

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Staff: RMR/LB **RMR**
Staff Report:
Hearing Date: October 7-10, 1997
Commission Action:

**RECORD PACKET COPY****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-97-122

APPLICANT: Walter and Susan Sawall

AGENT: None

PROJECT LOCATION: 200 Block of West Avenida Alessandro,
San Clemente, County of Orange

PROJECT DESCRIPTION: Subdivision of a single 1.47 acre parcel into two parcels of 28,060 sq. ft. (Parcel 1) and 36,040 sq. ft. (Parcel 2). No structures or other development, except for the subdivision, is proposed.

Lot area:	1.47 ac.
Building coverage:	NA
Pavement coverage:	NA
Landscape coverage:	NA
Parking spaces:	NA
Zoning:	R-1
Plan designation:	RL (4.5 du/gross ac.)
Project density:	NA
Ht abv fin grade:	NA

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

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan, Geotechnical Investigation by Ian Kennedy June 3, 1997, Geotechnical report by Ian Kennedy dated February 16, 1990, Biological assessment by Ted Hanes, Ph.D., June 4, 1997.

SUMMARY OF UNRESOLVED ISSUES:

When the application was submitted, staff analyzed the proposed subdivision and was concerned that approval of the subdivision as submitted would conflict with the Environmentally Sensitive Habitat Protection policies of the City of San Clemente certified Land Use Plan and the Coastal Act. Specifically, staff was concerned that the creation of Parcel 1 would result in the loss of coastal canyon coastal sage scrub habitat. In meetings with the applicant, the issue was resolved by identifying the allowable building area for Parcels

1 and 2 which conformed with land use plan setback policies. In order to ensure future compliance with these identified building areas, a deed restriction is required as a special condition of this coastal development permit. The applicant does not object to the imposition of a deed restriction limiting the building area of the residences for Parcels 1 and 2.

Therefore, there are no known unresolved issues with respect to this permit application.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the proposed development with a special condition requiring the applicant to comply with a deed restriction fixing the location of any future building footprint on parcels 1 and 2.

STAFF RECOMMENDATION:

The Staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, 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.

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 CONDITION

1. Limitation on Location of Future Residences

The location of future residences on each newly created lot is limited to the building site area depicted on Exhibits 4 and 5 to this staff report for coastal development permit 5-97-122. For purposes of this condition, "future residence" refers to enclosed living area. Patios, decks, landscaping, and other accessory structures are not limited to the building site area but cannot encroach to within five feet of the line of native vegetation.

2. Future Development Deed Restriction

Prior to the issuance of the coastal development permit the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, that restricts the location of all future single family residences on Parcel 1 and 2 to the locations shown on Exhibits 4 and 5. No enclosed living space shall be constructed canyonward of the shaded area shown on Exhibits 4 and 5 and reflected in the final plans submitted as per special condition 3.

The document shall run with the land binding all successors and assigns, and shall be recorded free and clear of prior liens and encumbrances which the Executive Director determines may affect the interest conveyed.

3. Submittal of Final Plans

Prior to the issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, revised full size final plans that show the allowable building site areas for Parcel 1 and Parcel 2. The building sites shown shall be in conformance with those shown on Exhibits 4 and 5 of this staff report.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Location

The proposed development consists of the subdivision of a single 1.47 acre lot into two parcels of 28,060 sq. ft. (Parcel 1) and 36,040 sq. ft. (Parcel 2). No residences or other development are proposed at this time.

The proposed subdivision is located on an inland south-facing vacant lot in the 200 block of West Avenida Alessandro (see Exhibit 3). The project site is located on Riviera Canyon, one of seven coastal canyons identified in the City

of San Clemente certified land use plan as Environmentally Sensitive Habitat Area (see Exhibit 2). The coastal canyons include open space for wildlife habitat, coastal sage scrub habitat, and standing water.

