

CALIFORNIA COASTAL COMMISSION

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

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: 5-88-784A2

APPLICANT: Roy Lindorf AGENT: Alan Block

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

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

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

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

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

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

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

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

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

SUMMARY OF STAFF RECOMMENDATION:

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

ISSUES OF CONTROVERSY:

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

STAFF NOTE:

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

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

STAFF RECOMMENDATION:

The Staff recommends the Commission adopt the following resolution:

I. Approval With Conditions

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that the proposed amendment, as conditioned, is consistent with the requirements of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions

1. Prior Conditions

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

II. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

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

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

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

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

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

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

2. Project History

Coastal Development Permit 5-88-784

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

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

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

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

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

Coastal Development Permit 5-88-784-A

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

B. Public Access

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

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

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

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

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

D. Local Coastal Program

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

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

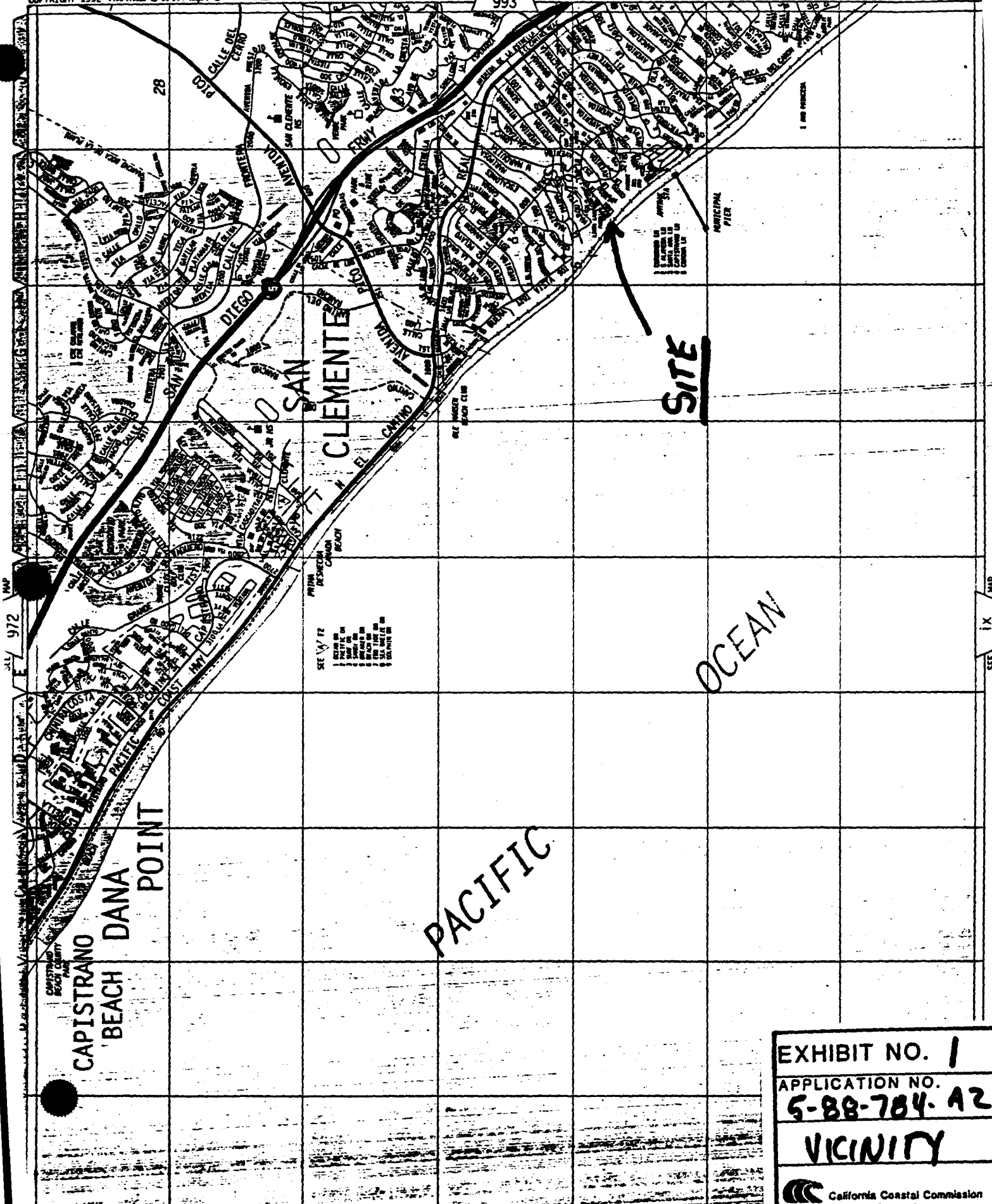
D. Consistency with the California Environmental Quality Act (CEQA).

