

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
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 P.O. BOX 1450  
 LONG BEACH, CA 90802-4416  
 (310) 590-5071

Filed: 09-20-95  
 49th Day: 11-08-95  
 180th Day: 03-18-96  
 Staff: RMR-LB *NR*  
 Staff Report: 10-27-95  
 Hearing Date: November 14-17, 1995  
 Commission Action:



## RECORD PACKET COPY

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-94-256A

APPLICANT: City of San Clemente AGENT: Engineering Department

PROJECT LOCATION: Coastal bluffs along Pacific Coast Highway between Camino  
 San Clemente and the Marblehead bluffs  
 City of San Clemente, County of Orange

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Slope stabilization and street widening of El Camino Real (Pacific Coast Highway). Grading consists of 58,000 cubic yards of cut and 3,000 cubic yards of fill. The project involves the installation of a tie-back anchor system extending as far as 100 feet inland from the bluff face, grading of the bluff to a 2:1 slope below the tie-back system, and construction of a grout curtain on the slope above the tie-back system. The project also includes street improvements, landscaping and mitigation measures. The staff report is included as exhibit 6.

DESCRIPTION OF AMENDMENT: The City of San Clemente is proposing to amend the assumption of risk special condition (special condition #3) to delete the last sentence of the condition, which reads: "The document shall run with the land, binding all successors and assigns, and shall be recorded free and clear of prior liens." The City is proposing to replace that sentence with the following: "The document shall be recorded free and clear of prior deeds of trust."

LOCAL APPROVALS RECEIVED: Approval in concept from the planning department of the City of San Clemente

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente certified Land Use Plan

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.

In this case, the Executive Director determined that the proposed amendment is a material change. 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, as conditioned, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends the Commission adopt the following resolution:

1. Approval with Conditions

The Commission hereby approves with a special condition an amendment to permit 5-94-256 on the grounds that the proposed development with the proposed amendment will be in conformance 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. SPECIAL CONDITIONS:

Replace special condition #3 with:

1. Assumption of Risk

Prior to the commencement of construction, each private landowner in Colony Cove owning property fronting the coastal bluff (assessors parcel map 691-353-(8,9,10,11,27,28,30,31), 691-354-(4,5,8,9,11,12) and the Lusk Company shall execute and record a deed restriction, for his/her property, in a form and content acceptable to the Executive Director, which shall provide: (a) that the landowner understands that the site may be subject to extraordinary hazard from landslide and soil erosion, and (b) that the landowner hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document ~~shall run with the land/binding all successors and assigns/and~~ shall be recorded free and clear of prior ~~lands~~ deeds of trust.

By acceptance of this permit, the City, as applicant: (a) agrees that the site may be subject to extraordinary hazard from landslide and soil erosion; and (b) waives any future claims of liability against the Commission or its successors in interest for damage from such hazards, and (c) agrees to hold harmless the Commission or its successors in interest against any and all claims arising out of the permitted project.

## II. Findings and Declarations

The Commission hereby finds and declares:

### A. Project History

The development conditionally approved in coastal development permit 5-94-256 involves the stabilization of a 80 feet high coastal bluff adjacent to El Camino Real and 16 private properties situated on the bluff top edge. The development includes construction of a dirt ramp on the bluff face, installation of soil nails and rows of tie-back anchors, reconstruction of the bluff face with textured shotcrete, and widening of El Camino Real. Grading consists of 58,000 cubic yards of cut and 3,000 cubic yards of fill.

Permit 5-94-256 was approved with the following special conditions: evidence of permission to construct, conformance with geologic recommendations, assumption of risk, location of disposal site for cut material, and landscaping.

The coastal bluffs terminate at Camino San Clemente at the northern boundary of Colony Cove. Approximately one-quarter mile to the north is the La Ventana landslide-coastal bluff stabilization project. At this site five homes were destroyed. This bluff reconstruction project is the model for the Colony Cove bluff stabilization. The La Ventana work has been completed.

At the southern boundary of Colony Cove is the Marblehead bluff site. In 1990 the Commission approved an emergency permit to stabilize the southern and central portion of the coastal bluffs at that site by grading them back to a 2:1 slope.

### B. Geologic Stability/Assumption of Risk Condition

Section 30253 of the Coastal Act States:

New development shall:

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

### Site Geologic History

The Colony Cove subdivision above El Camino Real is located on top of the coastal bluff, with residential development extending to the bluff edge. Several of the residences were damaged by bluff slope failures caused by the winter storms of 1992-1993. There is a history of slope failure at Colony Cove dating back to the 1930's following the construction of El Camino Real (Pacific Coast Highway). A geologic report prepared for the Colony Cove subdivision in 1963 recommended residence setbacks equal to 1.5 times the height of the bluff. There were bluff failures in 1969 following heavy

rains. A 300 foot long crib wall constructed at the base of the bluff in 1972, failed in 1979. Finally, geotechnical investigations in 1990 recommended that the entire bluff was unstable and needed to be laid back to a 1.5:1 or 2:1 slope.

In 1993 the South Coast Office received two applications for emergency permits for 211 and 215 Camino San Clemente in the Colony Cove subdivision. The applications were for caisson systems to stabilize the foundations. Only one system was implemented.

#### Assumption of Risk Condition

It is standard procedure for the Commission to require an assumption of risk condition for projects which involve a high risk of landslide, wave attack or some form of geologic instability and hazard. The purpose of this condition is to put present and future owners on notice as to the nature of those hazards and to hold the Commission harmless from future legal action regarding the geologic hazard.

The rationale in the findings for requiring the assumption of risk condition in permit 5-94-256 states:

Under ordinary circumstances, development on a coastal bluff involves some risk from erosion and landsliding. In this instance two homes have already been damaged by landsliding and as many as 13 are potentially in danger. The proposed development will attempt to remediate this situation. However, there are no guarantees that further landsliding will not occur and destabilize the remediated slope. For this reason, the Commission is requiring that bluff-top homeowners fronting the reconstructed slope comply with an assumption of risk condition.

Normally the Commission requires that all lienholders, voluntary or involuntary, be identified and required to subordinate. This means that in addition to voluntary lienholders, all contractors or mechanics who have a lien on the property also would be required to subordinate. The rationale for identifying all lienholders is that in the event of any foreclosure, unless that lienholder is subordinated, the assumption of risk deed restriction would be extinguished and would not continue to run with the land.

The City of San Clemente is requesting that the assumption of risk condition be amended by deleting the sentence which would require the City to submit recorded documents free and clear of all prior liens. The City proposes to substitute language which would require the City to obtain subordination agreements from persons or agencies identified only on the deed of trust.

The basic problem that the City has communicated to the Commission staff vis a vis the assumption of risk deed restriction is their inability to quickly obtain a full title report needed to ensure subordination of all lienholders. The City maintains that compliance with this condition requires an expenditure of time and funds which can jeopardize implementation of the project. The City has proposed instead to secure subdivision lot book guarantees which indicate the owner of record and give information on all outstanding deeds of trust. The City in correspondence dated August 15, 1995 (Exhibit 3) states their case for amending the assumption of risk special condition:

The City acknowledges that the subordination it is currently obtaining from the lenders may not offer the Commission absolute protection against any conceivable contingency which may arise affecting its Deed Restriction. While such absolute immunity is always the goal, the practical burdens imposed by clearing all potential encumbrances on sixteen separate properties, and the cost incident to same, appears to the City disproportionate to the level of practical risk presented by the issuance of the coastal permit. We are advised that securing new title reports for all sixteen properties will cost an estimated twelve thousand dollars, which will have a significant negative impact on the budgeted funds.

In a September 15, 1995 (Exhibit 4) the City also states:

The Assumption of Risk condition also states that the document shall be recorded free and clear of prior liens. It is almost impossible for the City to comply with this last statement. This would require the City to obtain subordinations to the deed restrictions from every lienholder (such as mortgage holders) for the properties. The City has no control over the willingness of financial institutions to sign these subordinations.

The City states that it is under time constraints to begin construction of the project. In this connection, the City submitted a request for an emergency permit on November 1, 1995 so that they can begin work on the access ramp, which must be constructed prior to the rainy season and because they fear that there will be more slope failure during the upcoming rainy season.

If this assumption of risk special condition were imposed on a private landowner, the homeowner would have the direct incentive of having to fulfill the condition in order to obtain the coastal development permit. In this situation, a public agency, with the assistance of federal funding, is acting to address a hazardous situation on private land. Unlike the private land owner, the only leverage the public agency has in order to get private land owner compliance is to threaten not to do the project, which is counterproductive. It should be noted that the City of Dana Point also had difficulty getting homeowners to comply with the assumption of risk special condition required in that bluff stabilization project. The issue therefore becomes whether the questions of the Commission having complete guarantees from liability and ensuring that every possible lien interest is subordinated requires denial of the application for permit amendment.

There are several mitigating factors in this situation which cause staff to recommend approval of the amendment with a special condition. First, this is a situation where the City of San Clemente is obtaining federal funds to take action to correct a public safety issue, namely preventing landslides on and closure of El Camino Real. El Camino Real is a major beach access thoroughfare between the coastal cities of Dana Point and San Clemente and is also identified as an emergency route in the event of a nuclear accident at San Onofre. Second, the City maintains that complying fully with this condition now jeopardizes the project.

Consequently, although it is most prudent for the Commission to subordinate all liens, whether voluntary or involuntary, in this case the Commission can agree to accept lot book guarantees even though they do not reflect involuntary liens if the City as applicant agrees, by acceptance of its

permit, to waive and indemnify all claims of liability against the Commission. In this way, the Commission is protected against future legal action even if a future foreclosure of an involuntary lien extinguishes the assumption of risk deed restriction.

Therefore, the Commission finds, in the case of this specific permit, that as conditioned the proposed development with the proposed amendment conforms with the requirements of the Coastal Act, and does not pose any adverse impacts to coastal resources identified in Chapter 3 of the Coastal Act.

#### 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 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. As conditioned, the proposed development with the proposed amendment is consistent with the policies contained in the certified Land Use plan. Therefore, as conditioned, approval of the proposed development with the proposed amendment 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. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

