

CALIFORNIA COASTAL COMMISSION

South Coast Area Office

20000 Ocean Gate, Suite 1000
Laguna Beach, CA 90802-4302
(562) 590-5071

Request filed: February 28, 2000

Staff: KFS-LB

Staff report: March 30, 2000

Hearing date: April 11-14, 2000

**RECORD PACKET COPY****PRELIMINARY STAFF RECOMMENDATION**
COMBINED STAFF REPORT: REVOCATION REQUESTS**APPLICATION NUMBERS:** R5-97-371; R5-98-020; R5-98-064;
R5-98-178; R5-98-307**INDIVIDUALS REQUESTING REVOCATION:** Craig Brown, Tim Hamchuck, David Emmes,
John Burns, Tom Hopper**ORIGINAL APPLICANTS, LOCATION, AND PROJECT DESCRIPTION:**

	Applicant	Project Location	Project Description
5-97-371	Jim Conrad	23, 25, 27, 29, & 31 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	Rebuild a failed slope including construction of a shoring wall, buttress fill, buried toe protection wall, and drainage devices. Also, merge three of the five existing lots into two lots resulting in a new total of 4 lots, with the 27 Bay Drive address eliminated as a result.
5-98-020	Jim Conrad	23 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	Construction of a 3,720 square foot single-family home with 9,984 cubic yards of grading (4,992 cubic yards of cut and 4,992 cubic yards of fill).
5-98-064	Troy & Celeste Barnes	25 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	Construction of a 3,719 square foot single-family residence including 7,662 cubic yards of grading (3,831 cubic yards of cut and 3,831 cubic yards of fill).
5-98-307	Charles & Valerie Griswold	29 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	Construction of a 5,078 square foot single-family residence including 12,250 cubic yards of grading.
5-98-178	Tim McMullen	31 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	Construction of a 5,099 square foot single-family residence including 12,900 cubic yards of grading (6,450 cubic yards of cut and 6,450 cubic yards of fill).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission allow the persons requesting the revocation reasonable time to present the request and allow the permittees like time for rebuttal. Then Commission staff recommend that the Commission direct staff to perform further investigation on specified topics.

The revocation request claims grounds for revocation based upon intentional inclusion of inaccurate and incomplete information as well as upon improper notice. The revocation

requesters assert the applicants submitted inaccurate information regarding the location of the mean high tide line as well as incomplete information regarding the applicants ability to undertake development within a private recreational beach use easement. Commission staff recommend the Commission dismiss the claim regarding the inaccurate representation of the location of the mean high tide line as the claim is not substantiated. However, staff recommend the Commission direct staff to perform additional investigation regarding the intentional provision of incomplete information regarding the applicants legal ability to undertake the proposed development within the private recreational beach use easement. Based upon information available, staff believes that the permittee intentionally declined to provide evidence that all easement holders were invited to join as co-applicant and evidence that such easement holders authorized the proposed development within the easement. However, staff is unable to determine whether the Commission would have taken a different action had they known there was a dispute over the applicants legal ability to undertake development in the easement. Therefore, staff recommends the Commission request additional investigation on this matter.

Staff also recommend the Commission dismiss the revocation requests claim that the applicants failed to comply with noticing provisions in effect at the time of filing as no evidence was provided that the applicants failed to comply with those provisions.

PROCEDURAL NOTE:

The Commission's regulations (Title 14, California Code of Regulations) state the grounds for the revocation of a coastal development permit as follows:

Section 13105 states:

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations, Section 13105.

Section 13108, states:

(a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the Commission with a preliminary recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The Commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the attorney general to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the Commission present if it finds that any of the grounds specified in section 13105 exist. If the Commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

STAFF NOTE:

A revocation of a permit removes a previously granted permit. Even if the permit is vested, i.e. the applicant has undertaken construction of the project, if the Commission revokes the permit, the applicant is required to stop work and if wishing to continue, to reapply for the project. In fact, if the evidence clearly shows that there are grounds for revocation, the Executive Director, upon receipt of a request for revocation, can order the project to stop work. Section 13107 provides, in part:

Where the executive director determines, in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation...

In this case, the Executive Director has not made a determination whether grounds exist for revocation so the operation of the permit has not been suspended.

The revocation request is based on subsection (a) and (b) of section 13105 of the Commission's regulations. The three elements of Section 13105(a) that must be proved before a permit can be revoked are:

- 1) That the applicant provided incomplete or false information; **AND**
- 2) That false or incomplete information was supplied knowingly and intentionally; **AND**
- 3) That if the Commission had known of the information, it would have denied the permit or imposed different conditions.

The three elements of Section 13105(b) that must be proved before a permit can be revoked are:

- 1) That the applicant failed to comply with the notice provisions of Section 13054 of the California Code of Regulations; **AND**
- 2) That the views of the person(s) not notified were otherwise not made known to the Commission; **AND**

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 4 of 21

- 3) That if the Commission had known of the information, it could have denied the permit or imposed different conditions.

In addition to these three elements of each of the above, a person requesting revocation needs to have filed the revocation with due diligence. Section 13108(d) clearly establishes that the Commission must deny a revocation request that has not been filed with due diligence. In this case, construction of the proposed project began upon issuance of Coastal Development Permit in April 1999. The revocation request was received on February 28, 2000. The Commission must determine whether the delay between the start of construction and the filing of request for revocation precludes a finding of due diligence.

