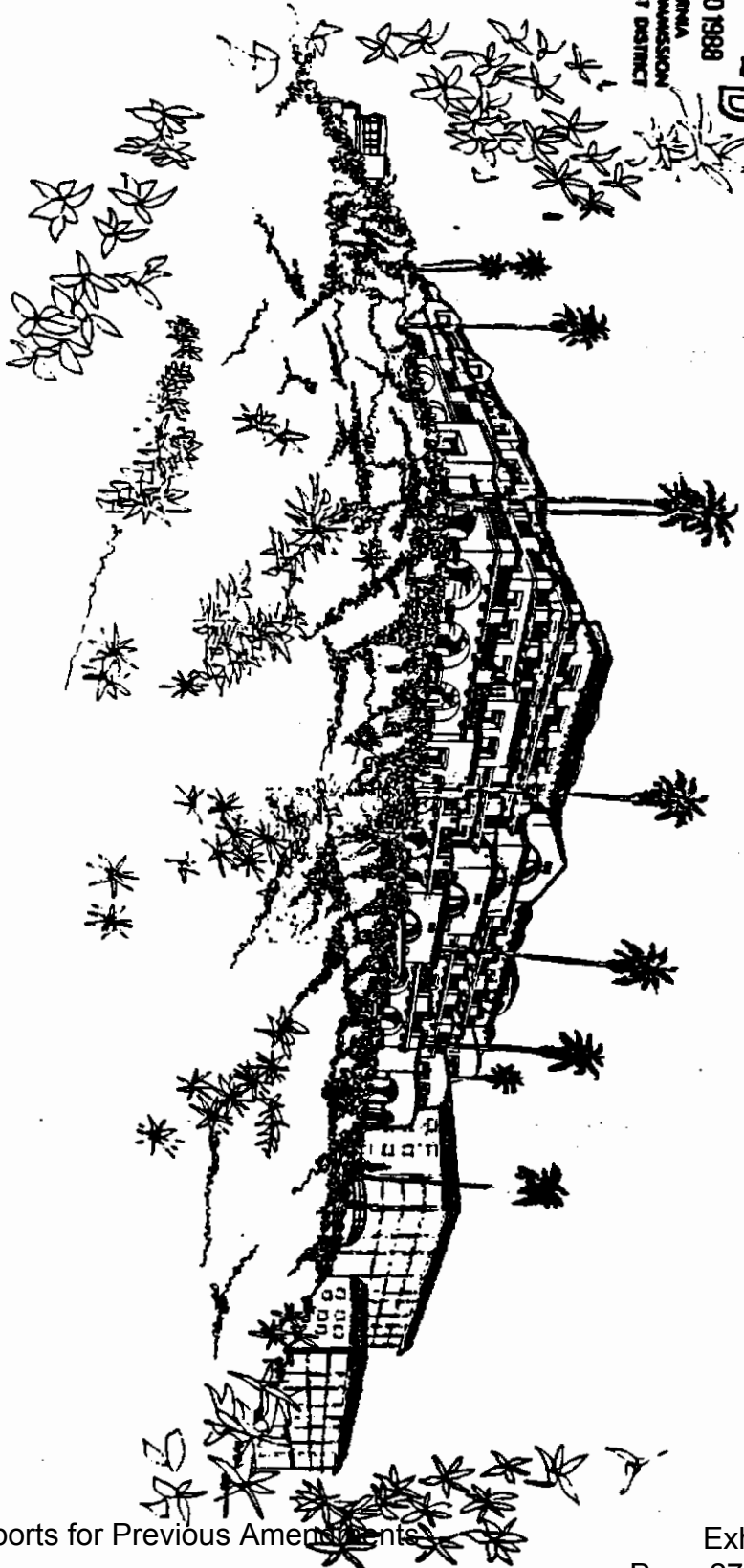
**PROJECT DATA:**  
 1. PROJECT NO. 11111  
 2. PROJECT NAME: ARENOSO VILLAS  
 3. PROJECT LOCATION: SAN CLEMENTE, CA  
 4. PROJECT OWNER: JORDAN ARCHITECTS INC.  
 5. PROJECT DATE: 7/6/05