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

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

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


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JULY 972 MAP

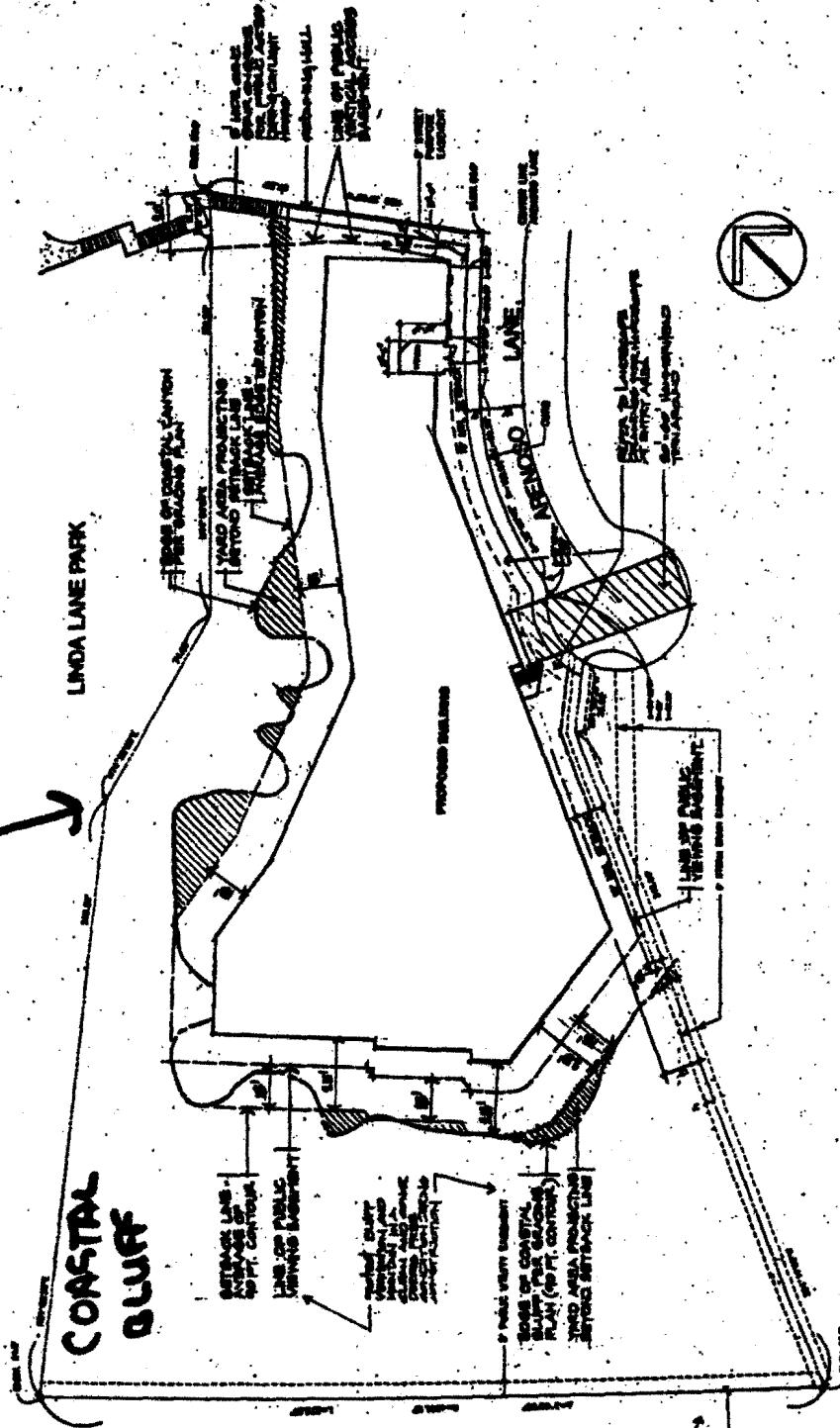
SEE IX MAP

EXHIBIT NO. 1
 APPLICATION NO.
 5-88-784-A2
 VICINITY



California Coastal Commission

Coastal
Canyon



PRELIMINARY SITE PLAN

VISTA PACIFICA VILLAS
SAN CLEMENTE, CALIFORNIA

EXHIBIT NO. 20
APPLICATION NO. S-88-784-A2
SITE PLAN
California Coastal Commission

CALIFORNIA COASTAL COMMISSION

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

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

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: 5-88-784A

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

PROJECT LOCATION: Southwest end of Arenoso Lane, San Clemente

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

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

LOCAL APPROVALS RECEIVED: none

SUBSTANTIVE FILE DOCUMENTS:

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

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

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

SUMMARY OF STAFF RECOMMENDATION:

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

EXHIBIT NO. 3
APPLICATION NO. 5-88-784 A2
STAFF REPORT
-784-A
California Coastal Commission

II. Special Conditions

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

1. Vertical Access

Prior to issuance of permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public pedestrian access to the shoreline. The document shall provide that, prior the acceptance of the offer the applicant and subsequent homeowner's association shall maintain the accessway and that it will remain open to the public during typical daylight hours. Any accepting agency or private association may also limit access to daylight hours through an access management plan submitted for review and approval of the Executive Director. The accessway shall be properly signed to acknowledge the availability for use by the public. Said signing shall be submitted for the review and approval of the Executive Director. The easement shall be twenty feet (20) wide at the canyon along the western boundary at the property line bordering Linda Lane Park narrowing to accomodate the structures location to a width of five (5) feet at Arenoso Lane. The exact location of the easement shall take into consideration public safety needs and the rights of nearby property owners to privacy and shall be approved by the Executive Director prior to recording. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The offer shall run with the land in favor of the People of the State of California binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running for the date of recording.

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

III. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Background:

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

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

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

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

B. Public Access:

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

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

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

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

C. Local Coastal Program:

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

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

39210

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
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 LONG BEACH, CA 90802