SUBSTANTIVE DOCUMENTS:

Coastal Development Permit files 5-97-371, 5-98-020, 5-98-064, 5-97-178, and 5-98-307.

LIST OF EXHIBITS:

- Exhibit 1: Revocation received February 28, 2000
- Exhibit 2: Staff's letter to revocation requesters dated March 8, 2000
- Exhibit 3: Revocation requesters response dated March 14, 2000 to staff's letter dated March 8, 2000
- Exhibit 4: Revocation requesters third letter dated March 19, 2000
- Exhibit 5: Permittees response to revocation request dated February 28, 2000
- Exhibit 6: Additional response from permittees regarding revocation request dated March 23, 2000
- Exhibit 7: Additional information provided by permittees regarding confirmation that proposed development is being constructed per approved plans
- Exhibit 8: Additional information provided by permittees regarding confirmation of location of Mean High Tide Line on December 10, 1997 dated March 23, 2000[0] *sic*
- Exhibit 9: Permittees request to postpone hearing on revocation dated March 24, 2000
- Exhibit 10: Commissions findings on approval of Coastal Development Permits 5-97-371, 5-98-020, 5-98-064, 5-98-178
- Exhibit 11: Commission staff's letter to applicant dated December 8, 1997 regarding notice of incomplete information which includes request for compliance with Section 30601.5 of the Coastal Act
- Exhibit 12: Permittees response dated December 10, 1997 including response regarding Section 30601.5 of the Coastal Act
- Exhibit 13: Preliminary title report showing presence of easement and identity of easement holders
- Exhibit 14: Permittees showing regarding legal ability to undertake development provided during condition compliance.

Although the staff report combines the analysis for the five permits covered by the revocation request, the Commission must vote separately on the question of whether each permit should be revoked.

I. STAFF RECOMMENDATION, MOTIONS AND RESOLUTIONS.

Staff recommends that the Commission make the following motions and adopt the following resolutions.

The Commission must act separately on each motion.

MOTION #1

I move the Commission continue consideration of revocation request R5-97-371 and direct staff to investigate the topics discussed at this hearing and in the staff recommendation.

Staff recommends a **YES** vote on the motion. This will result in continuance of this matter to a later hearing and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CONTINUE HEARING ON REVOCATION

The Commission hereby continues the hearing on revocation of the Commission decision on Coastal Development Permit No. 5-97-371 so that the Executive Director can investigate whether grounds exist for revocation pursuant to Section 13105 of Title 14 of the California Code of Regulations.

MOTION #2

I move the Commission continue consideration of revocation request R5-98-020 and direct staff to investigate the topics discussed at this hearing and in the staff recommendation.

Staff recommends a **YES** vote on the motion. This will result in continuance of this matter to a later hearing and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CONTINUE HEARING ON REVOCATION

The Commission hereby continues the hearing on revocation of the Commission decision on Coastal Development Permit No. 5-98-020 so that the Executive Director can investigate whether grounds exist for revocation pursuant to Section 13105 of Title 14 of the California Code of Regulations.

MOTION #3

I move the Commission continue consideration of revocation request R5-98-064 and direct staff to investigate the topics discussed at this hearing and in the staff recommendation.

Staff recommends a **YES** vote on the motion. This will result in continuance of this matter to a later hearing and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CONTINUE HEARING ON REVOCATION

The Commission hereby continues the hearing on revocation of the Commission decision on Coastal Development Permit No. 5-98-064 so that the Executive Director can investigate whether grounds exist for revocation pursuant to Section 13105 of Title 14 of the California Code of Regulations.

MOTION #4

I move the Commission continue consideration of revocation request R5-98-178 and direct staff to investigate the topics discussed at this hearing and in the staff recommendation.

Staff recommends a **YES** vote on the motion. This will result in continuance of this matter to a later hearing and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CONTINUE HEARING ON REVOCATION

The Commission hereby continues the hearing on revocation of the Commission decision on Coastal Development Permit No. 5-98-178 so that the Executive Director can investigate whether grounds exist for revocation pursuant to Section 13105 of Title 14 of the California Code of Regulations.

MOTION #5

I move the Commission continue consideration of revocation request R5-98-307 and direct staff to investigate the topics discussed at this hearing and in the staff recommendation.

Staff recommends a **YES** vote on the motion. This will result in continuance of this matter to a later hearing and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CONTINUE HEARING ON REVOCATION

The Commission hereby continues the hearing on revocation of the Commission decision on Coastal Development Permit No. 5-98-307 so that the Executive Director can investigate whether grounds exist for revocation pursuant to Section 13105 of Title 14 of the California Code of Regulations.