As conditioned, the proposed development with the proposed amendment has been found consistent with all policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that as conditioned the proposed development with the proposed amendment can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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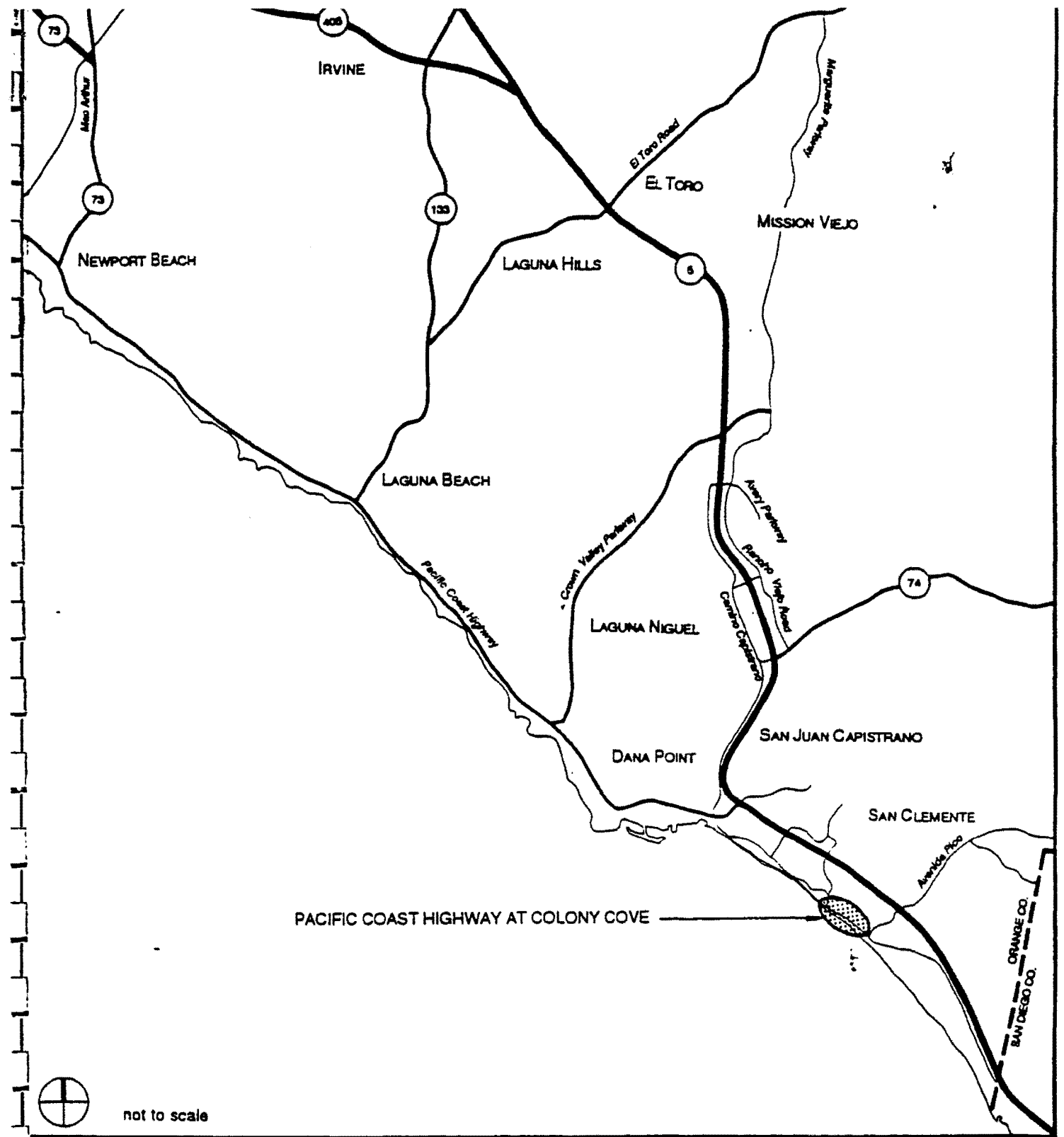


Exhibit 1

**REGIONAL LOCATION**

<b>EXHIBIT NO. 1</b>
APPLICATION NO. <b>5-94-256</b>
<b>LOCATION</b>
California Coastal Commission

<b>EXHIBIT NO. 1</b>
APPLICATION NO. <b>5-94-256A</b>
<b>LOCATION</b>
California Coastal Commission






**CITY OF  
SAN CLEMENTE**

ENGINEERING DIVISION  
WILLIAM E. CAMERON, CITY ENGINEER  
(714) 498-2533 FAX (714) 361-8281

**R E**

EXHIBIT NO. ←
APPLICATION NO. 5-94-256A
8-29-95
 <b>LETTER</b> California Coastal Commission

AUG 30 1995

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT VIA FAX

August 29, 1995

Mr. Chuck Damm  
Executive Director  
California Coastal Commission  
245 West Broadway/Suite 380  
P. O. Box 1450  
Long Beach, CA 90801-380

**Subject: Pacific Coast Highway Colony Cove Slope Stabilization  
Project No. 13172 Coastal Development Permit No. 5-94-256**

Dear Mr. Damm:

The subject permit was issued to the City in February of 1995 for construction of a sculptured wall to stabilize the slopes along Pacific Coast Highway from Camino San Clemente to approximately 1,000 ft. to the south. The project required easements from 63 property owners. As one of the conditions of the permit, the California Coastal Commission required that prior to commencement of construction, each private land owner in Colony Cove owning property fronting the coastal bluff and the Lusk Company, execute and record a deed restriction for his/her property. The City obtained deed restrictions from all the property owners and forwarded it to the California Coastal Commission's legal office in San Francisco for approval. On July 14, 1995 we received a signed copy of the deed restriction from California Coastal Commission for recording. The permit condition "assumption of risk" also required that the documents shall run with the land binding all successors and assigns and shall be recorded free and clear of prior liens. This requires all mortgage holders or anyone else including homeowners associations, who have the ability to lien against the property, to be subordinated. This also requires a full title report be provided to the California Coastal Commission showing that the information is recorded.

The project will be advertised for construction bids on August 31, 1995. We respectfully request that the Coastal Development Permit be issued by staff to allow the City to proceed with the construction of the project. At this time, the City has recorded the deed restrictions and requested subordinations from the mortgage lien holders. The City does not have much leverage to assure that the mortgage holders will subordinate and agree to all terms of the agreement. This may take significant time. Obtaining full title reports will also take time




and be a financial burden to the City. The cost of obtaining full title reports is estimated to be over \$12,000. There are fifteen (15) properties that have recorded deed restrictions. Of these fifteen, seven of the properties have mortgage lien holders. If they refuse, we have little leverage to get lenders to sign the subordinations that have been requested. We do not consider this a major issue since all owners have signed the subordination documents. In our agreements with the property owners, the City has assumed significant risk during the construction. The existing instability problems will be vastly improved when construction is complete. There continues to be minor failures along the bluff and it is essential we be under construction as soon as the bid is awarded and construction contracts are signed. Several million dollars in Federal Highway Administration (FHWA) and State Office of Emergency Management (OES) funds will pay for a majority of the projects' cost. If we cannot be under construction within a reasonable time, those funds could be lost and the project would not be built. This is a once in a lifetime opportunity to solve a major bluff stability problem with as an aesthetically pleasing design that can be constructed with significant Federal and State funding assistance. We would be happy to discuss with you any alternatives that may be available.

In summary, the City obtained the required deed restrictions from the private land owners and provided a recorded, confirmed copy of each deed restriction to the Coastal Commission's legal office. We request that this be deemed adequate to meet the conditions of the permit and the permit be issued to avoid delays to the project construction. It is anticipated that the project construction award will be in October 1995. Secondly, we request that the requirement to obtain subordination of all successors and assigns be removed, and also the requirement to obtain full title of the report be removed. The City will continue efforts to obtain the subordinations from the mortgage holders.

We would be happy to discuss our request and any other ideas you may have to help us resolve this issue. City staff very much appreciates the effort and assistance of your staff and the Coastal Commission to get this very complex project through the project review and hearing process. Thank you for your assistance.

Very truly yours,

  
William E. Cameron  
City Engineer

cc: Robin Maloney-Rames, California Coastal Commission  
Mike Parness, City Manager  
Michael L. Sorg, Public Works Director  
Handan Cirit, Principal Civil Engineer  
File: 13172

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# RUTAN & TUCKER

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A W RUTAN (1980-1972)

JAMES S TUCKER, SR (1980-1980)

MILFORD W DAHL, SR (1919-1988)

H. ROGER HOWELL (1928-1983)

APPLICATION NO.

5-94-256A

8-15-95

 **LETTER**  
California Coastal Commission

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DAVID S CO  
FRANK VAN L

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JUNE F WAHLQUIST  
RICHARD G BONTENVIDEO  
LORI BARNER SMITH  
ROBERT W KLATTE III  
ELIZABETH MARNA BIXON

*Rec. by 4-5 Mail  
8/17/95*

August 15, 1995

BY FAX TRANSMISSION TO (415) 904-5400 AND FIRST CLASS MAIL

Ms. Deborah Bove  
California Coastal Commission  
45 Fremont, Suite 2000  
San Francisco California 94105-2219

Re: CDP No. 5-94-256 (City of San Clemente)

Dear Ms. Bove:

I am writing in response to your letter to Ms. Lynn M. Connors, dated July 14, 1995, regarding the above-referenced project. Enclosed with this document are conformed copies of the deed restrictions referenced in your letter, pursuant to your request. In addition, please be advised that the changes you have requested to the pagination on the Marblehead Lusk Deed Restriction have been accomplished.

Your request for updated preliminary title reports is more problematic, however. With the permission of Caltrans and the Federal Highway Administration, the City did not obtain title reports for the property interests acquired in this Colony Cove project. The reason was the prohibitive costs of acquiring such reports on the large number of properties involved. Instead, the City secured subdivision lot book guarantees, which indicated the owner of record and provided information regarding all outstanding deeds of trust.

Consistent with the terms of the easement granted to the City by the landowners, which provides the City access to the property to accomplish the project for which the Coastal Commission permit is required, the City is requesting subordination agreements of both the City's easement interest and the Coastal Commission deed restrictions from the lenders with outstanding mortgages on the affected properties. A sample form copy of the requested subordination is enclosed. Some 16 properties are involved, and of these, only seven have

Mrs. Deborah Bove

August 15, 1995

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outstanding deeds of trust. We are in the process of securing the subordinations, and will provide them to you once they are received.

The City is requesting that the Coastal Commission accept these subordinations in satisfaction of the requirements of Special Condition No. 3, in lieu of its apparently routine practice of requiring updated preliminary title reports. As I indicated in our telephone conference, it appears to me the primary threat to any deed restriction is loss of priority to a foreclosing lender. The subordinations will eliminate this threat.

The City acknowledges that the subordinations it is currently obtaining from the lenders may not offer the Commission absolute protection against any conceivable contingency which might arise affecting its Deed Restriction. While such absolute immunity is always the goal, the practical burdens imposed by clearing all potential encumbrances on sixteen separate properties, and the cost incident to same, appears to the City disproportionate to the level of practical risk presented by the issuance of the coastal permit. We are advised that securing new title reports for all sixteen properties will cost an estimated twelve thousand dollars, which will have a significant negative impact on the budgeted funds.

Even more important, however, are the time constraints involved with the requirement to clear title on all of these properties. The City has completed the project's design, and it is anticipated that Caltrans/FHWA will authorize project advertisement for construction within the next few weeks. The construction award is anticipated to occur in October, 1995. Obviously, time is of the essence, and probably will not accommodate the delays incident to securing title reports, subordinating all interests to the Commission's deed restriction, and then updating all reports.

Consequently, the City is requesting that the Executive Director issue the coastal permit to the City upon receipt of the conformed, recorded copy of the deed restrictions, while the City secures the lender subordinations. Moreover, if the Commission insists on putting the City to the expense of securing title reports, City requests that it be allowed to proceed with construction pending clearance of all of the subordination and title updating which will be required. This will prevent the entire project being endangered by loss of time-sensitive funds.

In this regard, the Commission is asked to keep in mind the context and purpose of this project. This is not a private development which will generate huge profits for individuals or corporations. It is an emergency response effort, undertaken by the City only after clearing significant regulatory hurdles from Caltrans and FHWA, and involving significant expenditure of City funds, all to provide slope stabilization which will prevent (not generate) litigation.

Ms. Deborah Bove

August 15, 1995

Page 3

Nothing about the project will intensify the use of the properties, or do anything other than reduce the risk of future subsidence or property damage.

In this context, the City submits that a minor departure from the usual procedures attending the Deed Restriction (which the City itself secured on the Commission's behalf) is appropriate. We hope that you agree.

Thank you for your attention and anticipated cooperation. If you have any comments or questions regarding this matter, do not hesitate to contact either myself or Handan Cirit at the City of San Clemente, whose phone number is (714) 498-2533, extension 3404.

Very truly yours,

RUTAN & TUCKER

  
David B. Cosgrove

DBC:jbl

Enclosures (on mailed original only).

cc: Handan Cirit



# CITY OF SAN CLEMENTE

Steve Ap	APPLICATION NO.
Patrick A	5-94-256A
Joe Ande	9-15-95
Scott Die	LETTER
Mike Par	California Coastal Commission

September 15, 1995

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SEP 20 1995

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT

Mr. Chuck Damm, Executive Director  
California Coastal Commission  
South Coast District  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, CA 90801-1450

**Subject:** City of San Clemente - Pacific Coast Highway/Colony Cove Slope Stabilization, Project No. 13172, Coastal Commission Permit Application No. 5-94-256A

Dear Mr. Damm:

The California Coastal Commission issued a Notice of Intent to issue a permit for the subject project on February 9, 1995. Special Condition No. 3, Assumption of Risk, requires the City to obtain and record a deed restriction from each private landowner owning property fronting the coastal bluffs. The City obtained and recorded deed restrictions for the specified 15 properties that are located on the Colony Cove development and also from the Lusk Company.