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Filed: 10/3/88
 49th Day: 11/21/88
 180th Day: 4/1/89
 Staff: G. Timm
 Staff Report: 11/3/88
 Hearing Date: 11/18/88
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-88-784

APPLICANT: Suzanne Abbott

AGENT:

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

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

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

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

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

SUMMARY OF STAFF RECOMMENDATION:

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

EXHIBIT NO. 4
APPLICATION NO. 5-88-784 A2
STAFF REPORT
-784
California Coastal Commission

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

I. Standard Conditions: See Attachment X.

III. Special Conditions.

This permit is subject to the following special conditions:

1. Public Viewing Easement

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

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

2. Vertical Access

Prior to transmittal of the coastal development permit, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public pedestrian access to the shoreline. The document shall provide that, prior to the acceptance of the offer, the applicant and subsequent homeowner's association shall maintain the accessway and that it will remain open to the public during typical daylight hours. Any

accepting agency or private association may also limit access to daylight hours through an access management plan submitted for the review and approval of the Executive Director. The accessway shall be properly signed to acknowledge the availability for use by the public. Said signing shall be submitted for the review and approval of the Executive Director. The easement shall be twenty (20) feet wide and extend from Arenoso Lane into the canyon along the western boundary of the property to the property line bordering Linda Lane public park. The exact location of the easement shall take into consideration public safety needs and the rights of nearby property owners to privacy and shall be approved by the Executive Director prior to recording. The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect said interest. The offer shall run with the land in favor of the People of the State of California binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

3. Future Development

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

4. Assumption of Risk

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

5. Restoration Plan

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

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

6. Revised Plans

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

7. Plans Conforming to Geologic Recommendation

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

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

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

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

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

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

B. Blufftop Development

Section 30253 of the Coastal Act provides in part:

New development shall:

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

In addition, Section 30251 of the Coastal Act states:

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Public Access

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

Section 30211

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

Section 30212

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

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected.

Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30214

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

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

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

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

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

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

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

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

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

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

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

D. Local Coastal Program

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

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

Attachment X

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

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

I. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



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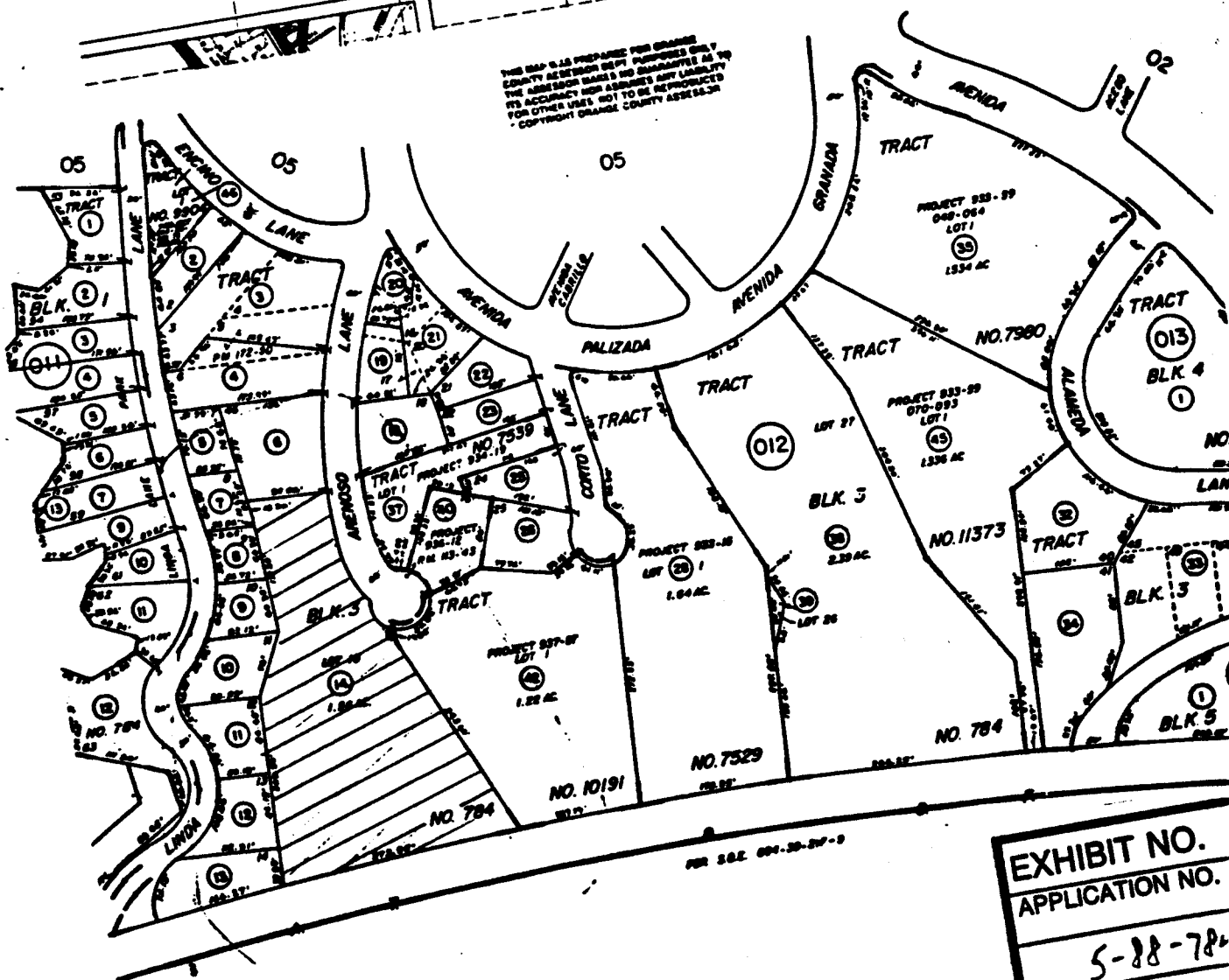
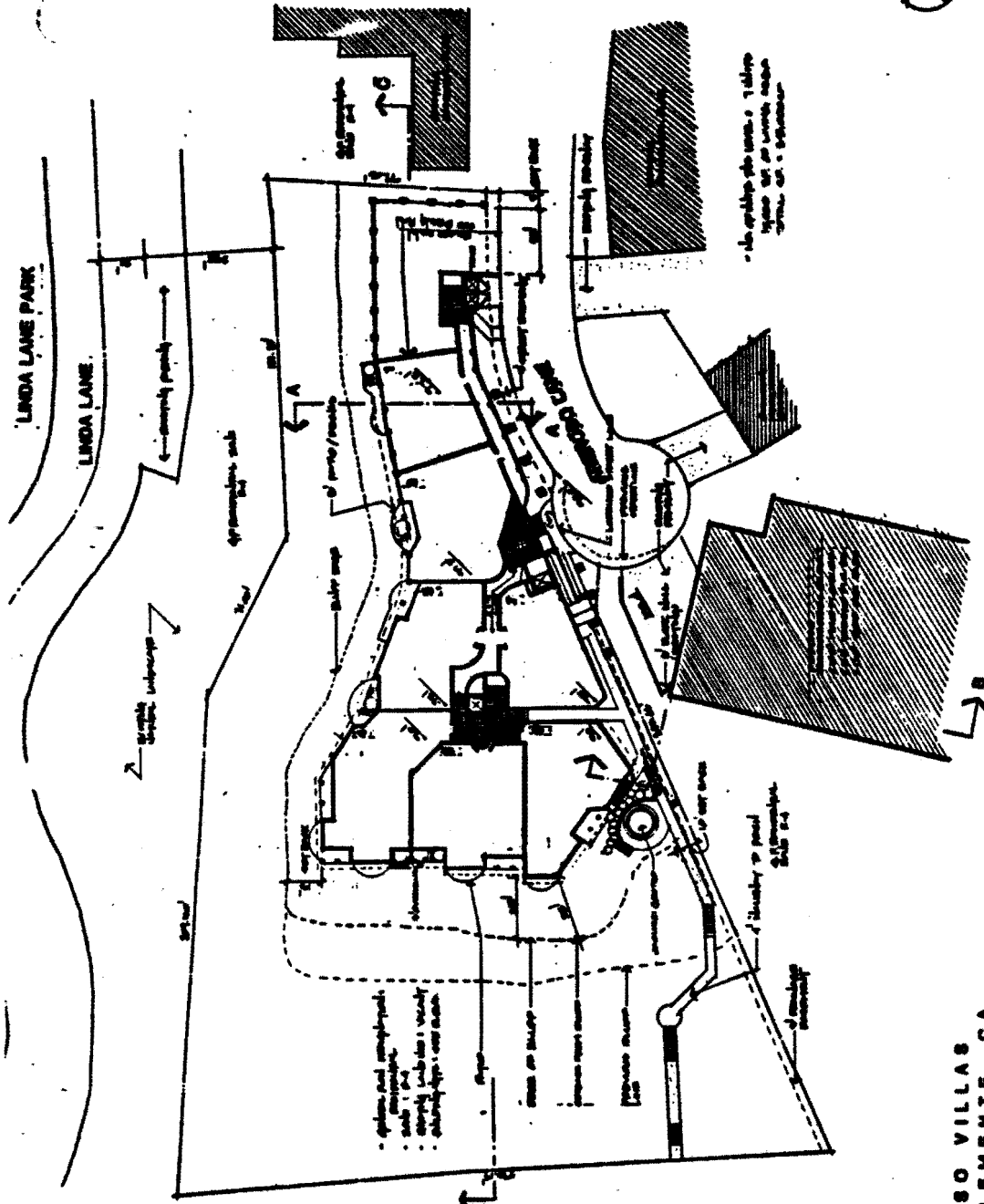
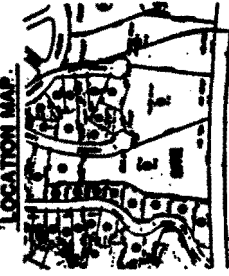