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND BACKGROUND

Coastal Development Permit 5-97-371

On August 13, 1998, the Commission approved Coastal Development Permit 5-97-371 for the following development: Construct a shoring system across five lots to stabilize Bay Drive including the installation of: 1) a shoring wall comprised of shoring piles and shotcrete adjacent to Bay Drive and the adjacent homes at 21 and 33 Bay Drive, 2) overexcavation and recompaction of slide debris (44,000 cubic yards of grading--22,000 cubic yards of cut and 22,000 cubic yards of fill) to create a buttress fill, 3) a buried toe protection wall near the toe of the slope, and 4) installation of drainage devices. No homes were proposed to be constructed as part of this project. Also approved was the merger of three of the five existing lots into two lots (resulting in a new total of 4 lots, with the 27 Bay Drive address eliminated as a result). The approved permit was subject to nine special conditions regarding 1) assumption of risk and no future shoreline protective devices, 2) compliance with geotechnical recommendations, 3) revised plans showing revised sidewall design, 4) requirements for homes to be built on lots including minimum factor of safety, pool design, conformance with stringline, landscaping, and prohibition of pathways built to the beach, 5) landscaping requirements, 6) construction staging requirements, 7) identification of a debris disposal site, 8) requirements for installation of inclinometers, and 9) requirement to demonstrate legal ability to undertake proposed development (Exhibit 10). The approved Coastal Development Permit was issued on April 26, 1999.

On April 7, 1999, the Executive Director issued a Notice of Proposed Permit Amendment and opened a ten day objection period pursuant to the requirements for immaterial amendments established in Section 13166 of the Title 14 of the California Code of Regulations. No written objections were received within the ten day appeal period and immaterial amendment 5-97-371-A1 was issued on April 26, 1999. Coastal Development Permit Amendment 5-97-371-A1 authorized changing the support for the shoring system from the previously approved tie back system (which extended onto adjacent properties) to a system using concrete rakers, grade beams, and deadman piles (contained within the project site). The system will include installation of 13 deadman piles, grade beam and raker support structures including 26 deadman piles (2 per support structure). This system will provide support for the shoring wall. Upon completion of the project, these structures will be subsurface. Additional modifications include replacement of a 60 foot section of the northernmost extension of the

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 8 of 21

previously approved buried toe protection wall with a caisson shoring wall that will serve a dual purpose as a buried shoring wall and toe protection wall. Finally, a concrete v-ditch is approved along the northernmost property line to direct sheet flow run-off from the project site into a non-erosive energy dissipator bubbler outlet at the toe of the slope.

On December 24, 1999, the Executive Director issued another Notice of Proposed Permit Amendment and opened a ten day objection period pursuant to the requirements for immaterial amendments established in Section 13166 of the Title 14 of the California Code of Regulations. No written objections were received within the ten day objection period and immaterial amendment 5-97-371-A2 was issued on January 19, 2000. Coastal Development Permit Amendment 5-97-371-A2 authorized redesign of the 60 foot section of the buried toe protection wall changed under amendment 5-97-371-A1 back to the design approved under permit 5-97-371 so that the toe wall can tie into the approved toe wall at 33 Bay Drive (i.e. 5-99-331).

Coastal Development Permit 5-98-020

On August 13, 1998, the Commission approved Coastal Development Permit 5-98-020 for the construction of a 3,720 square foot, 5-level, single-family home at 23 Bay Drive, Laguna Beach, Orange County. The approved development included an attached two-car garage and two uncovered parking spaces, 997 square feet of deck area, an 840 square foot swimming pool terrace with swimming pool and hardscape. The approved home would step down a repaired coastal bluff and be 57'6" from its lowest level to the highest point of the roof. The top of the approved home would extend ten feet above the centerline of Bay Drive. Also approved is 9,984 cubic yards of grading (4,992 cubic yards of cut and 4,992 cubic yards of fill).

The approval was subject to six special conditions requiring 1) recordation of an assumption-of-risk deed restriction including prohibition of future shoreline protective devices, 2) conformance with geotechnical recommendations, 3) revised landscape plans, 4) prohibition of staging and storage of construction materials and equipment on the beach, 5) identification of a disposal site, and 6) a plan to prevent leaks from swimming pools including monitoring devices. The approved coastal development permit was issued on October 19, 1999.

On October 14, 1999, the approved permit was transferred to Bay Drive Investment Group pursuant to Coastal Development Permit Transfer Request 5-98-020-T1. According to the transfer request, the representative of Bay Drive Investment Group is Mr. Jim Conrad.

Coastal Development Permit 5-98-064

On August 13, 1998, the Commission granted to Troy and Celeste Barnes Coastal Development Permit 5-98-064 for the construction of a 3,719 square foot, 5-level, single-family residence at 25 Bay Drive, Laguna Beach, Orange County. The approved development included a 662 square foot two-car garage, 812 square feet of decks, a covered, open-air pool terrace and game room, swimming pool and patio area, and 7,662 cubic yards of

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 9 of 21

grading (3,831 cubic yards of cut and 3,831 cubic yards of fill). The approved home would terrace down a rebuilt coastal bluff and be 61 feet high from the pool terrace level to the top of the roof of the garage, with the top of the home extending 11' above Bay Drive.

The approval was subject to six special conditions requiring 1) recordation of an assumption-of-risk deed restriction including prohibition of future shoreline protective devices, 2) conformance with geotechnical recommendations, 3) revised landscape plans, 4) prohibition of staging and storage of construction materials and equipment on the beach, 5) identification of a disposal site, and 6) a plan to prevent leaks from swimming pools including monitoring devices. The approved coastal development permit was issued on October 20, 1999.