There are existing single-family residences on either side of the site, as well as across the street on West Avenida Alessandro and across the canyon. The canyon-fronting lots across the canyon have been extensively altered and contain primarily non-native vegetation. The proposed site includes healthy stands of coastal sage scrub across the site, particularly in the eastern portion of parcel 1. There is no wetland riparian vegetation in the flowline of the canyon which runs through the lot, although there is standing water. The flowline of the canyon runs east of and parallel with Calle Las Palmas before turning west and proceeding parallel to West Avenida Alessandro eventually terminating at the ocean (see Exhibit 3).

The lot is designated in the certified land use plan (LUP) as residential low (RL) with a gross density of 4.5 units per acre. During the 1980's there were two proposals for subdivision of the site, a five-lot subdivision and a three lot subdivision. Neither of these proposals was approved by the City and consequently applications were never submitted to the Commission.

The City of San Clemente has a 20 foot drainage easement along the southern property boundary of parcel 1 and along the flowline of the canyon through parcel 2. There is a City of San Clemente sewer easement across parcel 1 (see Exhibit 4). This easement cannot be built on or developed and forms a buffer zone between the native vegetation and the potential building site. The easement contains non-native vegetation. Prior to 1950 West Avenida Alessandro was constructed and five feet of fill was placed along the site abutting the road. The excess dirt from cutting for the road was pushed onto the site and also down the slopes. Since that time the street-fronting portion of the site containing the fill has been cleared of vegetation (disced) annually for fire prevention purposes. However, the native vegetation below the fill line is quite healthy.

B. Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

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

Additionally, there are policies in the City of San Clemente certified LUP regarding development setbacks from coastal canyons. Policy VII.15 on page 3-21 of the LUP states:

New Development shall not encroach into coastal canyons and shall be set back either:

- a. A minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or
- b. A minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or
- c. In accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.

The development setback shall be established depending on site characteristics and determined after an on site visit.

Policy VII.10 requires a biological assessment report when the development results in the removal of any native vegetation. Policy VII.11 regards restrictions on grading and removal of native vegetation. It states:

Prohibit development and grading which alters the biological integrity of the Coastal Canyons as depicted on Coastal Canyon Map, Figure 2-1, unless it is replaced with habitat of equivalent value.

Policy VII.12 involves improving natural habitat. It states:

Encourage activities which improve the natural biological value, integrity and corridor function of the coastal canyons through vegetation restoration, control of alien plants and animals, and landscape buffering.

The proposed development is located on Riviera Canyon, one of seven coastal canyons designated in the certified LUP as environmentally sensitive habitat area (ESHA) (see Exhibit 2). There is a description of the coastal canyons in Chapter 2 section 202 (A) of the certified LUP. Page 2-2 of the LUP contains descriptions of the habitat.

The coastal canyons contain areas of flourishing coastal sage scrub as well as areas of coastal sage scrub intermixed with introduced vegetation. The native vegetation is drought tolerant and has deep root systems which help consolidate the surface soils on coastal canyons and bluffs. ...

San Clemente's coastal canyons represent remnants of what was once a much larger habitat zone. ... The primary environmental value of these habitat areas is that they represent an ever diminishing resource within urbanized portions of the coast.

The flowline of Riviera Canyon flows north parallel to Calle Las Palmas and then turns west running parallel with West Avenida Alessandro eventually terminating at the beach. There is a side canyon beginning at the junction of South Ola Vista which trends south across parcel 1 and connects with the main drainage where it turns and flows west (see Exhibit 3). The shaded area on Exhibit 3 represents Riviera Canyon to the south and Los Lobos Marinos Canyon to the north.

In 1995 the City of San Clemente certified LUP was amended. One of the changes which was made was to change policy VII.15(b) to read "line of native vegetation" instead of "primary vegetation line". This change was a suggested

modification which clarified the point that the Commission was primarily concerned about the preservation of native vegetation in coastal canyons. The plans submitted by the applicant show a "line of vegetation" (see Exhibits 4 and 5). This "line of vegetation" marked the extent of vegetation, but did not distinguish between native and non-native vegetation. In the plans originally submitted by the applicant the building sites were shown as extending beyond the line of vegetation marked on the site plans. Modified plans have been submitted to staff showing that the building sites conform with the setback policies.