<b>EXHIBIT NO. 2</b>
<b>APPLICATION NO.</b>
5-88-784
California Coastal Commission




**RECEIVED**  
 SEP 20 1988  
 CALIFORNIA  
 COASTAL COMMISSION  
 SOUTHERN COAST DISTRICT

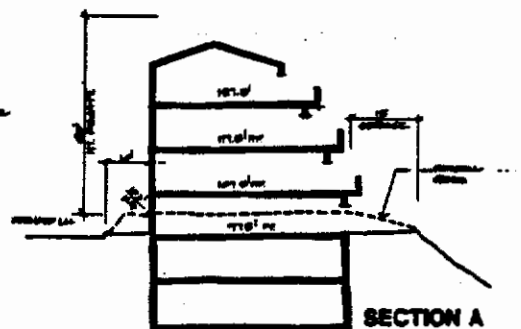
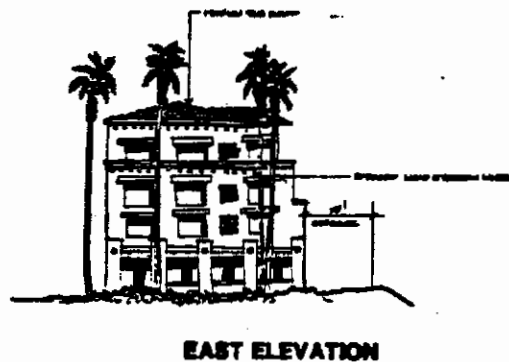
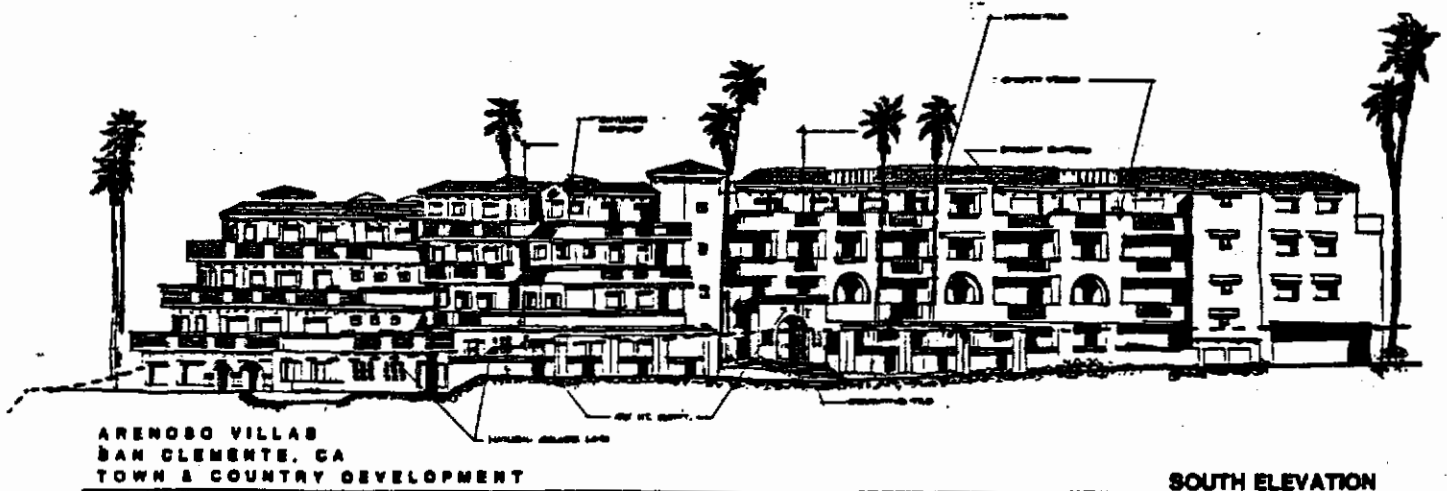