Coastal Development Permit 5-98-178

On August 13, 1998, the Commission granted to Tim McMullen Coastal Development Permit 5-98-178 for the construction of a 5,099 square foot, 5-level, single-family residence at 31 Bay Drive, Laguna Beach, Orange County. The approved development included an attached 742 square foot three car garage, 1,935 square feet of deck area, swimming pool, spa, landscaping, and 12,900 cubic yards of grading (6,450 cubic yards of cut and 6,450 cubic yards of fill). The approved home would terrace down a repaired coastal bluff and be 62 feet tall from the pool level to the top of the roof of the garage. The approved home would only extend 11' above the centerline of Bay Drive.

The approval was subject to six special conditions requiring 1) recordation of an assumption-of-risk deed restriction including prohibition of future shoreline protective devices, 2) conformance with geotechnical recommendations, 3) revised landscape plans, 4) prohibition of staging and storage of construction materials and equipment on the beach, 5) identification of a disposal site, and 6) a plan to prevent leaks from swimming pools including monitoring devices. The approved coastal development permit was issued on October 19, 1999.

On October 20, 1999, the approved permit was transferred to C & M Development, LLC pursuant to Coastal Development Permit Transfer Request 5-98-178-T1. According to the transfer request, the representative of C & M Development, LLC is Mr. Jim Conrad.

Coastal Development Permit 5-98-307

On October 13, 1998, the Commission granted to Charles and Valerie Griswold Coastal Development Permit 5-98-307 for the construction of a 5,078 square foot, 5 level single-family residence at 29 Bay Drive, Laguna Beach, Orange County. The approved development included an attached 750 square foot three-car garage and 1,278 square feet of deck area, and 12,250 cubic yards of grading.

The approval was subject to six special conditions requiring 1) recordation of an assumption-of-risk deed restriction including prohibition of future shoreline protective devices, 2) conformance with geotechnical recommendations, 3) revised landscape plans, 4) prohibition of staging and storage of construction materials and equipment on the beach, 5) identification of a disposal site, and 6) a plan to prevent leaks from swimming pools including

monitoring devices. This permit has not yet been issued because the prior to permit issuance conditions have not been satisfied.

B. BASIS FOR REVOCATION REQUEST AND REVOCATION REQUEST'S CONTENTIONS.

On February 28, 2000, the Commission offices received a revocation request from Craig Brown, Tim Hamchuck, David Emmes, John Burns, and Tom Hopper (Exhibit 1). The request was entitled:

Request and Application for Revocation of Coastal Construction Permit for Projects at 23-31 Bay Drive [Originally Application Nos. 5-97-371, 5-98-020, -5-98-064, and 5-98-178] Pursuant to Administrative Regulation [Title 14, Natural Resources, Division 5.5, California Coastal Commission, Chapter 1, Article 16, §§13054(e), 13105(b), and 13106].

The request listed a number of items in support of a contention that the subject permits could be revoked based on inadequate notice pursuant to Section 13054 of the California Code of Regulations and intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application. The revocation request explicitly requests revocation on grounds established in Section 13105(b). However, information contained within the revocation request also contends that inaccurate, erroneous or incomplete information was submitted. Therefore, the revocation request has been interpreted as asserting grounds for revocation based upon both Section 13105(a) (i.e. intentional inclusion of inaccurate, erroneous or incomplete information) and Section 13105(b) (i.e. inadequate notice).

In addition, the revocation request explicitly requests revocation of Coastal Development Permits 5-97-371, 5-98-020, 5-98-064, and 5-98-178. However, the request also refers to the applications regarding development at 23 to 31 Bay Drive. Therefore, the revocation request has been interpreted to include a request for revocation of Coastal Development Permit 5-98-307 for the proposed single family residence at 29 Bay Drive, which is between 23 and 31 Bay Drive and is one of the lots upon which the shoring system and lot subdivision is occurring under CDP 5-97-371.

The request for revocation was supplemented by additional information submitted by the revocation requesters in letters dated March 14, 2000 (Exhibit 3), and March 19, 2000 (Exhibit 4). In addition, the permittees have submitted preliminary rebuttals to the revocation request (Exhibits 5, 6, 7, and 8).

1. SUMMARY OF REVOCATIONS CONTENTIONS

- a. **The applicants failed to comply with the noticing provisions of Section 13054 of Title 14 of the California Code of Regulations**

4. The undersigned are, and were at the time the permit-holder(s) sought the Permit from the Coastal Commission, dominant holders of an

beach-use easement ("the Easement") over the properties at issue. The Easement is properly and publicly recorded in the deeds of both the permit applicant(s) and the undersigned property holders. As such, the undersigned were "interested parties known to the applicant" within the meaning of Section 13054.

5. The undersigned hereby represent that they were not properly notified of any proceedings regarding the Permit. The undersigned also believe there are more than 50 other similarly situated property holders who also failed to receive proper notices regarding the Permit. Many Easement holders live out of the community and have no notice of the Permit, the associated project, or of any proceedings related thereto.

- b.** The applicants submitted inaccurate, erroneous, or incomplete information with respect to a private recreational beach use easement within which a portion of the proposed development occurs.

...C. Their belief that the Project substantially and improperly encroaches upon the Easement-holders' property rights,...

...D. Their belief that the Project encroaches upon and permanently alters the beach, the natural coastal erosion process, and thus necessarily permanently alters the nature of their property rights as easement holders...