The site plans submitted by the applicant were formulated prior to the LUP being amended. Therefore, the "line of vegetation" drawn on the plans does not accurately reflect the "line of native vegetation." At staff's request, the applicant submitted a biological assessment report written by Dr. Ted Hanes, Ph.D., a biological consultant. Dr. Hanes plotted the vegetation on the site plan. Dr. Hanes' work (see Exhibits 4 and 5) shows that the presence of non-native plants, such as ice-plant and jade, increases with the proximity to the graded areas along the level disced portion of the site and also in proximity to water in the canyon drainage. Therefore, at the bottom of the canyon there are numerous types of palm trees and Brazilian pepper trees, as well as some red gum eucalyptus. Closer to the level portion of the site adjacent to the "vegetation line" there is an increasing amount of non-native plants, including ice plant, jade plants, russian thistle, red gum eucalyptus, Brazilian pepper tree. In between the flowline and the line of vegetation is found the bulk of the native vegetation.

The 10 foot wide sewer easement across proposed parcel 1 and a portion of parcel 2 is also periodically disced for easement maintenance purposes. The portion of proposed parcel 1 east of the sewer easement contains the best grouping of coastal sage scrub or as Dr. Hanes labels it "southern mixed chaparral," consisting of California buckwheat, toyon, prickly pear, lemonadeberry and California sagebrush.

Policy VII.15 of the LUP (above) requires that one of three setback policies be applied to development on coastal canyon lots. The stringline policy (c) is not applicable because the lot is long and narrow and the adjacent structures are not situated in such a way that the stringline can be applied. Both the proposed parcels meet the 30% depth of lot criteria. This means that the applicable policy is either "a" or "b" of policy VII.15. The utilization of the 15 feet from the canyon edge is not practicable because it would make building sites on both parcels problematic. Therefore, the applicable policy is policy "b", which mandates that development be situated 15 feet from the line of native vegetation and 50 feet from riparian vegetation. There is no riparian vegetation within 50 feet of the proposed development.

The original plans submitted with the application included the easement lines, lot lines and the "line of vegetation". The revised plans showing the buildable area for parcels 1 and 2 are Exhibits 4 and 5, which show the "line of vegetation", plots of native and non-native vegetation, and the buildable area which is established as 15 feet from native vegetation. The dashed line on Exhibit 5 reflects a revised "line of vegetation" which excludes non-native vegetation. The boundary of the buildable area for parcel 1 (Exhibit 4) has been adjusted to reflect a line of native vegetation, but the actual "line of vegetation" has not been adjusted as per Exhibit 5.

Exhibit 4 is a reduction of Parcel 1 (28,060 sq. ft.). Exhibit 5 is a reduction of Parcel 2 (36,040 sq. ft.). Both of these exhibits indicate shaded areas where potential building sites are. For the purposes of this permit, building site area refers to the area of enclosed living space. Other development consistent with the habitat setback policies shall be considered with future applications for specific development of the sites.

Measurements of the potential building area on Parcel 2 shows that it is approximately 90 feet long by 45 feet wide or 4,045 sq. ft. The potential building area on Parcel 1 is limited by the presence of the sewer easement, the narrowness of the lot, and the presence of native vegetation. However calculations on parcel 1 show that the main portion of the potential building site is on average 18 feet wide by approximately 105 feet or 1,890 sq. ft. The remainder of the eastern portion of the buildable lot is approximately 90 feet long by 12 to 15 feet wide.

The LUP policy requires that development be setback 15 feet from native coastal vegetation. Staff has revised the line of vegetation canyonward in some areas to account for the presence of non-native vegetation (see Exhibits 4 and 5). The Commission concludes from these calculations that two building sites can be accommodated. Subdivision of the site would be inconsistent with the Coastal Act if it would result in lots that cannot accommodate single family homes that are consistent with Chapter 3 policies. The subject lot can accommodate two residences that do not adversely impact native coastal vegetation only if the residences are built in the locations shown in Exhibits 4 and 5. Therefore, the lot can be subdivided into two lots consistent with the Coastal Act if the building sites for future residences are limited to those shown on Exhibits 4 and 5. The Commission finds that if conditioned to limit the building site area in each new lot, the proposed development conforms with Section 30240 of the Coastal Act and the forementioned policies of the City of San Clemente certified land use plan regarding the protection of environmentally sensitive resources in coastal canyons.