EXHIBIT NO.
APPLICATION NO.
 5-88-784
 California Coastal Commission

PROJECT DATA:

DATE: 01/15/88
 DRAWN BY: JAC
 CHECKED BY: JAC
 PROJECT NO.: 5-88-784
 CLIENT: ARENOSO VILLAS
 ADDRESS: 12111 N. GARDEN
 CITY: GARDEN, CA 92540



SITE PLAN / FIRST FLOOR

ARENOSO VILLAS
SAN CLEMENTE, CA
TOWN & COUNTRY DEVELOPMENT

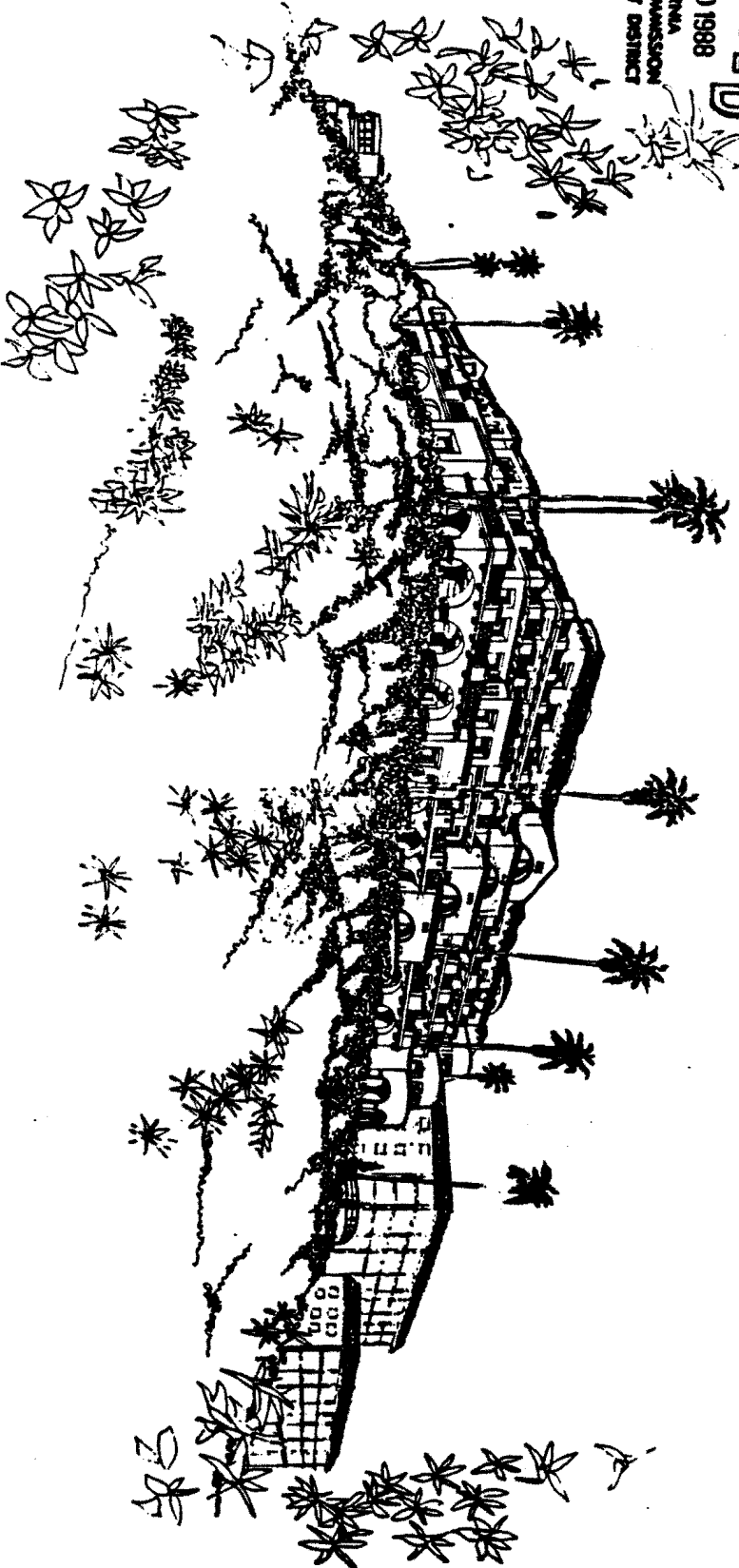
JORDAN ARCHITECTS INC.
 8215 E. MCGUIRE BLVD. SUITE D
 IRVINE, CALIFORNIA 92714-4008