...Had the easement-holders been heard, they would have presented evidence that they hold an easement over portions of the properties upon which the applicant received a permit to construct a toe wall and otherwise grade, compact, re-compact, landscape, and construct drainage...

...Thus, the easement-holders would have provided facts and evidence (the recorded Tract 970 map) which would have established that the projects encroach upon their easement and thus the applicants did not and do not have the legal right to carry out the project as approved.

- c.** The applicant submitted inaccurate, erroneous, or incomplete information regarding the location of the mean high tide line.

A. Their belief that the Permit (now granted) is based upon an inaccurate survey of the mean-high tide line of the beach at the project;

B. The Easement holders have, and did have at the time of the Permit hearing, a survey of the tide line which is substantially in conflict with the tide line survey privately commissioned and presented by the applicants.

...However, the easement-holders would have presented evidence that the high-tide line sits substantially closer (approximately 86 feet closer)(see Exhibit "A" and Tract 970 map previously submitted) to the base of the projects and the toe wall than the applicants and their experts represented. This would imply a substantially higher erosion rate than the Combined Staff Report concluded (since the base of the projects sit only 21 feet away from the high-tide line) and would have caused the Commission to require the projects and toe wall be moved further away from the high-tide line to minimize the erosion problem created by the projects.

- d. **The revocation requesters maintain that the Commission should reconsider approval of the proposed development as the development does not minimize the alteration of natural landforms.**

... §30251 requires permitted development to "minimize the alteration of natural land forms". The easement-holders would have presented evidence that the slope and toe wall at issue at the base of the projects, as designed, did not minimize the alteration of natural land forms as required by §30251.

The Tract 970 map marks exactly where the toe of the slope naturally sat some years ago. The Combined Staff Report itself notes several unnatural occurrences over the past 20 years, especially in 1992 when an old house at 23 Bay Dive was demolished. (See Combined Staff Report, page 14, paragraph "B"). The easement-holders, if properly noticed, would have presented evidence that the 1992 demolition of the former 23 Bay Drive home was illegally accomplished without permits and that a lawsuit ensued over the fact that the illegal demolition contributed to the degradation of the slope. The easement-holders would have argued that the natural land form of the permitted area included the toe of the slope sitting as it is marked on the Tract 970 plot map and that a sandy beach existed in front of the original, natural slope toe. The plot map shows the natural toe of the slope 30-40 feet north of where it sits under the current permitted plans. The easement-holders would argue that the slope was unnaturally pushed seaward by unnatural, man-made occurrences (such as the 1992 improper demolition). Thus the approved toe wall, and the developers efforts to grade, compact, re-compact, and landscape this man-created extension of the slope, substantially interfere with the natural land forms of the area in violation of §30251.

C. DISCUSSION OF THE REVOCATION REQUESTS CONTENTIONS WITH RESPECT TO SECTION 13105 OF TITLE 14 OF THE CALIFORNIA CODE OF REGULATIONS.

Each of the contentions asserted in the revocation request is evaluated below.

1. CONTENTIONS RELEVANT TO SECTION 13105(b)

The revocation requesters cite grounds pursuant to Section 13105(b) of the California Code of Regulations. Section 13105(b) of the California Code of Regulations state:

Grounds for revocation of a permit shall be:

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

Accordingly, Section 13105(b) establishes three "tests" which must be passed in order for the grounds for revocation to be met. These tests are 1) Did the applicant fail to comply with the notice provisions of Section 13054 of the California Code of Regulations?; 2) Were the views of the person(s) not notified otherwise not made known to the Commission?; and 3) Could the views of the persons not notified which were not otherwise made known to the Commission have caused the Commission to require additional or different conditions on a permit or deny an application?

a. Did the applicant fail to comply with the notice provisions of Section 13054 of the California Code of Regulations?

The revocation requesters state that, at the time the permit-holder(s) sought the subject coastal development permits, they were holders of a beach use easement over the subject properties. According to the revocation requesters, as easement holders, they were known interested parties whom, pursuant to Section 13054 of the California Code of Regulations, should have received written notice that the subject coastal development permit applications were pending before the Coastal Commission. The revocation request references the following language in Section 13054(a):

(a) For applications filed after the effective date of this subsection, the applicant shall provide names and addresses of, and stamped envelopes for adjacent landowners and residents, and other interested persons as provided in this section. The applicant shall provide the commission with a list of:[...]

(3) the names and addresses of all persons known to the applicant to be interested in the application, including those persons who testified at or submitted written comments for the local hearing(s).

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 14 of 21

This list shall be part of the public record maintained by the commission for the application.