Further, future purchasers of these lots may not be aware of the limitations of the building sites. Therefore, in order to ensure that potential future owners of the lots are aware of the buildable area restrictions, the Commission finds that the applicant must record a deed restriction that limits the construction of residences within the buildable area per exhibits 4 and 5.

In addition, the applicant must submit full size plans showing both the revised line of native vegetation and the buildable areas in relation to that line of vegetation (i.e., set back 15 feet). Exhibits 4 and 5 of this staff report are plans which were adjusted by staff and therefore final plans need to be submitted to reflect these changes.

Only as conditioned does the Commission find that the proposed development conforms with Section 30240 of the Coastal Act and the applicable resource protection policies of the certified Land Use Plan.

C. New Development

Section 30250 of the Coastal Act states:

- (a) New residential, commercial, or industrial development, except as

otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

The applicant is proposing to subdivide an existing 1.47 acre vacant lot into two parcels of 28,060 sq. ft. and 36,040 sq. ft. In section "B" of this staff report the Commission found that the proposed development would not adversely impact native coastal vegetation as required in Section 30240 and the applicable resource protection policies of the certified LUP.

Section 30250 of the Coastal Act requires that new development be located in areas which are able to accommodate the development without adverse impacts. The proposed development is a two-lot subdivision in an area of existing single-family residential development. The parcel abuts West Avenida Alessandro and therefore ingress and egress to the site is not a problem. In addition, the infrastructure supporting residential development (sewer, water, etc.) is in place.

Therefore, the Commission finds that the proposed development is in an area able to accommodate it, poses no adverse impacts to coastal resources, and therefore conforms with Section 30250 of the Coastal Act.

D. Geologic Considerations

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.

Prior to approving a subdivision it is essential to determine whether the site is stable enough to support future residential structures and to ensure that adjacent structures are not put at risk by allowing the development.

Geotechnical reports were prepared by Ian Kennedy in February 1990 and in June of 1997. The 1990 report included borings, shear strength tests, soils analysis and a sub-surface geologic investigation.

Both the 1990 geotechnical report and the 1997 geotechnical report conclude that the site bedrock is stable, no faults are located on the property, and no evidence of groundwater was found in the test borings. The reports

note that the overburden materials (artificial fill) are poorly consolidated and unstable, however, do not pose a threat to development if that development is anchored in bedrock.

The reports concluded that the site was suitable for residential development if constructed in conformance with the geotechnical recommendations concerning the construction of the foundation support system, treatment of surface drainage and inspection by the consulting geologist. However, this coastal development permit is for subdivision only and therefore a special condition requiring conformance with geologic recommendations is not required at this time. The Commission finds that single-family residences can be safely constructed on the site in the future and that the lot can be subdivided. Therefore, the Commission finds that the proposed subdivision conforms with section 30253 of the Coastal Act.