ARENOSO VILLAS  
 SAN CLEMENTE, CA.  
 TOWN AND COUNTRY DEVELOPMENT

JORDAN ARCHITECTS INC.  
 1011 E. HEDGECOCK BLVD. # 2  
 ANAHEIM, CALIFORNIA 92801-4000

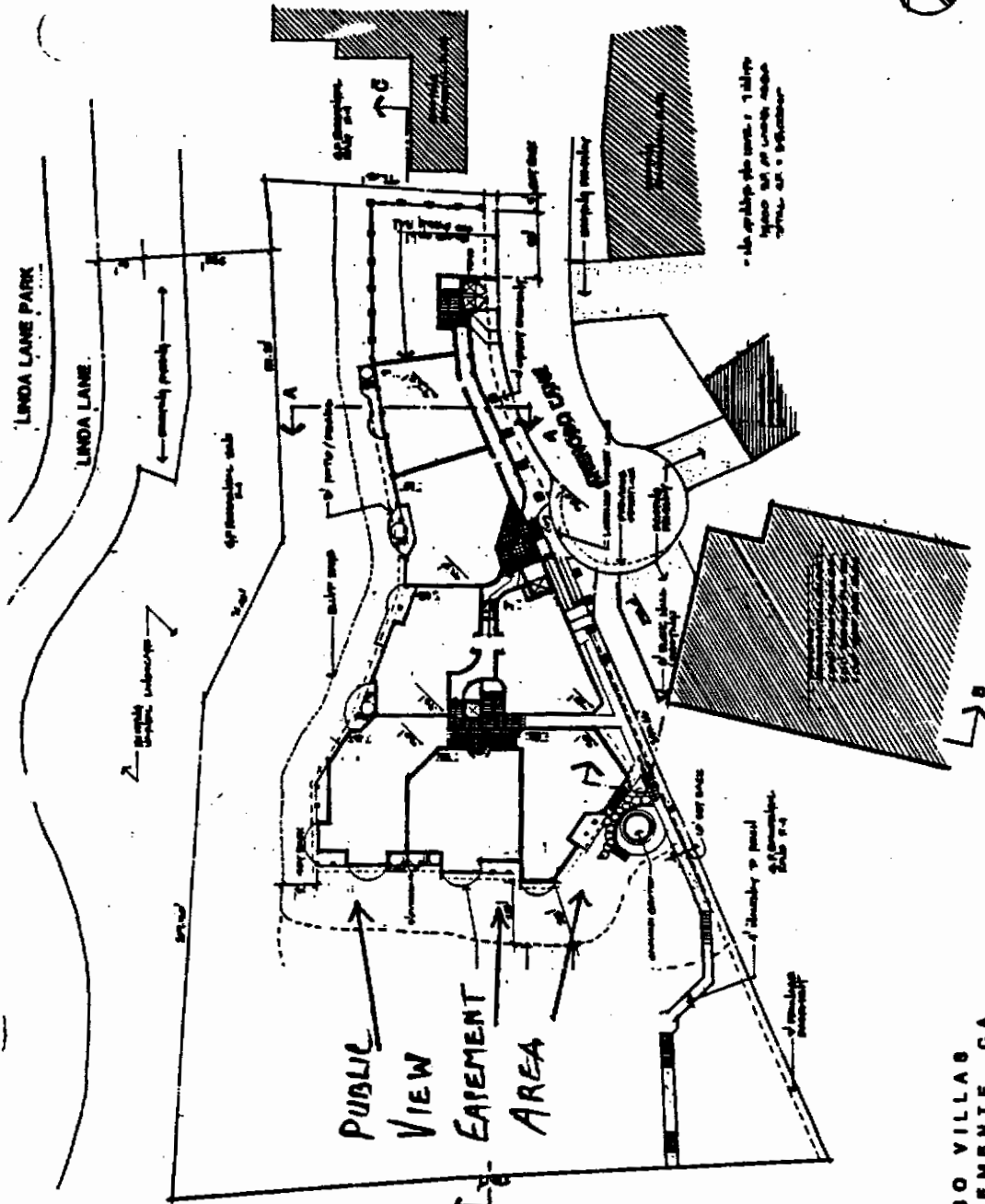
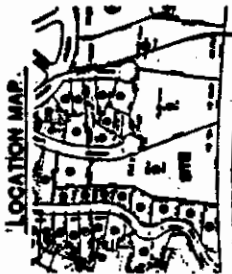
**BLUFF VIEW**