The Assumption of Risk condition also states that the document shall be recorded free and clear of prior liens. It is almost impossible for the City to comply with this last statement. This would require the City to obtain subordinations to the deed restrictions from every lienholder (such as mortgage holders) for the properties. The City has no control over the willingness of financial institutions to sign these subordinations. Seven (7) of the properties along the bluff in Colony Cove have outstanding mortgages. Other homes are paid off.

The project is being funded from Federal, State, County and local sources. Currently, the City has obtained easements and agreements from 63 homeowners in Colony Cove, recorded deed restrictions for the 15 properties required, and obtained Federal Highway Administration and Caltrans approval of the plans and specifications.

The project is currently bidding for construction. The construction bids are scheduled to be opened on September 27, 1995. The City's intent is to award the construction contract on October 18, 1995. If the Coastal development permit is not issued, this will delay commencement of construction for the project. The start of construction could be delayed into the rainy season or even until next Spring. Or even worse, the City may never be able

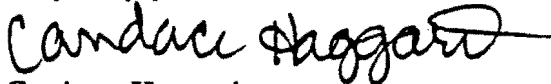
Mr. Chuck Damm, Executive Director  
California Coastal Commission  
September 15, 1995  
Page 2

to construct the project unless Condition No. 3 is amended. Bluff conditions are gradually worsening and there have been some more minor failures this year. It is essential that work on this project begin as soon as possible.

This is a one-time funding opportunity for the City due to the January, 1993 bluff failures on to Pacific Coast Highway that is a safety issue for the travelling public, and further delays may jeopardize the City's ability to obtain the currently committed funding. We respectfully request: 1) special Condition No. 3, Assumption of Risk, be amended to exclude the statement "...*free and clear of prior liens*"; and 2) a Coastal Development Permit be issued prior to October 18, 1995 to allow the City to proceed with the construction.

The City complied with all other conditions stated in the California Coastal Commission's Notice of Intent to issue a permit for the project. Thank you.

Very truly yours,



Candace Haggard  
Mayor


Attachments:           Amendment Request Form  
                              Addresses and envelopes for notifications

cc:   File - Project 13172.19

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CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-3200

APPLICATION NO. 5-94-256 A
8-18-95
 LETTER California Coastal Commission

August 18, 1995

VIA FACSIMILE AND U.S. MAIL

David B. Cosgrove  
Rutan & Tucker  
Bank of the West, Suite 1400  
611 Anton Boulevard  
Costa Mesa, CA 92626-1998

Re: CDP No. 5-94-256 (City of San Clemente)

Dear Mr. Cosgrove:

This letter follows our telephone conversation of August 16, 1995, and is in response to your letter to me dated August 15, 1995.

Before addressing the concerns raised in your letter, I thought it may be useful to provide you with the history of events that occurred prior to the approval of this permit. As we discussed, you have been aware of the Commission's requirement for PTR's since the Commission's standard deed restriction form, with instructions, was sent to you by facsimile on August 31, 1994. The instructions clearly state the necessity of subordination agreements and updated PTR's. Subsequently, on November 3, 1994, Robin Rames requested legal staff review of a draft deed restriction submitted to him by Handan Cirit. Robin was informed of the unacceptability of the draft deed restriction. We included the Commission's standard deed restriction and subordination agreement forms in our written response to him. In our telephone conference with John Bowers on November 30, 1994, you informed us that prior to receiving any approval or response to the draft deed restriction, you sent them out to the property owners with instruction that the deed restrictions may have to be amended. We agreed that a new deed restriction may be required because the deed restriction sent to the property owners did not reference a permit number or approval date. We also discussed the possibility of subordination agreements that may be required. I recall you expressed concern regarding the time restraints involved with the deed restriction and subordination agreement process. We suggested that any concerns you may have should be addressed at the Commission hearing. The Commission granted the permit at a public hearing on February 9, 1995. Apparently, none of these concerns was raised by either you or Mr. Cirit at that time.

David B. Cosgrove  
August 18, 1995  
Page 2

Dav:

Your letter addressed, 1) the difficulty you have with the Commission's requirement of submitting updated preliminary title reports (PTR's) due to the time restraints and the cost of obtaining the PTR's; 2) the sample form of subordination agreement; 3) your request that we to accept the "subdivision lot book guarantees" in lieu of the updated PTR's; and 4) your request for the issuance of the permit upon receipt of the conformed copies of the recorded deed restrictions.

I shall address each of your concerns in the same order as enumerated above:

1. Considering the history referenced above, your concerns regarding the time restraints and cost of providing updated PTR's should have been addressed at the Commission hearing.

2. The subordination agreements should reference the Commission's San Francisco office address. Otherwise, the sample subordination agreement included in your package is acceptable.

3. As you are aware, the special condition requires the deed restrictions to be recorded "free and clear of prior liens." The language does not specify "free and clear of prior deeds of trust." You imply in your letter that the Commission is only concerned with these types of liens. The Commission is concerned with all liens, whether voluntary or involuntary. A foreclosure of a judgment, mechanic's lien or other lien would have the same effect on the deed restriction as a foreclosure on a deed of trust. The lot book guarantees accepted by the City do not reflect any involuntary liens. We rely on updated PTR's because they reflect all documents recorded against a property. I suggested that a possible option to you may be to contact the district office and request an amendment to the permit to modify the special condition language so that the subordination requirement is limited to "prior deeds of trust." Approvability of such an amendment would be determined by the district staff.

4) Obviously, we cannot accept the conformed copies of the deed restrictions as satisfaction of the special condition. As we further discussed, the permit may be issued subject to a condition subsequent. The condition subsequent would contain your agreement to submit copies of the recorded subordination agreements and title reports (or the lot book guarantees, should an amendment be approved) within a reasonable period of time (60 days maximum) or the permit will become null and void retroactive to the date of issuance of the permit. Of course, the district staff would have to concur in this condition subsequent.



David B. Cosgrove  
August 18, 1995  
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We are in receipt of the recorded documents package sent under your August 15, 1995 letter. A copy of the recorded deed restriction for Marblehead was not included in the package. Please submit a copy to me at your earliest convenience.

If you have any questions, feel free to contact me.

Sincerely,



Deborah Bove  
Legal Assistant

cc: John Bowers  
Robin Rames  
Handan Cirit

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST AREA  
245 W. BROADWAY, STE. 380  
P.O. BOX 1450  
LONG BEACH, CA 90802-4416  
(310) 590-5071



Filed: 01-17-95  
49th Day: 03-07-95  
180th Day: 07-16-95  
Staff: RMR-LB *RMR*  
Staff Report: January 25, 1995  
Hearing Date: February 7-10, 1995

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-94-256

APPLICANTS: City of San Clemente  
Stephanie Patterson  
Harvey & Dorris Tedford

AGENT: None

PROJECT LOCATION: Coastal bluffs on the Pacific Coast Highway between Camino San Clemente and the Marblehead bluffs in the City of San Clemente, Orange County

PROJECT DESCRIPTION: Slope stabilization and street widening on Pacific Coast Highway. Grading consists of 58,000 cubic yards of cut and 3,000 cubic yards of fill. The project involves the installation of a tie-back anchor system extending as far as 100 feet inland from the bluff face, grading of the bluff to a 2:1 slope below the tie-back system, and construction of a grout curtain on the slope above the tie-back system. The project also includes street improvements, landscaping and mitigation measures (see Exhibit 12).

Lot area:	NA
Building coverage:	NA
Pavement coverage:	NA
Landscape coverage:	NA
Parking spaces:	NA
Zoning:	R1 Single Family Residence
Plan designation:	Medium Low Density Res. (7 du/ac)
Project density:	NA
Ht abv fin grade:	NA

LOCAL APPROVALS RECEIVED: Approval in concept from the City of San Clemente, Mitigated Negative Declaration by the City of San Clemente

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, Coastal Development Permits A5-DPT-93-275 and A5-DPT-93-275A (City of Dana Point), 5-94-052 (City of Dana Point), Mitigated Negative Declaration for Pacific Coast Highway/Colony Cove Slope Stabilization July 1994, August 9, 1993 Geotechnical Report for Pacific Coast Highway Bluff Stabilization by

<b>EXHIBIT NO. 6</b>
APPLICATION NO. <b>5-94-256A</b>
<b>STAFF REPORT</b>
<b>5-94-256</b> California Coastal Commission

Leighton and Associates, Letter dated November 14, 1994 from the City of San Clemente concerning landscaping, Letter dated January 18, 1995 from the City of San Clemente to the Colony Cove Homeowners' Associations, Letter dated January 18, 1995 from the City of San Clemente to the Lusk Company, Letter from the City of San Clemente to the Coastal Commission dated January 12, 1995

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SUMMARY OF STAFF RECOMMENDATION:

The City of San Clemente and Coastal Commission staff are in agreement on the findings and special conditions of this staff report. Therefore, there are no unresolved issues or objections to the special conditions of this staff report.

Staff recommends approval with special conditions relating to assumption of risk, location of disposal site for export dirt, conformance with geologic recommendations, landscaping and evidence of permission to construct from bluff-top homeowners and adjacent affected property owner, the Lusk Company.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

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

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Conditions

#### 1. Evidence of Permission to Construct

Prior to issuance of the coastal development permit the applicant shall provide evidence of its legal right to enter and do construction on the properties owned by the residents of Colony Cove and the Lusk company.

#### 2. Conformance with Geologic Recommendations

All recommendations contained in the Geologic Report dated August 9, 1993 by Leighton and Associates, shall be incorporated into all final design and construction plans, including drainage. Prior to the issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, final design plans signed by the consultant incorporating the recommendations made in the referenced report.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

#### 3. Assumption of Risk

Prior to the commencement of construction, each private landowner in Colony Cove owning property fronting the coastal bluff (Assessors parcel map 691-353-(8, 9, 10, 11, 27, 28, 30, 31), 691-354-(4, 5, 8, 9, 11, 12) and the Lusk Company shall execute and record a deed restriction, for his/her property, in a form and content acceptable to the Executive Director, which shall provide: (a) that the landowner understands that the site may be subject to extraordinary hazard from landslide and soil erosion, and (b) that the landowner hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free and clear of prior liens.

#### 4. Location of Cut Material

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director the location of the proposed dump site for the excess cut material. Should the dump site be located in the Coastal Zone, a permit shall be required from the Commission.

#### 5. Landscaping

Prior to the issuance of a coastal development permit, the applicant shall submit a landscaping plan prepared by a licensed landscape/architect for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded areas on the lower slopes of the reconstructed bluff shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native, drought resistant plants. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) Should grading take place during the rainy season (November 1-March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from run-off waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.
- (c) Cut and fill slopes (as applicable to this project) shall be stabilized with planting at the completion of final grading. Planting should be of native species using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage.

#### 6. Protection of Biological Resources

Prior to the issuance of a coastal development permit the applicant shall submit for the review and approval of the Executive Director a mitigation plan protecting the Blochman's Dudleya. This plan shall be devised and implemented under the supervision of a qualified botanist/biologist and shall consist of the following components:

- a. Prior to any grading activities at or near the Marblehead site, the applicant shall place protective fencing around the vicinity of the Blochman's Dudleya;
- b. Periodic monitoring shall be conducted by the consulting biologist to ensure there are no impacts to the fenced off area during grading operations; and

- c. In the event that the consulting biologist identifies impacts to the Blochman's Dudleya, he/she shall notify the Executive Director immediately and all work shall stop in the vicinity until further authorization is obtained from the Executive Director.