E. Local Coastal Program

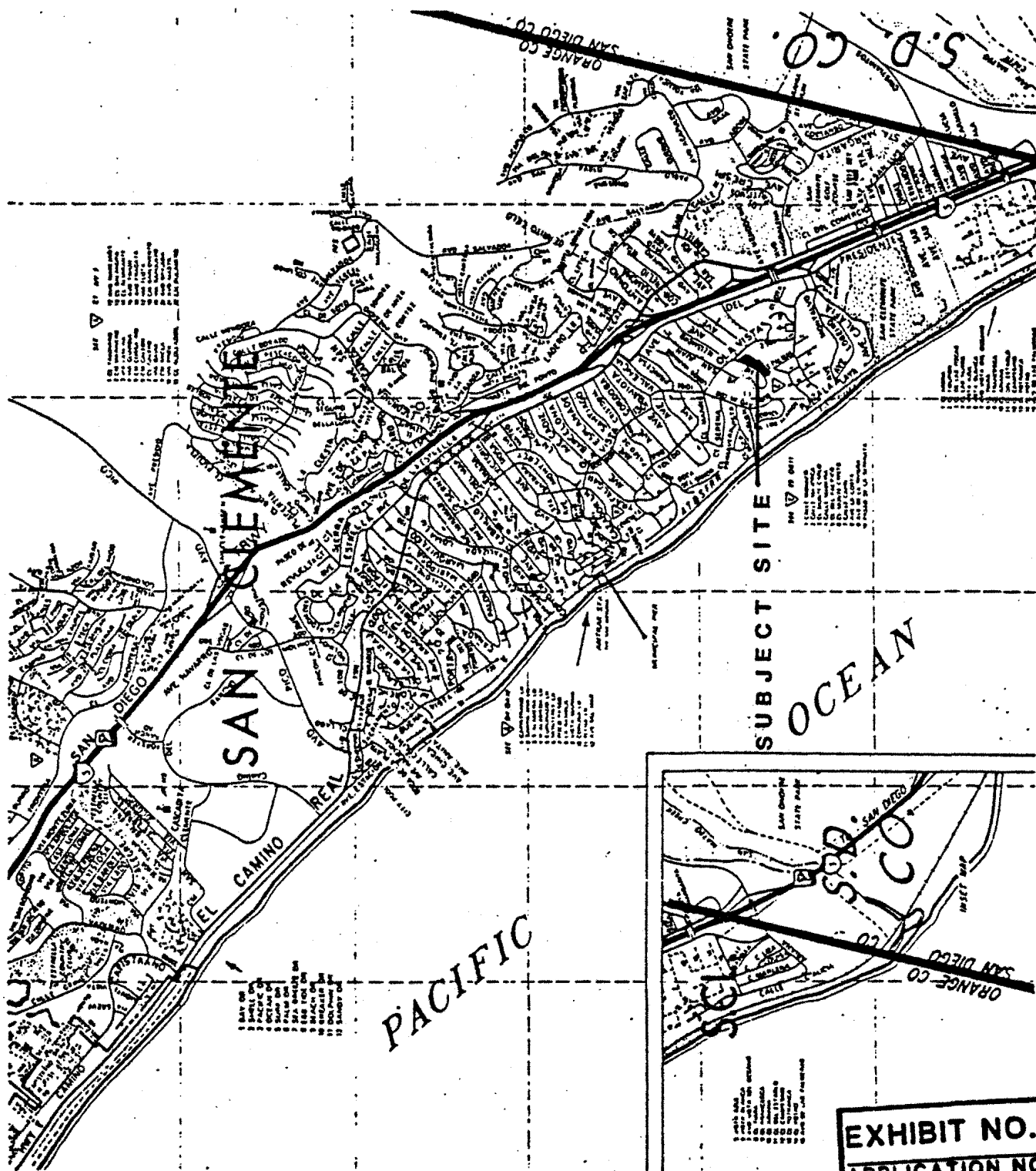
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a local coastal program which conforms with Chapter 3 policies of the Coastal Act.

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. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan. 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).

F. 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, 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 section 30240 of the Coastal Act. A mitigation measure; requiring the applicant to submit a deed restriction limiting the location of building footprints for potential residences; will minimize all adverse impacts. 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.