<b>EXHIBIT NO. 3</b>
<b>APPLICATION NO.</b>
5-88-784
 California Coastal Commission



**PROJECT DATA:**

1. PROJECT NO. 100-100  
 2. DATE OF PREP. 10/1/84  
 3. PROJECT NAME: ARENOSO VILLAS  
 4. PROJECT LOCATION: SAN CLEMENTE, CA  
 5. PROJECT TYPE: TOWN & COUNTRY DEVELOPMENT  
 6. PROJECT AREA: 10.0 ACRES  
 7. PROJECT OWNER: JORDAN ARCHITECTS INC.  
 8. PROJECT ARCHITECT: JORDAN ARCHITECTS INC.  
 9. PROJECT ENGINEER: JORDAN ARCHITECTS INC.  
 10. PROJECT LANDSCAPE ARCHITECT: JORDAN ARCHITECTS INC.



ARENOSO VILLAS  
 SAN CLEMENTE, CA  
 TOWN & COUNTRY DEVELOPMENT

JORDAN ARCHITECTS INC.  
 2218 E. HODGSON AVENUE, SUITE 100  
 RIVERSIDE, CALIFORNIA 92504-4000

SITE PLAN / FIRST FLOOR  
 10/1/84

EXHIBIT NO. 5
APPLICATION NO.
5-82-784
California Coastal Commission

## Page 1 of 2

JAN 24 '94

671 19

SHEET 1 OF 2 SHEETS

ALL OF TENTATIVE  
TRACT NO. 13713  
AREA: 1.873 ACRES  
DATE OF SURVEY: JULY, 1989  
BLOCK 4558, MODULE 91  
1 LOT

# TRACT 13713

IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE  
STATE OF CALIFORNIA

LOT FIFTEEN (15) IN BLOCK THREE (3), "TRACT NO. 784," SAN CLEMENTE, THE  
SPANISH VILLAGE, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF  
CALIFORNIA, AS PER MAP RECORDED IN BOOK 23, PAGES 30 AND 40 OF  
MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY.

STEVENSON, PORTO & PIERCE, INC. JULY 1989  
JOHN E. STEVENSON R.C.E. 22446  
FOR CONDOMINIUM PURPOSES

ACCEPTED AND FILED AT THE  
REQUEST OF

Investors Title Co.

DATE November 21, 1990

TIME 9:10 AM FEE \$8.00

INSTRUMENT # 90-648197

BOOK 671 PAGE 19 M.M.

LEE A. BRANCH  
COUNTY RECORDER

BY: Shirley Robinson  
DEPUTY

## OWNERSHIP STATEMENT

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST  
IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND  
RECORDATION OF SAID MAP, AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

WE HEREBY DEDICATE TO THE CITY OF SAN CLEMENTE:

1. THE 15 FT. WIDE VIEW EASEMENT AS SHOWN.

2. THE 5 FT. WIDE MIN. VERT. ACCESS EASEMENT FOR PEDESTRIAN  
THROUGH AND EGRESS AS SHOWN.

400 ARENOSO PROPERTIES PARTNERSHIP  
A CALIFORNIA GENERAL PARTNERSHIP

BY: PLAYA DEL MER ASSOCIATES  
A CALIFORNIA CORPORATION  
MANAGING GENERAL PARTNER

BY: RONALD I. SAFREN  
PRESIDENT

STATE OF CALIFORNIA ) ss

COUNTY OF ORANGE )

ON THIS 15th DAY OF August, 1990 BEFORE ME, JACLYN L. WYATT,  
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY KNOWN  
TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE  
PRESIDENT OF PLAYA DEL MER ASSOCIATES, THE CORPORATION THAT  
EXECUTED THE WITHIN INSTRUMENT, AND KNOWN TO ME (OR PROVED TO ME ON THE BASIS  
OF SATISFACTORY EVIDENCE) TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT  
ON BEHALF OF SAID CORPORATION, SAID CORPORATION BEING KNOWN TO ME (OR PROVED TO ME  
ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE ONE OF THE PARTNERS OF 400  
ARENOSO PROPERTIES PARTNERSHIP, THE PARTNERSHIP THAT EXECUTED THE WITHIN  
INSTRUMENT AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME  
AS SUCH PARTNER AND THAT SUCH PARTNERSHIP EXECUTED THE SAME.