However, the above language of Section 13054(a) is the language approved as a result of changes to the regulations approved by the California Office of Administrative Law which became effective on October 20, 1999. Prior to October 20, 1999, and effective from September 31, 1981 to October 19, 1999, the language of Section 13054(a) of Title 14 of the California Code of Regulations was as follows:

(a) For applications filed after the effective date of this subsection, the applicant shall provide notice to adjacent landowners and residents as provided in this section. The applicant shall provide the commission with a list of the addresses of all residences, including apartments and each residence within a condominium complex, and all parcels of real property of record located within one hundred feet of the perimeter of the parcel on which the development is proposed and the name and address of the owner of record on the date on which the application is submitted, of any such parcel which does not have an address or is uninhabited. This list shall be part of the public record maintained by the commission for the application. The applicant shall also provide the commission with stamped envelopes for all parcels described above. Separate stamped envelopes shall be addressed to "owner" and to "occupant" except that for parcels which do not have addresses or are not occupied, the envelopes shall include the name and address of the owner of record of the parcel. The applicant shall also place a legend on the front of each envelope including words to the effect of "Important. Public Hearing Notice." The executive director shall provide an appropriate stamp for the use of applicants in the commission office. The legend shall be legible and of sufficient size to be reasonably noted by the recipient of the envelope. The executive director may waive this requirement and may require that some other suitable form of notice be provided by the applicant to those interested persons, upon a showing that this requirement would be unduly burdensome; a statement of the reasons for the waiver shall be placed in the project file. [emphasis added]

The subject applications were filed on December 30, 1997 (5-97-371), January 20, 1998 (5-98-020), April 6, 1998 (5-98-064), May 8, 1998 (5-98-178), and July 30, 1998 (5-98-307). Since all of the subject applications were filed before the effective date of the regulations approved by the Office of Administrative Law in 1999, the subject applications were governed by the regulations in effect between September 1981 and October 1999.

Section 13054(a) effective between September 1981 and October 1999 did not include language requiring applicants for coastal development permits to provide notice to all persons known to the applicant to be interested in the application. Section 13054(a) of the regulations in effect at the time of filing of the subject applications required the applicant to provide notice to owners and occupants of parcels of real property within 100 feet of the perimeter of the parcels on which the development was proposed. Based on information submitted by the applicants, the persons seeking revocation were not owners or occupants of parcels of real property within 100 feet of the perimeter of the parcels on which the development was proposed.

Therefore, the Commission finds the revocation request does not demonstrate that the applicants failed to comply with Section 13054 of Title 14 of the California Code of Regulations in effect at the time the subject coastal development permit applications were filed. Since the revocation request does not establish a failure to comply with Section 13054 in effect at the time of filing, the revocation request does not demonstrate the grounds necessary for revocation of the subject coastal development permits as defined in Section 13105(b) of Title 14 of the California Code of Regulations. Therefore, the request for revocation of Coastal Development Permits 5-97-371, 5-98-020, 5-98-064, 5-98-178, and 5-98-307 based upon Section 13105(b) is denied.

The revocation requesters have stated certain views which would have been presented to the Commission had they been notified pursuant to Section 13054 of the California Code of Regulations. Since the Commission has found that the revocation request does not demonstrate that the applicants failed to comply with Section 13054 of the California Code of Regulations in effect at the time of filing, the Commission finds it need not address whether the views stated in the revocation request were otherwise made known to the Commission and could have caused the Commission to take a different action.

2. CONTENTIONS RELEVANT TO SECTION 13105(a)

Although the revocation request does not explicitly state that the revocation is being sought on grounds established by Section 13105(a) of the California Code of Regulations, Commission staff have interpreted the request as seeking revocation on such grounds because the revocation request states contentions which allege the subject coastal development permits may be revoked consistent with the grounds established by Section 13105(a) of the California Code of Regulations.

Section 13105(a) states:

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;

Therefore, pursuant to Section 13105(a) of the California Code of Regulations, three elements that must be proved before a permit can be revoked are:

- 1) That the applicant provided incomplete or false information; **AND**
- 2) That false or incomplete information was supplied knowingly and intentionally; **AND**
- 3) That if the Commission had known of the information, it would have imposed different conditions or would have denied the permit.

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 16 of 21

- a. Evaluation of claim that the applicant submitted inaccurate, erroneous, or incomplete information with respect to the location of the mean high tide line.

The revocation request asserts that the applicants submitted an inaccurate mean high tide line survey. In addition, the revocation request states that there is a mean high tide line survey which conflicts with the survey provided by the applicants.

The mean high tide line surveys in question include a mean high tide line survey commissioned by the applicants dated December 11, 1997, and prepared by Toal Engineering of San Clemente, California (Exhibit 8), and a mean high tide line survey obtained in August 1930 which was drawn upon Tract Map 970 filed with the County of Orange on September 12, 1930 (Exhibit 3, page 7). These two mean high tide line depictions are shown on exhibits contained within the staff reports prepared for the Commission hearings on the subject permits which occurred in April 1998, August 1998, and October 1998. For instance, the applicants' mean high tide line survey was included as *Exhibit 1* in the April 1998 staff report and *Exhibit 23* within the Combined Staff Report for the August 1998 hearing. In addition, the August 1930 mean high tide line survey appears on *Exhibit C* of the April 1998 staff report and Exhibits 4 and 7 of the August 1998 staff report.

There is no information in the record to suggest that the applicant provided incomplete or false information regarding the location of the mean high tide line. During filing of the application, the applicant did submit information showing the location of the mean high tide line prepared in August 1930. Due to the age of the mean high tide line survey and the fact that conditions change over time, Commission staff requested that the applicant submit an updated mean high tide line survey (Exhibit 11, page 1). The applicant complied with the request and submitted a survey prepared in December 1997 (Exhibit 3, page 25 and Exhibit 8).