INDEX MAP

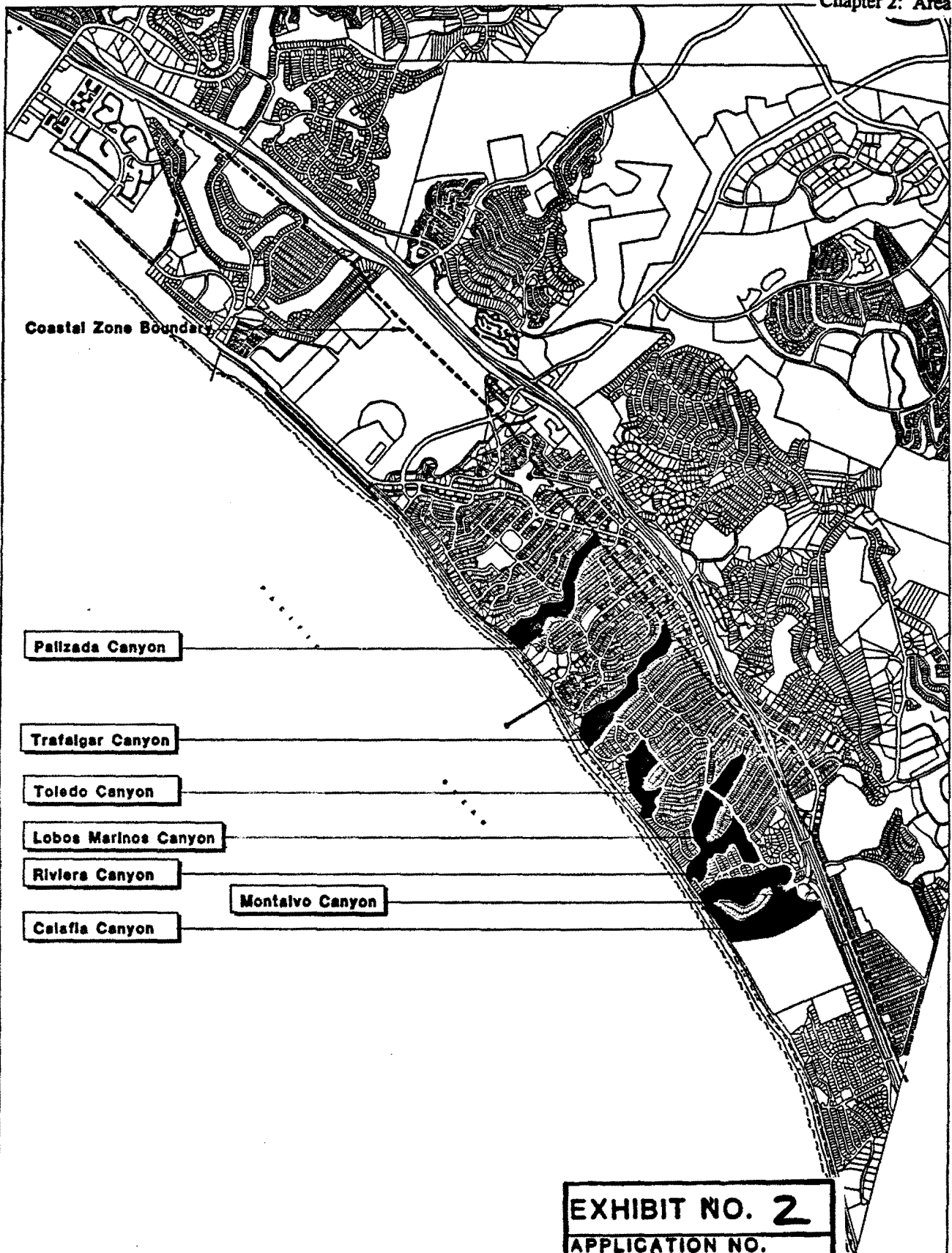



FIGURE 2-1

EXHIBIT NO. 2
APPLICATION NO. 5-97-122
COASTAL CANYONS
 California Coastal Commission