WITNESS MY HAND AND SEAL AS A NOTARY PUBLIC IN AND FOR SAID STATE  
JACLYN L. WYATT

MY PRINCIPAL PLACE OF BUSINESS IS IN ORANGE COUNTY

MY COMMISSION EXPIRES 8-14-94

BENEFICIARY: CHIGIN-BEING HOUSING LOAN CO., LTD.

A PARTNERSHIP CORPORATION FOR DEED OF TRUST RECORDING

1. Shirley Honda  
SHOCHI HONDA (ASSISTANT MANAGER)

STATE OF CALIFORNIA ) ss

COUNTY OF Los Angeles )

ON THIS 15th DAY OF June, 1990, BEFORE ME, KAREN K. CAMPBELL,  
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED Shirley Honda, AND  
PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE  
ASSISTANT MANAGER AND, RESPECTIVELY,  
OF CHIGIN-BEING HOUSING LOAN CO., LTD., THE CORPORATION THAT  
EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME (OR PROVED TO ME ON  
THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSONS WHO EXECUTED  
THE WITHIN INSTRUMENT ON BEHALF OF SAID CORPORATION AND  
ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME.

WITNESS MY HAND:

Karen K. Campbell  
NOTARY PUBLIC IN AND FOR SAID STATE  
KAREN K. CAMPBELL

MY PRINCIPAL PLACE OF BUSINESS IS IN

Los Angeles COUNTY.

MY COMMISSION EXPIRES January 31, 1994.

## SOILS ENGINEER CERTIFICATE

A PRELIMINARY SOILS REPORT WAS PREPARED BY EBERHART & STONE, INC. ON FEBRUARY  
22, 1989 AND WAS FILED WITH THE CITY OF SAN CLEMENTE AS REQUIRED BY THE HEALTH  
AND SAFETY CODE 17993 AND SECTION 86434.8 OF THE SUBDIVISION MAP ACT RELATIVE  
TO THIS SUBDIVISION BY GERALD L. STONE, R.C.E. NO. 32233.

## SIGNATURES OMISSION NOTE:

PURSUANT TO THE PROVISIONS OF SECTION 86436(b) (3) OF THE SUBDIVISION MAP ACT,  
THE FOLLOWING SIGNATURES HAVE BEEN OMITTED, THEIR INTEREST BEING SUCH THAT IT  
CANNOT RIPEN INTO A FEE:

1. HERCHANTS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, HOLDER OF  
AN EASEMENT FOR PUBLIC UTILITIES PURPOSES, RECORDED DECEMBER 24, 1928, IN BOOK  
227, PAGE 217 OF OFFICIAL RECORDS.

2. THE CITY OF SAN CLEMENTE, HOLDER OF AN EASEMENT AGREEMENT FOR SANITARY  
SEWER AND STREET PURPOSES, RECORDED MAY 12, 1929 IN BOOK 251, PAGE 325 OF  
OFFICIAL RECORDS.

3. THE CITY OF SAN CLEMENTE, HOLDER OF AN EASEMENT FOR SANITARY SEWER  
PURPOSES, RECORDED MARCH 25, 1929 IN BOOK 257, PAGE 138 OF OFFICIAL RECORDS.

## ENGINEER'S STATEMENT

I HEREBY STATE THAT I AM A REGISTERED CIVIL ENGINEER OF THE STATE OF  
CALIFORNIA; THAT THIS MAP CONSISTING OF 2 SHEETS, AND THE TRUE AND COMPLETE  
SURVEY MADE IN JULY, 1989, WHICH IT CORRECTLY REPRESENTS WERE BOTH MADE BY ME  
OR UNDER MY DIRECTION; THAT THE MONUMENTS ARE OF THE CHARACTER AND ACCURACY OF THE  
POSITIONS INDICATED BY SAID MAP AND THE MONUMENT NOTES NOTED THEREON AND THAT  
SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

John E. Stevenson  
JOHN E. STEVENSON R.C.E. 22446  
EXPIRES 8-30-93

## CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE  
SUBSTANTIALLY IN CONFORMANCE WITH THE TENTATIVE MAP AS FILED WITH, AMENDED AND  
APPROVED BY THE CITY PLANNING COMMISSION; THAT ALL PROVISIONS OF THE  
SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH  
AND THE MAP IS TECHNICALLY CORRECT IN ALL RESPECTS NOT CERTIFIED TO BY THE  
COUNTY SURVEYOR.