The mean high tide line survey prepared in 1997 was prepared by a licensed surveyor and the survey is affixed with the surveyors licensure seal (Exhibit 3, page 25). There is no information to indicate the survey prepared by the surveyor was tampered with prior to submittal to the Commission. In addition, the permittees have submitted a statement prepared by the surveyor affirming the location of the mean high tide line on the date the survey was obtained (Exhibit 8).

The fact that there are two differing mean high tide line surveys does not indicate that either of the mean high tide line surveys are inaccurate nor does it mean that the surveys conflict with one another. The mean high tide line is ambulatory. Changing seasonal beach profiles and tidal conditions result in different mean high tide lines. A mean high tide line survey performed on a certain date would reflect the mean high tide line on that date. No information, such as a mean high tide line survey performed the same day as the applicants' mean high tide line survey, has been submitted which indicates that the survey submitted by the applicants was inaccurate or erroneous. In addition, the fact that two mean high tide line surveys performed on different dates show different results is not indicative of a conflict between the two surveys. Rather, the two surveys show that the mean high tide line is

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 17 of 21

ambulatory.

A review of information in the record by Commission staff does not indicate that the applicants submitted false or misleading information regarding the mean high tide line or that the applicants intended to submit false or misleading information. In fact, information regarding both mean high tide line surveys were submitted to staff and were presented to the Commission as exhibits in the staff recommendation. Therefore, the revocation request on this basis must be denied.

In addition, even if the Commission found that the applicant had intentionally submitted false or misleading information regarding the mean high tide line survey, the revocation request does not establish that the Commission would have required additional or different conditions or denied the application based on this information. The revocation request states that, if the differing mean high tide line surveys were called to the attention of the Commission, the Commission would have required different conditions to address erosion of the toe of the bluff because the 1930 mean high tide line survey suggests that erosion would occur more quickly than represented by the applicant. However, in addition to mean high tide line surveys, the applicant submitted a coastal engineering analysis to evaluate the potential for erosion of the proposed toe of bluff due to wave action.

The coastal engineering assessment for the subject development is contained within three documents prepared by Noble Consultants, Inc. of Irvine, California dated April 2, 1998, May 12, 1998, and June 23, 1998. These letters clearly establish that, over time, the slope between the buttress fill toe protection wall and the proposed toe of slope would erode due to wave action. Based on this conclusion, the coastal engineer recommended the installation of the buried buttress fill toe protection wall in order to protect the buttress fill. In addition, the coastal engineer evaluated the location of the buttress fill toe protection wall with respect to erodibility of the slope. The coastal engineer concludes that the optimal location for the buried buttress fill toe protection wall was 25 to 30 feet landward of the existing slope/sand boundary line, as proposed. At this particular location, there was a balance between time to exposure and size of wall. A more landward alignment would result in the need for a taller buried wall that, when exposed, would appear more massive than the one needed for the proposed location. Therefore, even if the revocation request did establish that the applicants had intentionally submitted false or misleading information, the revocation request does not establish how additional mean high tide line survey information would have caused the Commission to require additional or different conditions or deny the application.

In addition, the applicants asserted that no future protective devices would be necessary for the proposed development. In order to assure that the proposed development was consistent with Sections 30235 and 30253 of the Coastal Act, the Commission imposed several special conditions. Of particular note is an assumption-of-risk deed restriction including a no future protective devices restriction. Therefore, in the event that the applicants' conclusions regarding the need for protective devices was erroneous, the no future protective devices clause requires the permittees to seek remedies which do not result in the construction of protective devices. Accordingly, the revocation request's concerns regarding the rate of erosion have already been addressed through special conditions previously imposed by the

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 18 of 21

Commission.

Therefore, the Commission finds that the revocation request based upon a claim that the applicants intentionally submitted false or misleading information regarding the mean high tide line does not establish the grounds necessary to revoke the subject coastal development permits pursuant to Section 13105(a) of Title 14 of the California Code of Regulations because the revocation request does not establish that (1) the applicants intentionally submitted erroneous information regarding the mean high tide line or (2) that additional mean high tide line information would have caused the Commission to require additional or different conditions or deny the proposed applications.

- b. Evaluation of claim that the applicants submitted inaccurate, erroneous, or incomplete information with respect to a private recreational beach use easement within which a portion of the proposed development occurs.**

The revocation request states that a portion of the proposed development occurs within a private recreational beach use easement which is recorded across all of the subject properties between the toe of slope and the mean high tide line. The revocation request states that the applicant does not have the legal ability to undertake development within this easement.

The recorded private beach use easement is described in recorded documents as follows:

There is also hereby conveyed as an appurtenance to the hereinbefore described property an easement for the use and convenience of the grantee in common with the record owners of lots in Tracts 970 and 971, and the Northeast Quarter (NE¼) of Section 8, Township 8 South, Range 8 West, S.B.B.M., over that portion of Lots 25 to 32, inclusive of Tract 970, between the foot of the slope and the line of ordinary high tide of the Pacific Ocean, as shown on a map of Tract 970, herein before referred to.