#### A. Project Description

The proposed coastal bluff stabilization project is located inland and adjacent to the Pacific Coast Highway between Camino San Clemente and the Marblehead bluffs site. Grading consists of 58,000 cubic yards of cut and 3,000 cubic yards of fill. The project involves the installation of a tie-back anchor system extending as far as 100 feet inland from the bluff face, shotcrete textured facing of the tie-back anchor system, grading of the bluff to a 2:1 slope below the tie-back system, and construction of a grout curtain on the slope above the tie-back system. The project also includes street improvements on Pacific Coast Highway and landscaping for the slope and roadway. The roadway improvements include a sidewalk and bike path.

The Colony Cove subdivision is located on top of the coastal bluff, with residential development extending to the bluff edge. Several of the residences were damaged by the winter storms of 1992-93. The coastal bluff at the project location varies from 70 to 90 feet high. Seaward of the Pacific Coast Highway is the Atchison, Topeka and Santa Fe Railroad right-of-way.

Directly north of Camino San Clemente is the 1993 La Ventana landslide which blocked Pacific Coast Highway, the railroad tracks and resulted in severe damage to five residences. The coastal bluff below La Ventana St. was approved by the Commission for a tie-back stabilization system under coastal development permits A5-DPT-93-275, A5-DPT-93-275A and 5-94-052 (Dana Point). The coastal bluff reconstruction at La Ventana involves a series of tie-back anchors mid-slope, reconstruction of the slope above and below the tie-backs, installation of a shotcrete textured bluff facing, and landscaping. The La Ventana project was the model for the proposed Colony Cove bluff stabilization.

Immediately to the south of Colony Cove is the Marblehead bluffs site. The coastal bluffs at Marblehead were subject to landsliding and in 1990 the Executive Director approved an Emergency Permit for contour grading of Phase I of the Marblehead bluffs. Mass grading was possible at the Marblehead site because there were no existing structures on the coastal bluffs at that location. The Marblehead site is currently vacant.

As part of the project description the City of San Clemente is proposing to widen Pacific Coast Highway and add a pedestrian walkway alongside the road. There is an existing bike path which would be restored. Exhibit 8 shows the existing situation along Pacific Coast Highway. Exhibit 9 shows the proposed improvements, and Exhibit 10 is a cross-section of the road and reconstructed slope showing the access improvements. Due to landsliding and debris slides Pacific Coast Highway was gradually reduced from the original configuration of two 12 foot wide lanes in each direction, an eight foot sidewalk on the bluff side, and a six foot bike path on the seaward side to two 12 foot wide traffic lanes and a six foot bike path on either side of the highway. In effect the width of the highway was reduced from 64 feet to 36 feet. The proposed improvements will enhance public access along Pacific Coast Highway for both

pedestrians and vehicular traffic and will restore the highway to its original width of 64 feet. Implementation of the bluff stabilization project will prevent ongoing closures of Pacific Coast Highway below Colony Cove due to landsliding and slope failure.

Pacific Coast Highway is a main connector between the coastal areas of San Clemente and Dana Point. In addition, it is an integral component of the emergency escape route in the event of a nuclear catastrophe at the San Onofre nuclear power plant.

## B. Geologic Stability

Section 30253 of the Coastal Act states:

New development shall:

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

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

### 1. Project Location and Geologic History

Originally the coastal bluffs at Colony Cove extended to the beach (see Exhibits 1 and 2). In the 1880's the bluff was cut back during construction of the Atchison, Topeka and Santa Fe Railroad. In 1929, the bluff was again cut back to install the Pacific Coast Highway. Bluff instability at the project site dates back to these two actions. In effect, the construction took out the natural angle of repose of the coastal bluffs along the beach and created the situation where the bluffs were oversteepened. Oversteepened bluffs are subject to failure by gravity, especially when the bluff soils are poorly consolidated to begin with. The erosion problem was exacerbated by adverse impacts from residential development, primarily runoff infiltration.

There is a history of slope failure at the Colony Cove location dating to the 1930s. However, in January and February of 1993, heavy winter rains caused slope failures on the coastal bluffs at Colony Cove, partially undermining patios and other bluff top structures and weakening the foundations of two homes. There is an extensive history of geologic investigations of the bluffs at Colony Cove.

The original geologic report for Colony Cove was conducted by Dresselhaus engineers in 1963. At that time the engineers recommended that all structures be set back from the toe of the bluff a minimum of distance equal to 1 1/2 times the height of the bluff. In 1969 Geolabs conducted a preliminary reconnaissance of bluff failures at Colony Cove. The bluff failures were impacting the safe passage of vehicles along Pacific Coast Highway. In 1978 Stickel and Associates conducted a geotechnical investigation which documented a correlation between residential development and slope failure and

recommended the installation of dewatering trenches. In 1978 Toal Engineering reviewed the Stickel report and recommended that surface drainage facilities be constructed to prevent runoff from flowing over the bluff top. In 1979 a 300 foot long crib wall, constructed in 1972, failed.

Finally, there were geotechnical investigations of bluff stabilization alternatives done in 1981 and 1990 by Leighton and Associates. In its 1990 report Leighton stated that the entire bluff was unstable and needed to be laid back to a 1.5:1 or 2:1 slope.

In 1993 the South Coast Office received two applications for emergency permits for 211 and 215 Camino San Clemente in the Colony Cove subdivision. These two residences were damaged by bluff erosion and slope failure. The applications were for caisson systems to stabilize the foundations.

Since 1979, slope failures along the bluff at Colony Cove have posed a threat to vehicular traffic along Pacific Coast Highway. In the past the City of San Clemente has employed slough walls and chain link fences to keep landslide debris from blocking the highway.

## 2. Proposed Project

The applicant is proposing the following measures to stabilize the bluff (see Exhibits 4-7):

1. Regrade the lower portion of the bluff to a 1.5:1 to 2:1 slope. This regraded slope will be landscaped when the project is finished.
2. Above the lower slope two or three rows of 100 foot long tie-backs will be drilled down into bluff bedrock and installed. The tie-backs will be attached to concrete plates on the bluff face.
3. A textured shotcrete facing will be placed on the section of slope containing the tie-backs to give the appearance of a natural bluff.
4. A grout curtain and 30 foot long soil nails will be installed on the top of the bluff and slope above the shotcrete textured bluff face.
5. The roadway improvements, including an added traffic lane, sidewalk and bike path will be installed.
6. The lower slope and strip adjacent to the highway will be landscaped.

Before arriving at the preferred alternative (as described above) the geotechnical consultants considered several alternatives. One alternative was taking no action, which is not considered viable because of the ongoing threats to property in Colony Cove and vehicular safety along Pacific Coast Highway. Another alternative the consultants considered was a 25 foot high (or more) slough wall along the entire stretch of affected bluff below Colony Cove. This was not considered to be a long-term viable alternative because it did not provide for stability of the bluff or ensure that further damage to homes would not occur. The consultants also considered variations of the tie-back scheme with the tie-backs located at the toe of the slope. Locating



the tie-backs in the mid-slope section of the bluff is considered a more stable alternative. The preferred alternative is a more acceptable alternative because this solution has already been approved by the Commission for the La Ventana site, is a long-term solution, and is also more compatible from a visual standpoint.

The geotechnical consultants state the necessity for the project in the Conclusions section of the geotechnical report. They state:

The steeply inclined cut slope, originally built in 1929 with little regard for long-term stability, has been episodically failing onto the traveled portion of the road since the 1930's. At the present time portions of the upper part of the eroded cut slope have separated and are at the brink of toppling onto the roadway. The accumulation of talus at the lower part of the cut slope, while providing some support to the lower portion, does not help the higher elevations of the bluff. In the meantime, the talus cone has encroached 10 to 14 feet into the roadway.

In its present state the roadway is only marginally safe for use, and the City's practice of closing the roadway during heavy rain forecasts is prudent.

In addition to the safety threat to vehicles on Pacific Coast Highway, the bluff failures pose threats to at least two homes on the bluff top in Colony Cove. There are 13 homes located along the bluff-top in the Colony Cove subdivision (see Exhibit 3). The geotechnical report states:

It is apparent that some structures within Tract 5171 are in immediate jeopardy.

### 3. Conclusion

Section 30253 of the Coastal Act mandates that new development shall minimize risks to life and property in areas of high geologic hazard and assure stability and structural integrity and neither create nor contribute to further geologic instability.

In this case there is no existing development to the north and south of the proposed project site which can be adversely impacted by the proposed project. To the north is the Camino San Clemente St. and to the south is the vacant Marblehead site. The proposed project consists of reconstructing the bluff in order to stabilize it and prevent further damage to existing residences on the bluff top. In addition, reconstruction of the bluff face will allow the City of San Clemente to remove the landslide debris which caused the highway to be reduced from 64 feet to 36 feet, restore the highway to 64 feet width, and minimize the danger to public safety from further landsliding. Furthermore, the development of the bluff stabilization project is required to protect existing Colony Cove subdivision development constructed prior to Coastal Act passage.

Under ordinary circumstances, development on a coastal bluff involves some risk from erosion and landsliding. In this instance two homes have already been damaged by landsliding (see Exhibit 3) and as many as 13 are potentially

in danger. The proposed development will attempt to remediate this situation. However, there are no guarantees that further landsliding will not occur and destabilize the remediated slope. For this reason, the Commission is requiring that bluff-top homeowners fronting the reconstructed slope comply with an assumption of risk condition.

In addition, the geotechnical reports include recommendations for construction of the tie-back system and bluff reconstruction. In order to ensure that the recommendations of the consulting geotechnical experts are followed, the Commission finds that the applicant shall submit plans reviewed and signed by the consulting geotechnical experts for the review and approval of the Executive Director.

In conclusion, the Commission finds that the implementation of the tie-back system in combination with slope reconstruction, provides the best solution to the landslide problem along Pacific Coast Highway at Colony Cove. For this reason, the Commission finds that the proposed development, as conditioned for assumption of risk and geologic recommendations, conforms with Section 30253 of the Coastal Act.

### C. Visual Resources

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 of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic area 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.

Potential visual impacts from the implementation of the proposed development include the reconstruction of the coastal bluff and landscaping.

The existing coastal bluff below Colony Cove is oversteepened with very little vegetation cover on the face. Successive slope failures and continual erosion has sculpted the bluff face so that it looks like a landslide scarp. The steepness of the bluff face prevents the growth of anything more than marginal vegetation. As stated in the Mitigated Negative Declaration:

The bluffs' visual character is the result of geotechnical conditions at work at the site. The bluffs are an oversteepened slope of heavily eroded siltstone, patchily vegetated by mostly salt-tolerant and invasive species. The bluffs stand at an average height of +80 feet above the roadway and at an average slope of +1:1.

The previous section on geological stability includes findings that leaving the coastal bluff in its natural state is not a viable option and that any viable long-term alternative would involve massive alteration of the coastal

bluff. One of the bluff stability alternatives considered by the applicants was a 25 foot high retaining wall at the toe of the slope. Another alternative, not considered, would be a massive crib wall on the bluff face. Both of these alternatives involve considerable adverse visual impacts.

The alternative chosen by the applicants is the tie-back and textured face slope reconstruction. This alternative consists of a 1.5:1 to 2:1 regraded slope at the toe of the bluff, installation of a tie-back anchor system mid-bluff, and installation of a grout curtain and soil nails on the bluff top. Following installation of the tie-backs the mid-slope area of the bluff would be covered with a shotcrete textured facing which is designed to look like the existing unaltered bluffs along Pacific Coast Highway. As stated in the Mitigated Negative Declaration:

Because of the visual prominence of the sculptured facing and grout curtain, the project includes measures to enhance these surfaces and render them more visually appealing. These measures include: (1) coloring of the grouting and shotcrete or gunite material to approximate the color of earth material; and (2) sculpting of the material to create a textured surface that is more pleasing in appearance than untextured concrete.