CITY OF SAN CLEMENTE
COASTAL CANYONS/ ENVIRONMENTALLY SENSITIVE HABITAT AREAS

OUTH

OLA

R-7

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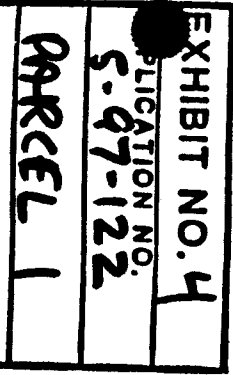
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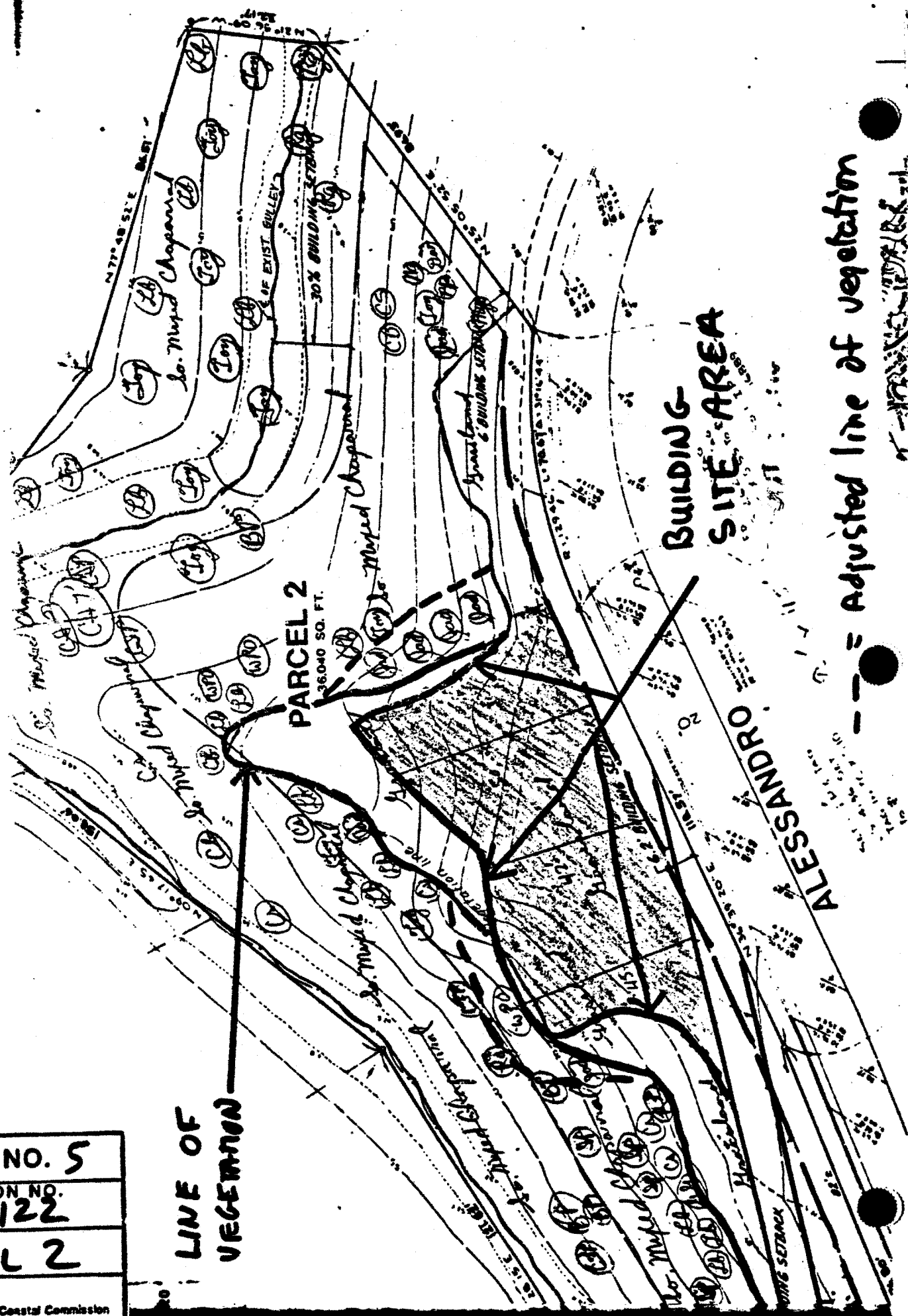
PLAZA A LA

EXHIBIT NO. 3
APPLICATION NO.
S-97-122
ASSESSORS
MAP
California Coastal Comm



RECEIVED
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 CALIFORNIA
 STATE COMMISSION

EXHIBIT NO. 5
APPLICATION NO. 5-97-122
PARCEL 2
 California Coastal Commission



--- = Adjusted line of vegetation