EXHIBIT NO. 2
APPLICATION NO.
5-88-784
California Coastal Commission

RECEIVED

SEP 20 1988

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT



ARENOSO VILLAS
SAN CLEMENTE, CA.
TOWN AND COUNTRY DEVELOPMENT

JORDAN ARCHITECTS INC.
2010 E. MCARDLETT BLVD #
RYDAL, CALIFORNIA 92647-0000

BLUFF VIEW

EXHIBIT NO. 3
APPLICATION NO.
5-88-784
California Coastal Commission

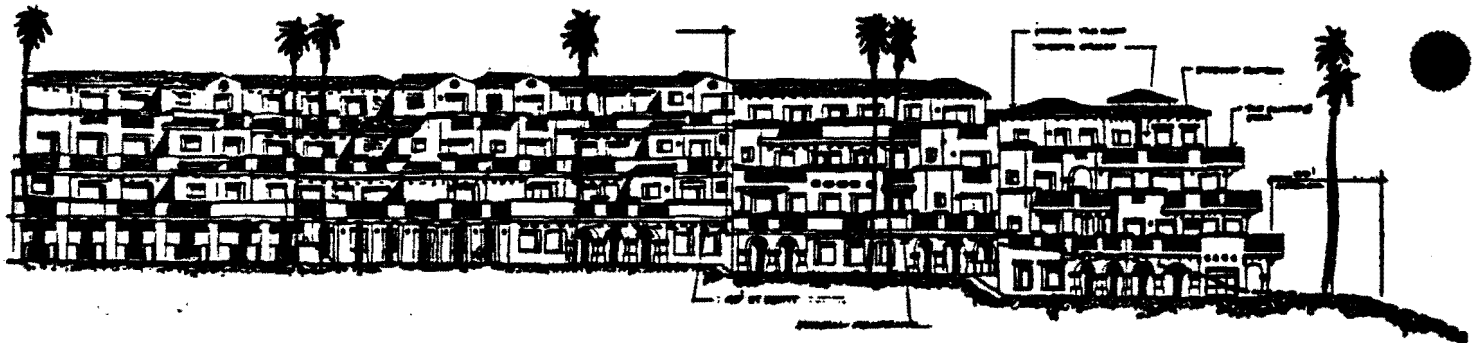


WEST ELEVATION



ARENOSO VILLAS
SAN CLEMENTE, CA
TOWN & COUNTRY DEVELOPMENT

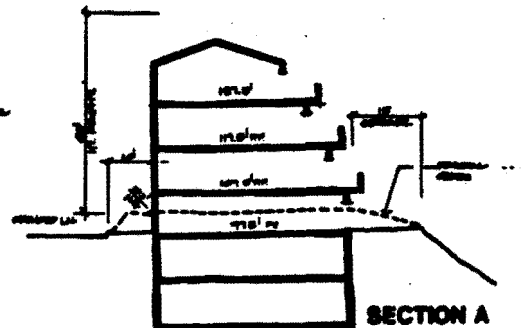