This slope reconstruction tie-back alternative is the same concept and involves the same visual appearance as the Commission-approved reconstructed bluffs at the La Ventana landslide area directly to the north. Implementation of a tie-back alternative at Colony Cove will make these two stretches of coastal bluff present a uniform visual appearance.

As an additional mitigation measure, the City of San Clemente included a landscaping plan with its application for a coastal development permit. Some of the plants on the original plant list would not fit in with the visual look of the existing bluffs. In response to staff's concerns the City sent a letter dated November 14, 1993 discussing proposed "Palm Tree Corridor" plan for the coast highway. Staff confirmed that planting of palm trees along Pacific Coast Highway is compatible with the existing planting scheme for El Camino Real. Implementation of the proposed streetscape planting scheme for Pacific Coast Highway would result in a continuous palm tree-lined corridor from the Dana Point boundary through the City of San Clemente to the San Diego County boundary. However, in order to ensure visual compatibility and to ensure the success of the landscape plan, the Commission finds that the applicant shall comply with a landscaping condition.

In its October 25, 1994 letter to the Coastal Commission, the City presented a proposed plant palette for the reconstructed slopes adjacent to Pacific Coast Highway. Staff has reviewed the plant list and concluded that the list consists of native plants and is acceptable.

The Mitigated Negative Declaration approved by the City of San Clemente and submitted as part of the coastal development permit application contains mitigation measures to offset the visual impacts of the project. These mitigation measures are included as Exhibit 12 and are incorporated by reference into this staff report. Therefore, the Commission finds that the project as proposed to mitigate visual impacts by coloring and texturing the

shotcrete bluff facing, landscape the lower reconstructed slopes, and comply with a landscaping condition is in conformance with Section 30251 of the Coastal Act.

D. Biological Resources

Section 30240 of the Coastal Act mandates the protection of Environmentally Sensitive Habitat. It states:

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

There are no sensitive biological resources on the coastal bluff face below the Colony Cove subdivision development. There are native plants, primarily on the lower slope, however, the native plants introduced following construction of the project will be of higher quality, more permanent, and in greater quantity than exist now.

However, in their proposal the City will extend the bluff face reconstruction into the adjoining Phase III area of the Marblehead bluffs site. The Marblehead bluff site contains the Blochman's Dudleya (*Dudleya blochmanae*), a native succulent perennial with only three known populations in Orange County. The plant is listed as rare and threatened by the California Native Plant Society. The mitigated negative declaration shows that portions of the proposed development which are slated to occur on Marblehead property will not impact the Blochman's Dudleya. In addition, to prevent any possible impacts, sites containing the Blochman's Dudleya will be marked and fenced to avoid possible disturbance. The Mitigated Negative Declaration states that the identification, fencing, and monitoring of the Blochman's Dudleya sites will be supervised by a qualified field botanist.

The Mitigated Negative Declaration approved by the City of San Clemente and submitted as part of the coastal development permit application, contains mitigation measures to protect the Blochman's Dudleya. These mitigation measures are included as Exhibit 12. However, to ensure the protection of these sensitive coastal plants, the Commission finds that the applicant shall comply with special condition 6 of this staff report which details mitigation and monitoring measures. Therefore, the Commission finds that the project as conditioned to mitigate potential impacts to sensitive coastal bluff biological resources is in conformance with Section 30240 of the Coastal Act.

#### E. Access and Recreation

Section 30212(a)(2) of the Coastal Act states:

(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 30604(C) of the Coastal Act requires that permit applications between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. That portion of the public right-of-way for Pacific Coast Highway is located between the sea and the first public road.

A public access dedication can be required pursuant to section 30212 only if it can be shown that the development either individually or cumulatively directly impacts physical public access, i.e., impacts historic public use, or impacts or precludes use of Public Trust Lands. In this situation, that portion of the development in the Pacific Coast Highway right-of-way is located between the sea and the first public road. The development proposed by the City of San Clemente will restore the highway to its configuration of two 12 foot wide traffic lanes. In addition, the City will restore the six foot wide bicycle path and include a four foot wide pedestrian walkway at the base of the reconstructed bluffs. Therefore, the proposed development will result in improved vehicular, pedestrian and bicycle access.

There is no beach access from the Colony Cove subdivision down the coastal bluffs and across the highway. The development will not create adverse impacts, either individually or cumulatively on public access and will not block public access from the first public road to the shore. To the contrary, the project will improve public access on Pacific Coast Highway, which is a major beach access road.

Therefore, the Commission finds that the proposed development is consistent with the access and recreation policies of Section 30212(a)(2) of the Coastal Act.

#### F. Proof of Legal Interest

Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement

to use the property for the proposed development, the Commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

In this case the City of San Clemente is proposing development which would take place on property owned by homeowners in the Colony Cove subdivision and on property owned by the Lusk Company. The City of San Clemente has submitted documents showing that the homeowners and the Lusk Company were informed of the pending development and were invited to join as coapplicants.

However, in order to do the work the City must first obtain permission from the private property owners and construction easements. The City has not supplied this documentation. Therefore, the Commission finds that prior to issuance of the coastal development permit the City of San Clemente shall provide evidence of its legal right to enter and do construction on property owned by others (see special condition 1).

#### G. Paleontological Resources

Section 30244 of the Coastal Act mandates the protection of cultural resources. It states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The Mitigated Negative Declaration includes a section on paleontological resources. This report states that paleontological remains have been found in the Capistrano Formation in the San Clemente area. The report states:

The potential of the Capistrano Formation indicates that it is likely that significant fossils will be exposed during grading into this unit. These fossils could be destroyed by grading activities unless proper mitigation measures are undertaken. The destruction of these fossils would represent an adverse impact on the region's paleontological resources.

In order to avoid adverse impacts the report recommends that a qualified paleontologist be present on site to perform periodic inspections of excavations and perform salvage of fossils, if necessary. The Mitigated Negative Declaration approved by the City of San Clemente and submitted as part of the coastal development permit application contains mitigation measures to protect the paleontological resources, if any. These mitigation measures are included as Exhibit 12 and are incorporated by reference into this staff report. Therefore, the Commission finds that the project as proposed to mitigate potential impacts to paleontological resources is in conformance with Section 30244 of the Coastal Act.

#### H. 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.

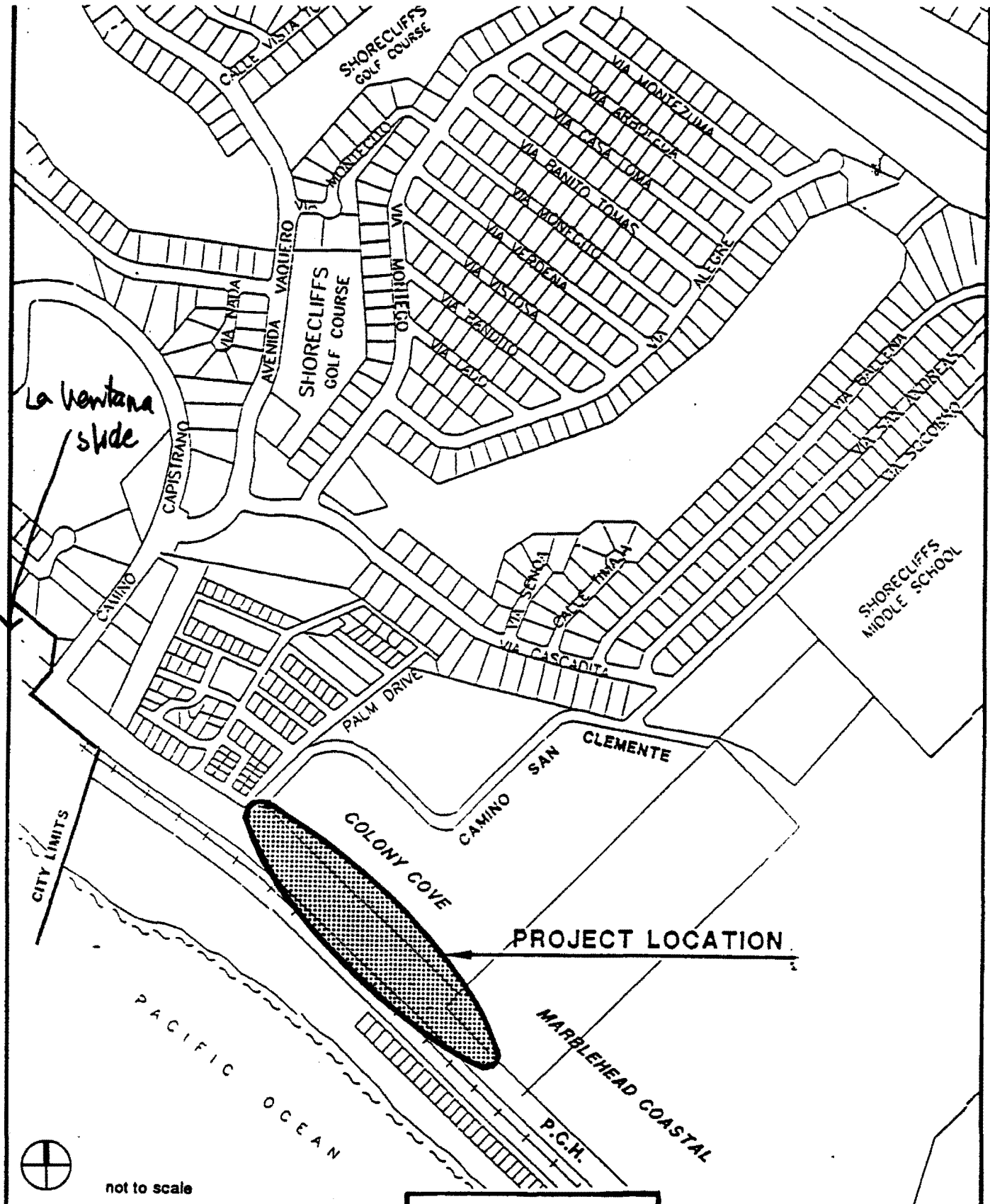
The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988. Among the policies contained in the certified LUP are those discussed in the preceding sections regarding the proposed development. Previous findings have demonstrated the project's consistency with Chapter 3 of the Coastal Act. It has also been shown that the proposal is consistent with the certified land use plan which includes these Chapter 3 policies. Therefore, the Commission finds that the project approval would not prejudice the ability of the City to prepare a certifiable LCP for the City of San Clemente.