DATED THIS 20th DAY OF September, 1990

William E. Cameron  
WILLIAM E. CAMERON R.C.E. 23784  
EXPIRES 12-31-93  
CITY ENGINEER, CITY OF SAN CLEMENTE

## COUNTY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND THAT ALL MAPPING  
PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH AND I AM  
SATISFIED SAID MAP IS TECHNICALLY CORRECT RELATIVE TO THE TRACT MAP BOUNDARY.

DATED THIS 15th DAY OF November, 1990

Paula C. Cramer  
BY: PAULA C. CRAMER, DEPUTY  
COUNTY SURVEYOR L.S. 4136 EXPIRES 6-30-92

## CITY CLERK'S CERTIFICATE

STATE OF CALIFORNIA ) ss

COUNTY OF ORANGE )

CITY OF SAN CLEMENTE

I HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL  
OF THE CITY OF SAN CLEMENTE AT A REGULAR MEETING THEREOF HELD ON THE 15th  
DAY OF September, 1990, AND THAT THEREUPON SAID COUNCIL DID, BY AN ORDER  
ONLY PASSED AND ENTERED, APPROVE SAID MAP AND DID ACCEPT ON BEHALF OF THE CITY  
OF SAN CLEMENTE:

1. THE 15 FT. WIDE VIEW EASEMENT AS DEDICATED.  
2. THE 5 FT. WIDE MIN. VERT. ACCESS EASEMENT AS DEDICATED.  
SUBJECT TO CITY ACCEPTANCE OF THE IMPROVEMENTS REQUIRED PURSUANT TO THE SUBDIVISION  
IMPROVEMENT AGREEMENT BETWEEN THE CITY AND OWNERS AS SHOWN ENTERED INTO ON OR  
ABOUT THE DATES OF CITY APPROVAL OF THIS FINAL TRACT MAP AND  
AND DID ALSO APPROVE SUBJECT MAP PURSUANT TO THE PROVISIONS OF SECTION  
86436 (a) (3) (A) OF THE SUBDIVISION MAP ACT.

DATED THIS 20th DAY OF September, 1990

Myrna Erway  
MYRNA ERWAY  
CITY CLERK  
CITY OF SAN CLEMENTE

## CLERK OF THE BOARD OF SUPERVISORS' TAX CERTIFICATION

STATE OF CALIFORNIA ) ss

COUNTY OF ORANGE )

I HEREBY CERTIFY TO THE RECORDER OF ORANGE COUNTY THAT THE PROVISIONS OF THE  
SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSIT TO SECURE THE  
PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND COVERED  
BY THIS MAP.

DATED THIS DAY OF 1990

LINDA D. RUTH  
CLERK OF THE BOARD OF SUPERVISORS

## COUNTY TREASURER-TAX COLLECTOR'S CERTIFICATE

STATE OF CALIFORNIA )

COUNTY OF ORANGE ) ss

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE THERE ARE NO LIENS  
AGAINST THE LAND COVERED BY THIS MAP OR ANY PART THEREOF FOR UNPAID STATE,  
COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES,  
OTHER THAN SPECIAL ASSESSMENTS COLLECTED AS TAXES ON SEWER SERVICE.

DATED THIS 23rd DAY OF October, 1990.

ROBERT L. CITRON  
COUNTY TREASURER-TAX COLLECTOR  
BY: Jerome B. Erb  
DEPUTY TREASURER-TAX COLLECTOR

RECEIVED

JUN 04 2002

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Accepted Tract Map  
Exhibit 4  
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Exhibit 5

5-88-784-A3