SOUTH ELEVATION



NORTH ELEVATION



EAST ELEVATION



SECTION A

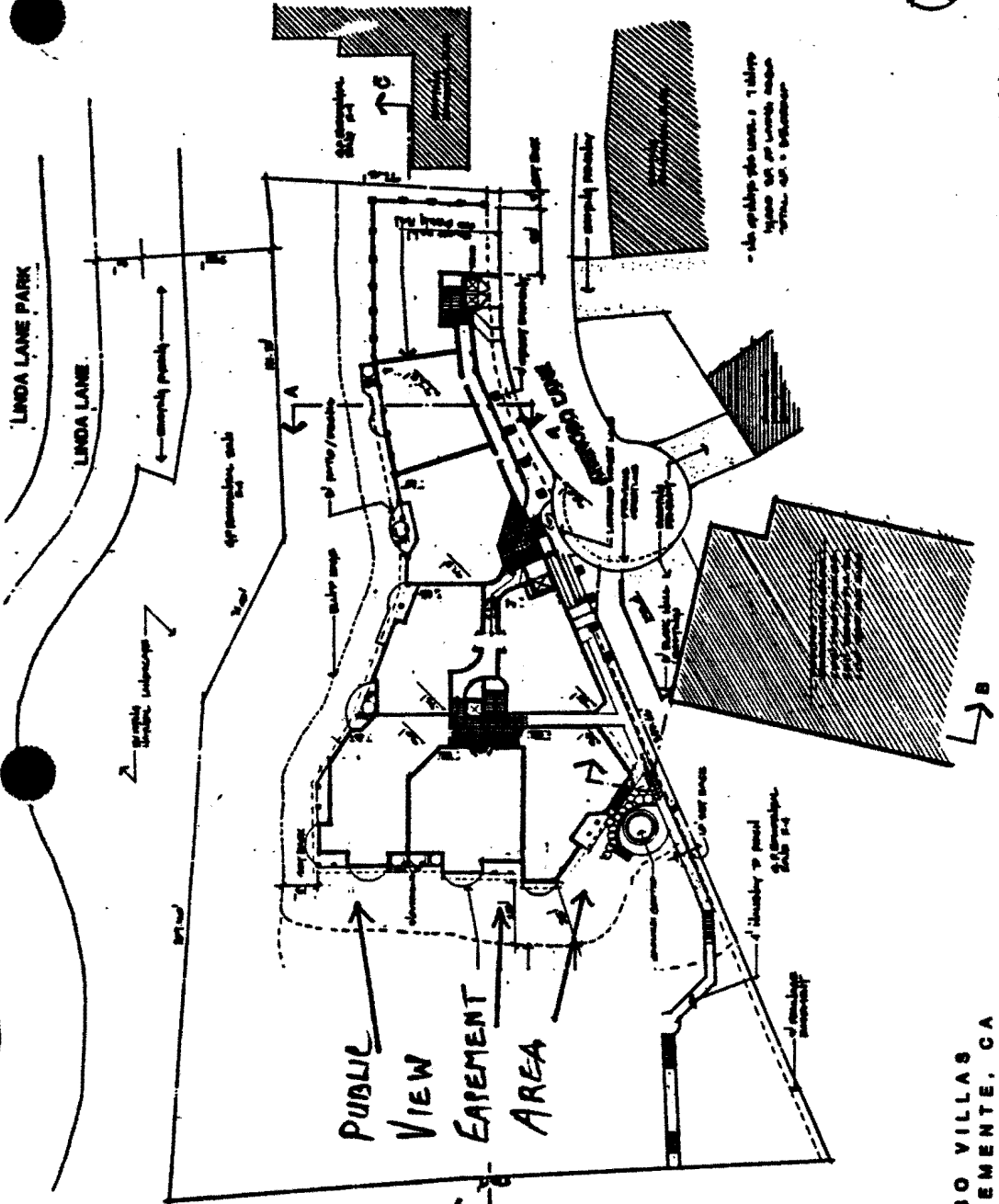
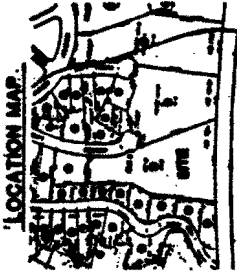
EXHIBIT NO. 4

APPLICATION NO.

5-88-724

PROJECT DATA:

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 1.4 10/10/1988
 1.5 10/10/1988
 1.6 10/10/1988
 1.7 10/10/1988
 1.8 10/10/1988
 1.9 10/10/1988
 1.10 10/10/1988



JORDAN ARCHITECTS INC.
 9214 E. MURPHY AVENUE
 IRVINE, CALIFORNIA 92617-0000

SITE PLAN / FIRST FLOOR

EXHIBIT NO. 5
APPLICATION NO.
5-88-784
California Coastal Commission