#### I. CEQA

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the geologic safety, visual quality, paleontological and biological resource policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

3646F




**PROJECT LOCATION**

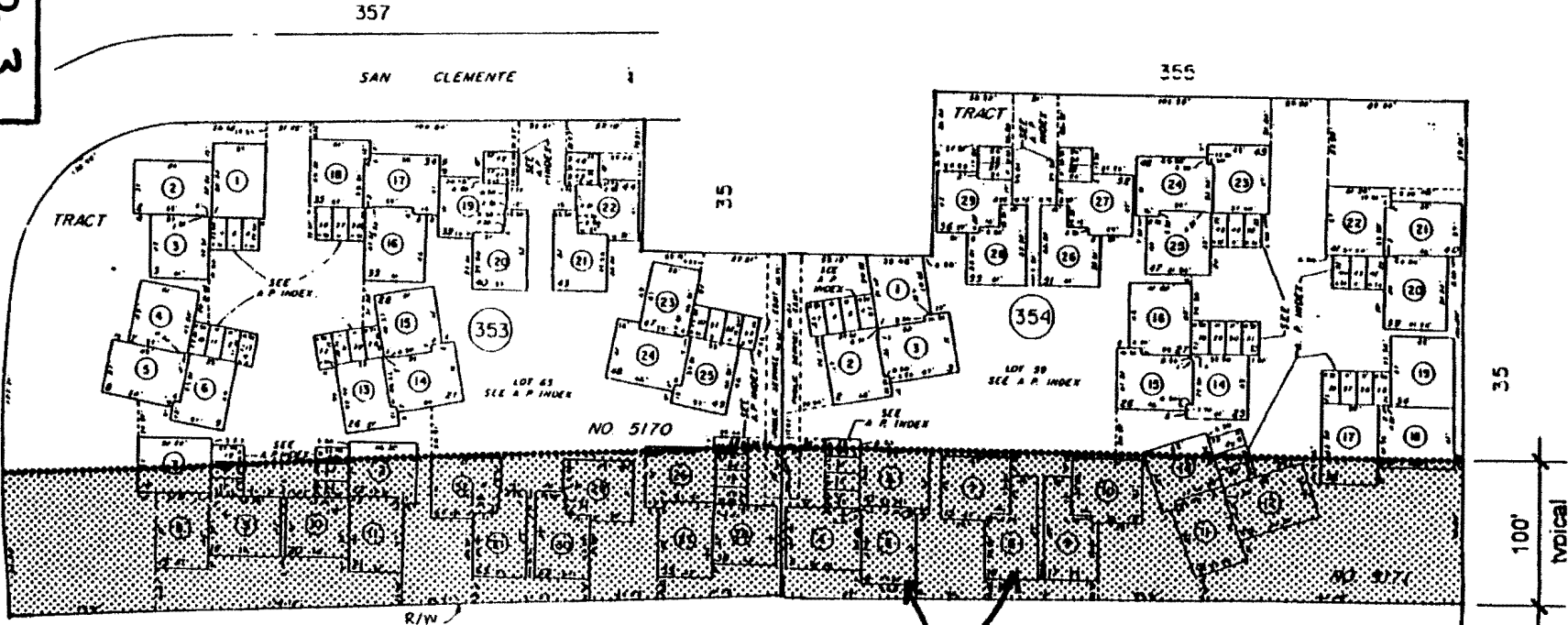
<b>EXHIBIT NO. 2</b>
APPLICATION NO. <b>5-94-256</b>
<b>SITE</b>
California Coastal Commission

Exhibit 2

ED ALMANZA & associates




**ASSESSOR'S**  
 APPLICATION NO.  
**5-94-256**  
**EXHIBIT NO. 3**

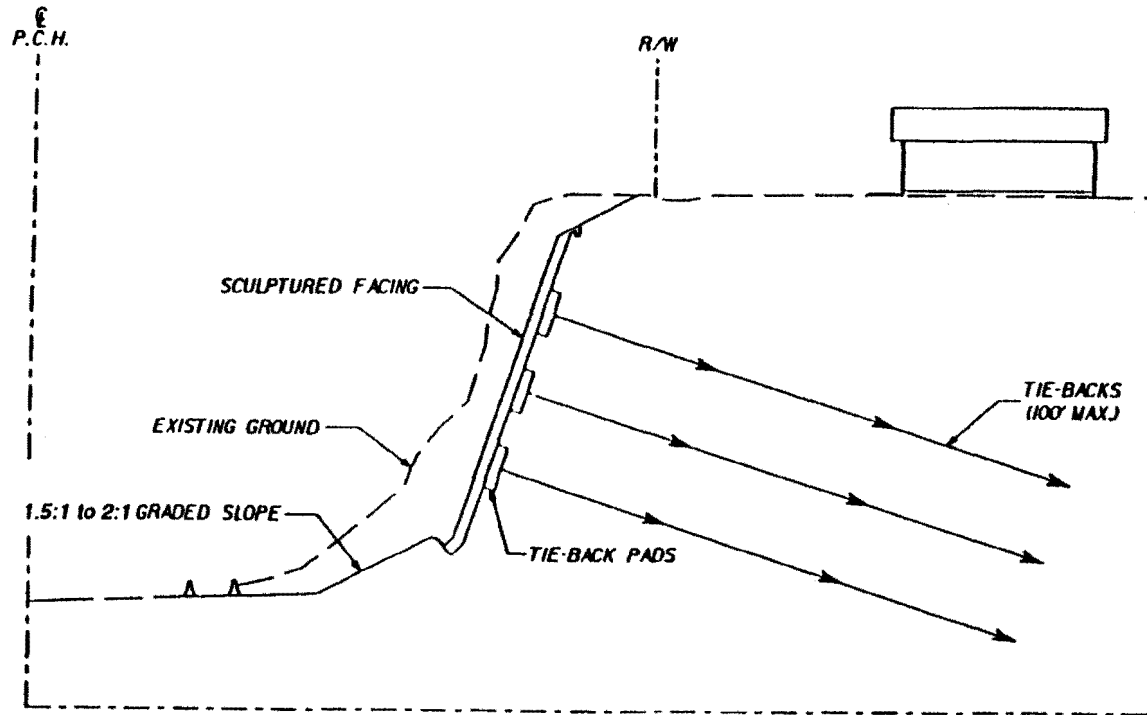



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*Damaged Homes*

**LIMIT OF EASEMENT TO CONSTRUCT TIE-BACK ANCHORS**

Source: AKM



TYPICAL IN THE NORTHERN 1/3 OF  
THE ALIGNMENT

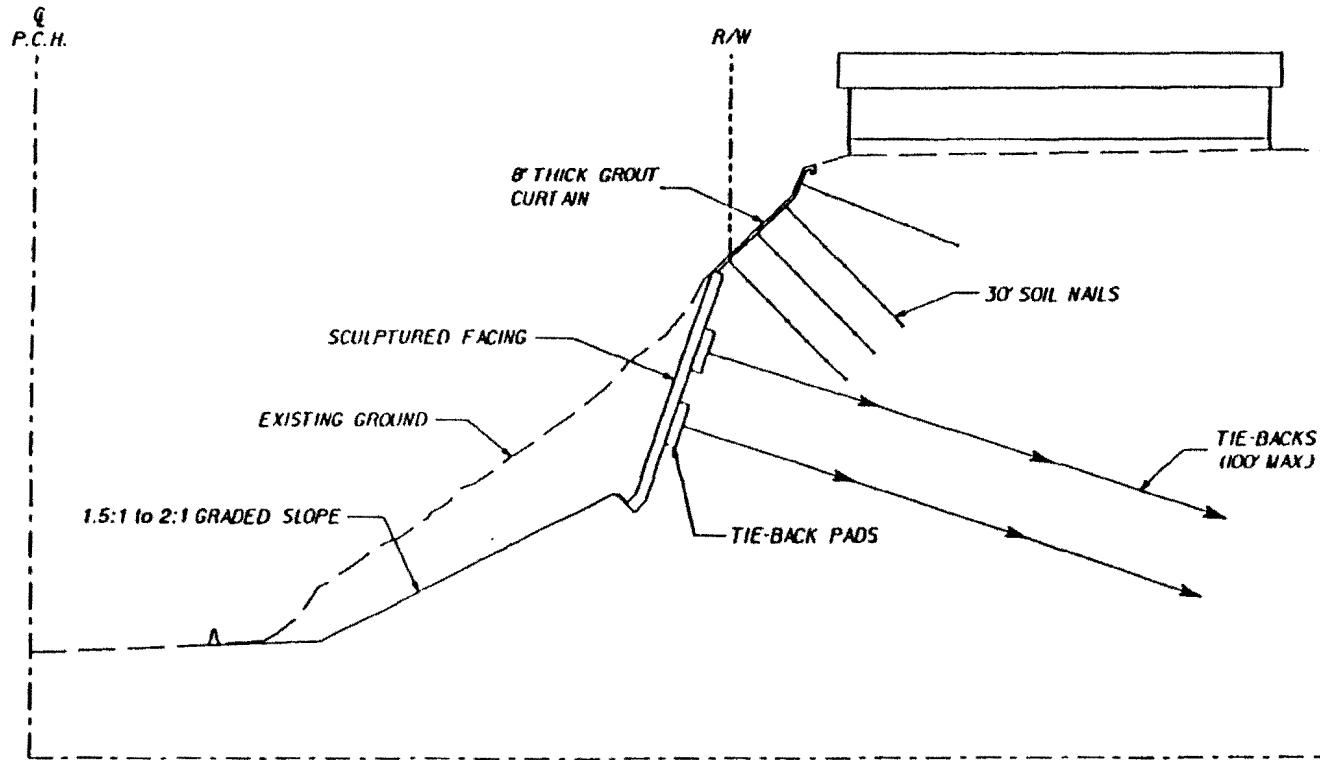
 California Coastal Commission	EXHIBIT NO. 4
	APPLICATION NO. S-94-256
	STABILIZATION SECTION

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## PROPOSED STABILIZATION METHODS NORTHERN END

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Source: AKM



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 California Coastal Commission	EXHIBIT NO. 5
	APPLICATION NO. S-94-256
STABILIZATION SECTION	

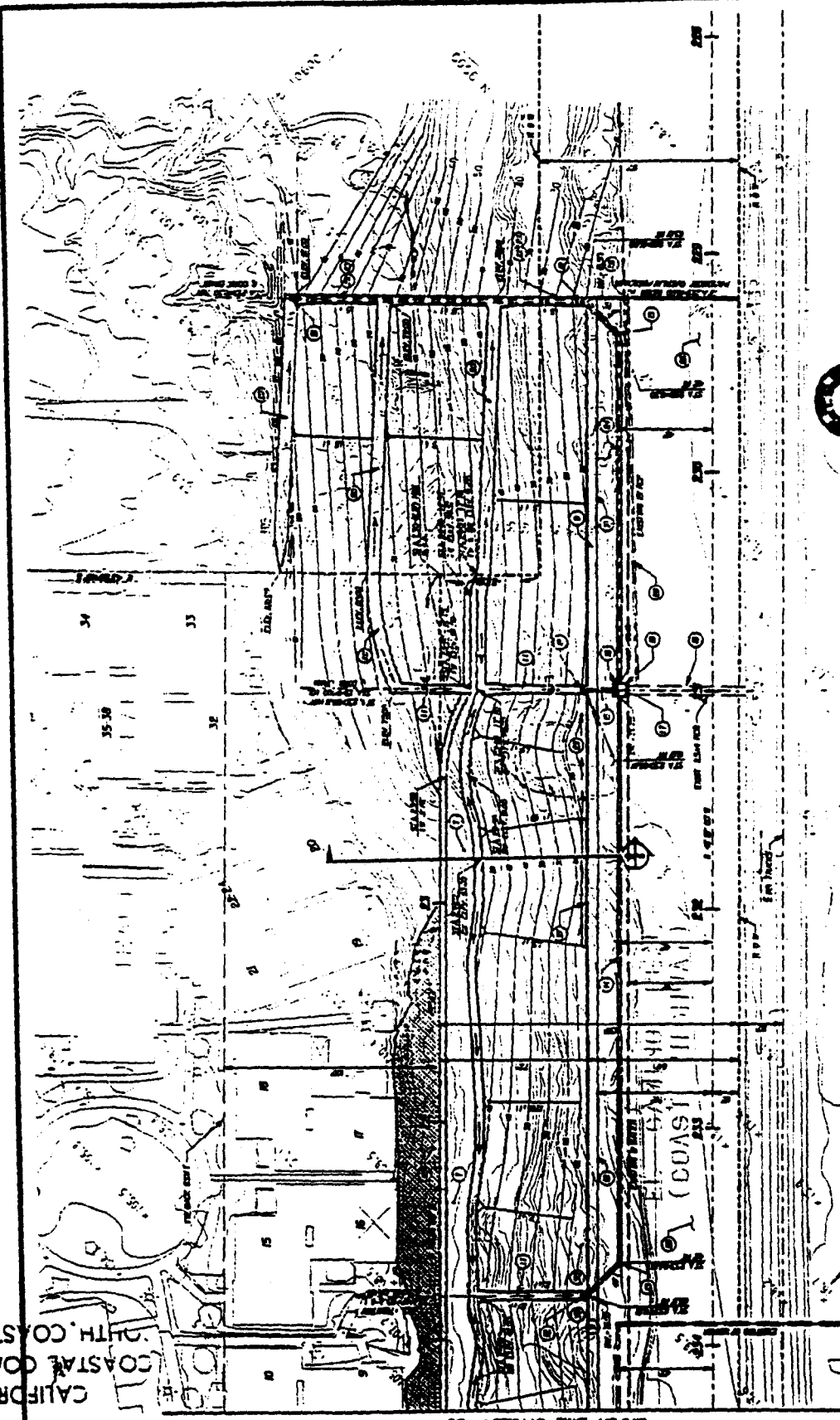
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## PROPOSED STABILIZATION METHODS SOUTHERN END

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DEC 22 1994

CALIFORNIA COASTAL COMMISSION  
SOUTH COAST DISTRICT



**CITY OF SAN CLEMENTE**  
**PACIFIC COAST HIGHWAY/ROBERT COVE**  
 MAP 15-100-0100



DATE OF PREPARATION	NOV 29 1994
DATE OF REVISION	
NO. OF SHEETS	1
TOTAL NO. OF SHEETS	1
PROJECT NO.	5-94-256
DATE OF ISSUE	
ISSUED BY	
APPROVED BY	
CHECKED BY	
DESIGNED BY	
DRAWN BY	
SCALE	
PROJECT LOCATION	
PROJECT DESCRIPTION	
PROJECT OWNER	
PROJECT CONTACT	
PROJECT PHONE	
PROJECT FAX	
PROJECT E-MAIL	

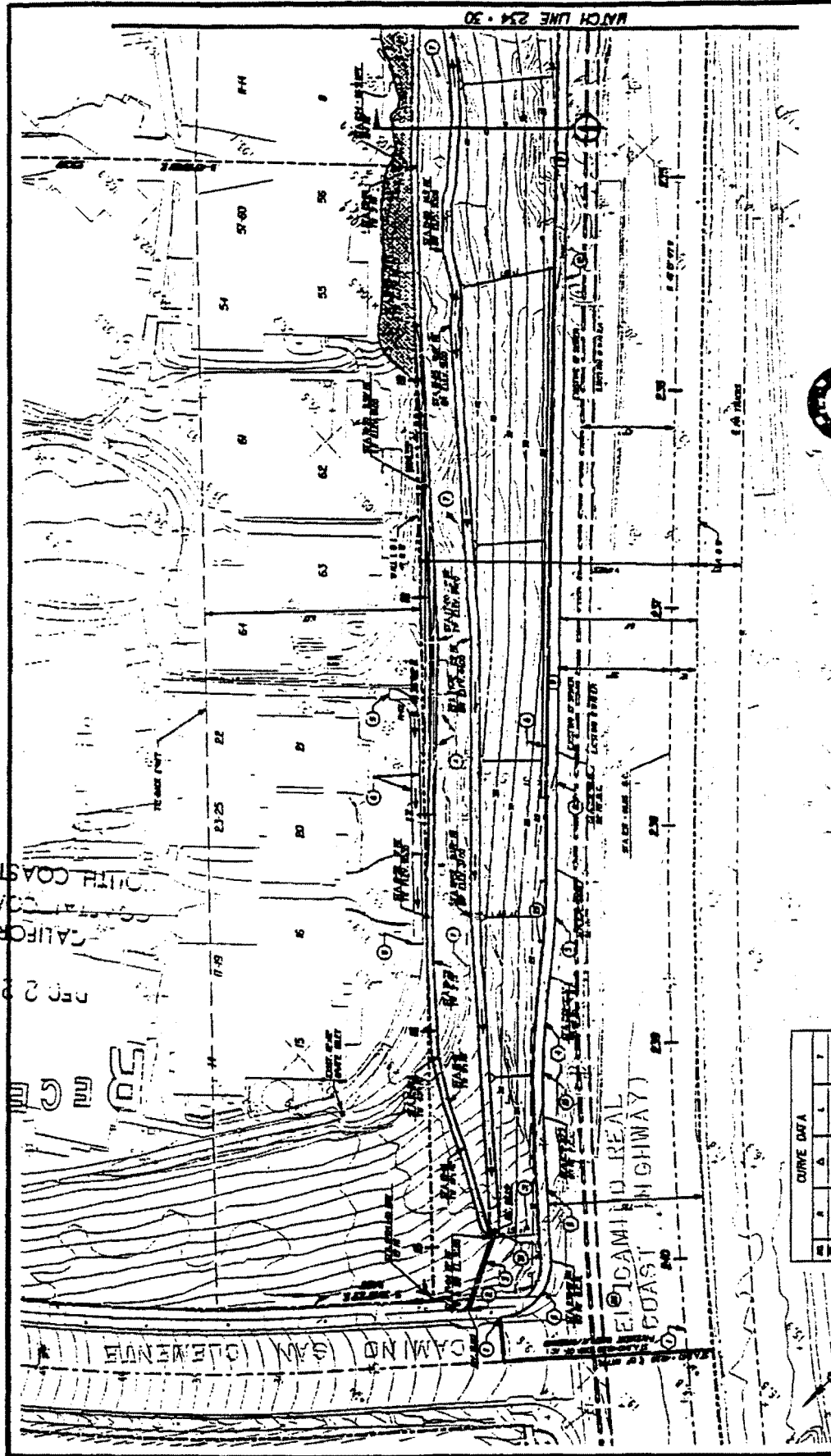
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**EXHIBIT NO. 6**  
**APPLICATION NO.**  
**5-94-256**  
**SITE PLAN**



DEC 2 1994  
 CALIFORNIA  
 COASTAL COMMISSION  
 SANTA MONICA DISTRICT

RECEIVED



**CITY OF SAN CLEMENTE**  
**PACIFIC COAST HIGHWAY ROTARY GORE**  
 DATE: 11/29/94  
 DRAWN BY: J. S. WILSON  
 CHECKED BY: J. S. WILSON  
 SCALE: AS SHOWN

PREPARED UNDER THE SUPERVISION OF  
 JAMES S. WILSON, INC. Santa Monica, CA

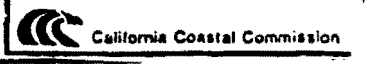
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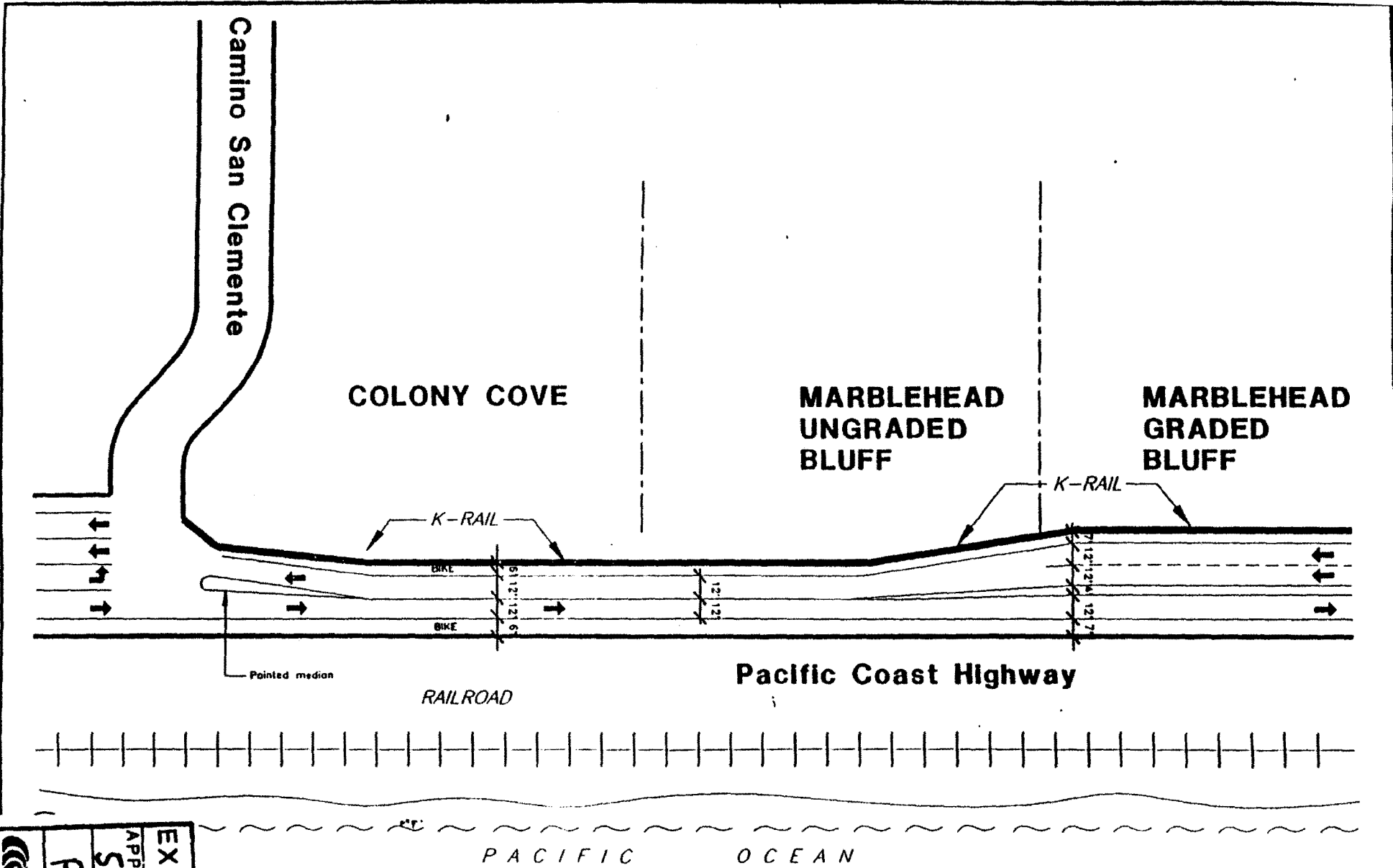
DATE: 11/29/94  
 DRAWN BY: J. S. WILSON  
 CHECKED BY: J. S. WILSON  
 SCALE: AS SHOWN

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**EXHIBIT NO. 7**  
**APPLICATION NO.**  
**5-94-256**  
**SITE PLAN**




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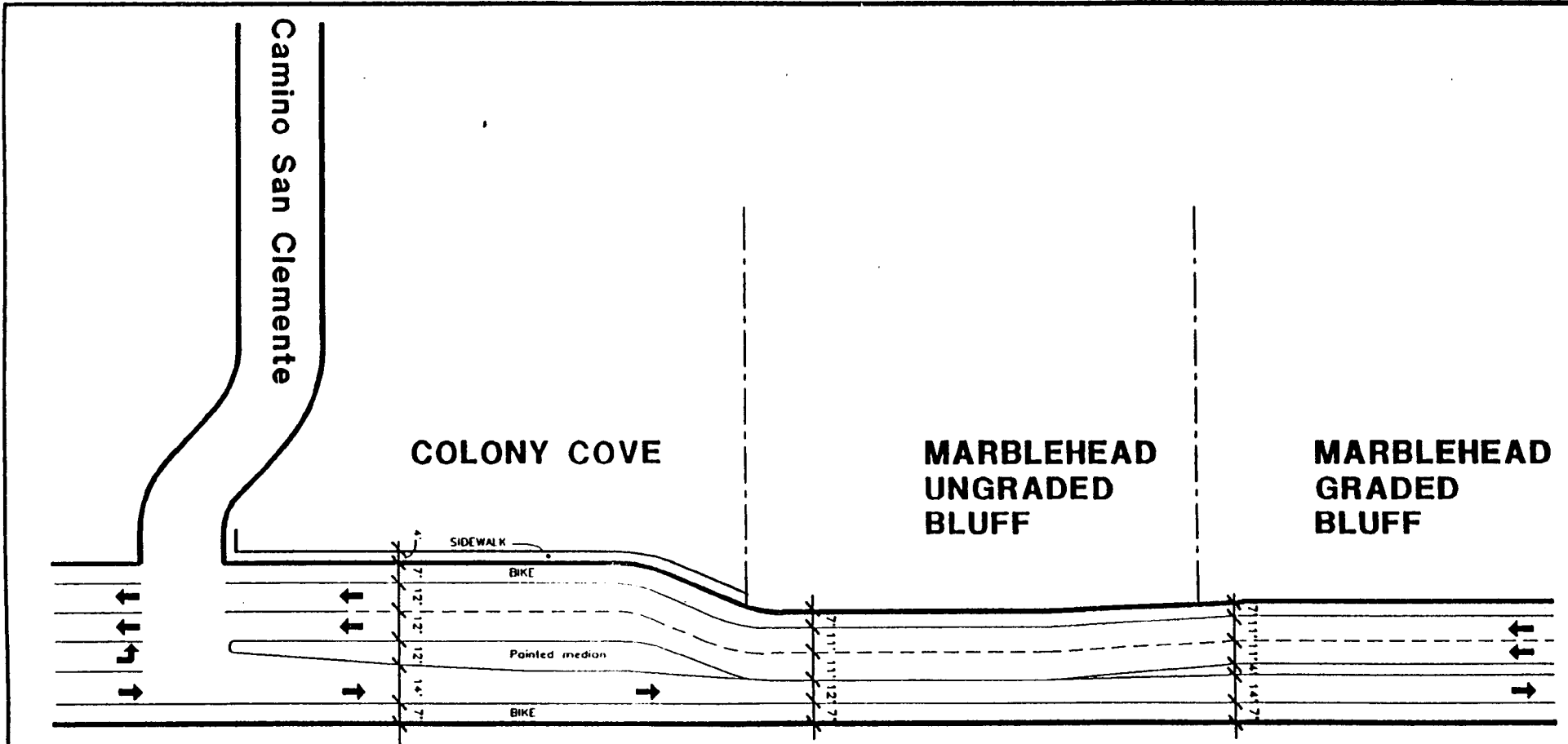



Exhibit

**LANE CONFIGURATION**

**ED ALMANZA**  
 associate

  
 California Coastal Commission  
**EXHIBIT NO. 8**  
 APPLICATION NO.  
**S-94-256**  
**PCH Now**



 California Coastal Commission	<b>EXHIBIT NO. 9</b>
	APPLICATION NO. <b>5-94-25C</b>
	<b>PCM PROPOSED</b>

**INTERIM LANE CONFIGURATION**

Exhibit



**ED ALMANZA**  
 ASSOCIATES

Source: Richard Price & Associates, Inc.

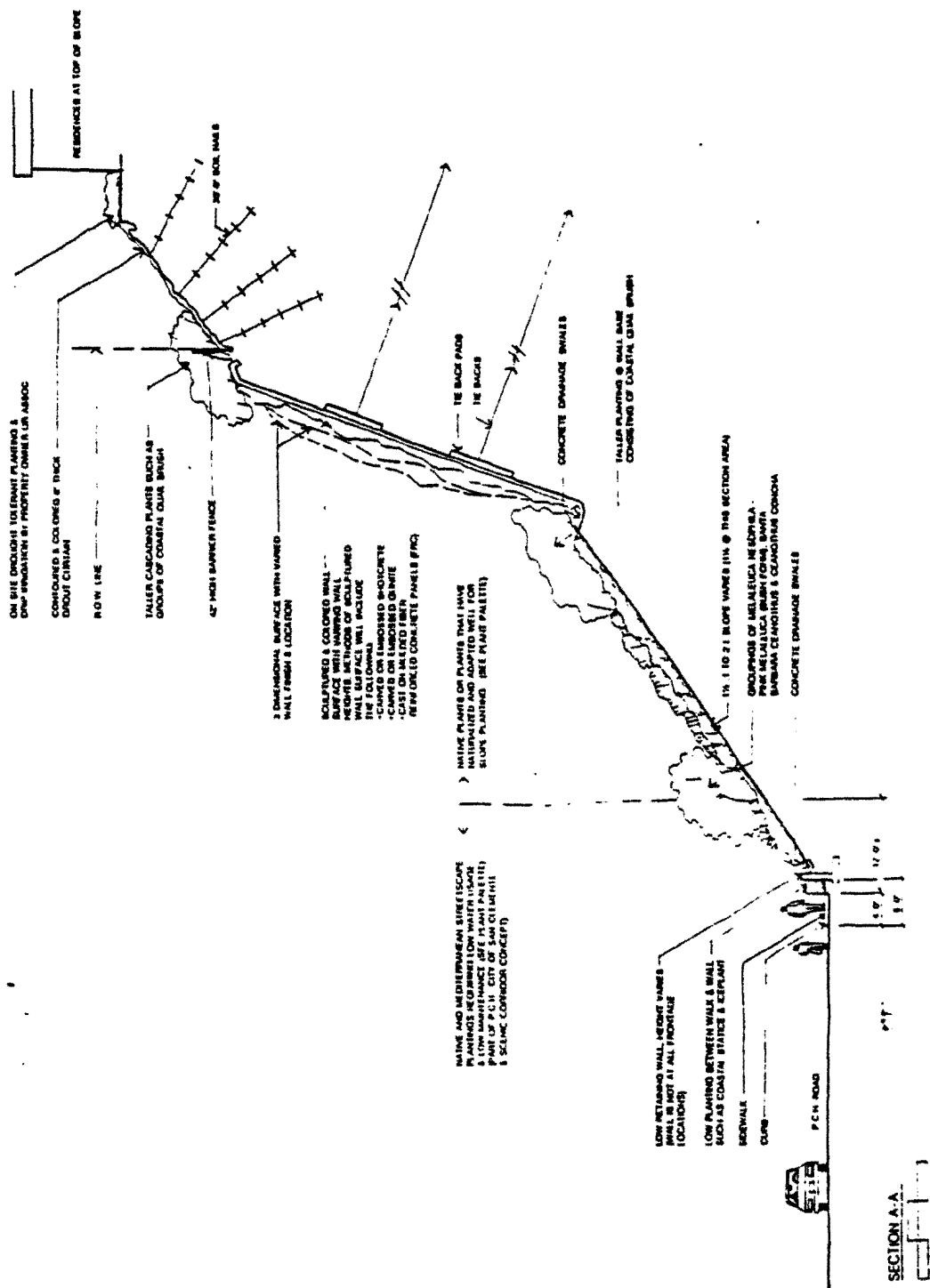


EXHIBIT NO. 10  
 APPLICATION NO.  
 5-94-256  
 LANDSCAPING

California Coastal Commission

Exhib

PROPOSED LANDSCAPE CONCEPT  
 CROSS - SECTION A



RECEIVED

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING MITIGATED NEGATIVE DECLARATION FOR PACIFIC COAST HIGHWAY/COLONY COVE SLOPE STABILIZATION PROJECT NO. 13172

OCT 26 1994 CALIFORNIA COASTAL COMMISSION SOUTH COAST DISTRICT

WHEREAS, the City of San Clemente has applied for Federal Highway Administration (FHWA) disaster relief funds for the January-March, 1993 storm damage; and

WHEREAS, the City of San Clemente suffered storm damage and performed emergency work and will be performing restoration work for slope stabilization and street widening along Pacific Coast Highway from Camino San Clemente to Marblehead Coastal along the Colony Cove development; and

WHEREAS, staff processed and completed the mitigated negative declaration for this project in accordance with the California Environmental Quality Act; and


WHEREAS, the Planning Division recommends that the City Council find that the project will have no significant environmental impacts, and therefore that a mitigated declaration is warranted; and

WHEREAS, on September 7, 1994, the City Council held a duly noticed public hearing on the subject application and considered evidence presented by the City staff and other interested parties.

NOW, THEREFORE, the City Council of the City of San Clemente, California, HEREBY RESOLVES AS FOLLOWS:

SECTION 1: The City Council of the City of San Clemente has reviewed the mitigated Negative Declaration and any comments received on the mitigated Negative Declaration. After reviewing the foregoing, the City Council has exercised its independent judgment and determined that, as mitigated, there is no substantial evidence that the project will have a significant impact upon the environment. Pursuant to Section 711.4, the City Council hereby determines that after considering the record as a whole, there is no substantial evidence that this project may have an impact on fish or wildlife or the habitat upon which it depends and, for that reason, the City Council finds the project's impacts are de minimus pursuant to Fish and Game Code Section 711.4. Furthermore, the City has, on the basis of substantial evidence, rebutted the presumption of adverse effect contained in Section 753.5(d) of Title 14 of the California Code of Regulations.

SECTION 2: The City Council of the City of San Clemente does hereby approve the mitigated Negative Declaration for the Pacific Coast Highway/Colony Cove Slope Stabilization, Project No. 13172.

EXHIBIT NO. 11
APPLICATION NO. 5-94-256
RESOLUTION
 California Coastal Commission

*B. Scott Diehl*  
MAYOR of the City of  
San Clemente, California

ATTEST:

*Myrna Erway*  
CITY CLERK of the City of  
San Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF SAN CLEMENTE )

I, MYRNA ERWAY, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 94-60 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 7th day of Sept. , 1994 by the following vote:

AYES: ANDERSON, BENEDICT, HAGGARD, MAYOR DIEHL

NOES: NONE

ABSENT: LORCH

*Myrna Erway*  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

*Wm. McDem...*  
City Attorney

I, MYRNA ERWAY, CITY CLERK OF THE CITY OF SAN CLEMENTE, STATE OF CALIFORNIA, HEREBY CERTIFY UNDER PENALTY OF PERJURY THE FOREGOING INSTRUMENT TO BE A FULL TRUE AND CORRECT COPY OF THE ORIGINAL NOW ON FILE IN MY OFFICE.

DATE: 9-12-94  
*Myrna Erway*  
MYRNA ERWAY  
CITY CLERK  
BY: \_\_\_\_\_

## VIII. SUMMARY OF MITIGATION MEASURES

**Biological Resources:** To ensure avoidance of impacts to the local population of Blochman's Dudleya, grading and disturbance within the Marblehead (Lusk) property shall be restricted from the area identified in Exhibit 7. Prior to grading and site preparation activities, the area identified in Exhibit 7 shall be marked with a temporary plastic fencing to prohibit any disturbance and intrusion of heavy equipment. Placement of the fencing shall be supervised by a qualified field botanist who shall also conduct periodic monitoring during and at completion of grading to ensure that no impact occurs.

**Aesthetics:** The project plans and specifications (to be publicly bid) will include requirements for the construction of the wall, sculpted facing and grout curtain surface treatments and colors, and landscaping details. The successful bidder will be required to submit shop drawings, treatment and color samples for the City's approval to ensure that the intent of project plans and specifications is met

**Paleontology:** A qualified paleontologist shall be retained and will be notified prior to commencement of removal of Capistrano formation for initial inspection. Frequency of inspection shall be determined by the City according to the rate of removal and quality of material excavated.

All fossils collected shall be prepared and identified by a qualified paleontologist. They shall then be donated to a suitable institution with a research interest in the materials. Selection of the appropriate institution shall be made by a qualified paleontologist.


<b>EXHIBIT NO. 12</b>
APPLICATION NO. 5-94-256
<b>MITIGATION MEASURES</b>
 California Coastal Commission




EXHIBIT NO. 12
APPLICATION NO. S-94-256
B10
 California Coastal Commission

Exhibit 7

**BLOCHMAN'S DUDLEYA POPULATION**