The map of Tract 970 filed with the County of Orange on September 12, 1930, shows a line depicting the "toe of slope" and a line depicting the "ordinary high tide" as referenced within the language of the private easement. The private recreational use easement occurs between the "toe of slope" and "ordinary high tide" lines shown on Tract Map 970 and ranges from 40 to 70 feet wide across the 200 foot length of the project site (Exhibit 3, page 7). The proposed development includes the construction of drainage devices, a 36 foot long portion of the approximately 140 foot long subsurface buttress toe protection wall, landscaping, as well as grading within the beach use easement. The 36 foot long portion of subsurface buttress toe protection wall extends a maximum of 8 feet into the easement and the re-graded landslide debris extends between 10 to 40 feet into the easement.

The presence of the recreational easement was known to the Commission. The staff reports for the April 1998, August 1998, and October 1998 Commission hearings contain a description of the recreational use easement. In addition, drawings included as exhibits to the staff reports show the presence of the easement. However, based upon Commission staff's review of the written and oral record, the Commission was not aware of any claim that the

R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 19 of 21

applicant did not have the legal right to carry out the proposed project.

With respect to property ownership and the filing of a coastal development permit application, 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.

The Three Arch Bay Association is a homeowners association which owns and manages private common areas, such as roads and several beach accessways, within the private community of Three Arch Bay. During the filing of the subject applications the applicant was requested to comply with Section 30601.5 of the Coastal Act (Exhibit 11). In response, the applicant submitted copies of property deeds, a copy of a private recreational use easement, and information indicating that an invitation was extended to the Three Arch Bay Association to join as co-applicant. In a letter dated December 17, 1997, Three Arch Bay Association declined to join as co-applicant and authorized the applicant to proceed with the application (Exhibit 12). There is no evidence in the files to indicate that any other persons having a legal interest in the subject properties were notified of the pending application and invited to join as co-applicants pursuant to Section 30601.5 of the Coastal Act. As noted below, staff have subsequently learned that the Three Arch Bay Association is not the sole owner of the subject private recreational beach use easement, and may not have any ownership interest in the easement.

Also, Special Condition 9 of Coastal Development Permit 5-97-371 required the applicants, prior to issuance of the coastal development permit, to submit evidence of the legal ability to undertake the proposed development. In response, the applicants submitted a letter from Three Arch Bay Association dated April 13, 1999, indicating authorization to proceed with the proposed development in the recreational easement area (Exhibit 14). No other persons with a legal interest in the property were identified and there is no evidence in the files to indicate that notice of the pending application was provided to or permission to proceed was sought or obtained from any other persons with a legal interest in the property.

While the applicant sought the approval of Three Arch Bay Association with respect to legal ability to proceed with development, the revocation request states that the Three Arch Bay Association does not own the recreational easement within which a portion of the proposed development is occurring. Rather, the recreation easement was conveyed to and is owned by the individual lot owners within Tracts 970 and 971, and the lot owners within the Northeast Quarter (NE¼) of Section 8, Township 8 South, Range 8 West, S.B.B.M.

**R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 20 of 21**

Thus, the individual lot owners within Tracts 970, 971, and within the Northeast Quarter (NE¼) of Section 8, Township 8 South, Range 8 West, S.B.B.M. have a legal interest in the property affected by the proposed development. However, during the filing of the application, the applicants for the subject coastal development permits did not show evidence of compliance with Section 30601.5 of the Coastal Act with respect to the individual recreational easement holders outlined within the language of the easement. The applicants failed to fully comply with Section 30601.5 of the Coastal Act even though staff explicitly requested that such compliance be fully evidenced. Therefore, it appears that the applicants did provide incomplete and/or erroneous information regarding ownership in the filing of the coastal development permit applications.

In filing incomplete and/or erroneous information regarding ownership, there is evidence that such information was knowingly and intentionally not provided. The applicants were represented as fee owners of the subject properties. The property grant deeds submitted as evidence of ownership indicate that ownership was acquired within the last 11 years (i.e. the oldest transfer occurred in 1989). The private recreational use easement in question was conveyed and recorded on all of the affected properties in the early 1930's. Several title reports submitted by the applicants during condition compliance of the subject permits shows the recorded easement as encumbrances on the subject properties since the early 1930's (Exhibit 13). During the transfer of property, which occurred after conveyance of the easement, the presence of the easement and the identity of the easement holders would have been revealed as was shown on the title reports submitted during condition compliance. Therefore, the applicants, as fee interest owners who purchased the property after it had been encumbered by the easement, would have known of the presence of the easement and the identity of the easement holders. While the applicants did submit a copy of the easement during filing of the application, the applicants did not indicate there were any other easement holders, other than the Three Arch Bay Association. The evidence in the record indicates that the applicants knew there were other easement holders and intentionally declined to submit evidence of an invitation to such easement holders to join as co-applicants. Had such an invitation been extended, the Commission would have been made aware of a dispute regarding the applicants ability to undertake development within the easement.

Even though there is evidence that the applicants knowingly and intentionally provided incomplete and/or erroneous information regarding the legal ability to undertake development on the subject property, it remains unclear whether there is a valid dispute over the ability of the landowner to develop within the easement and thus whether the Commission would have imposed additional or different conditions on the permit or have denied the permits.

Commission staff have reviewed the language of the easement to evaluate whether or not the dispute over the applicants legal ability to develop within the easement is valid. In this case, landslide activity resulted in the deposition of landslide material within the easement. The applicants did not propose to encroach further into the easement than had already occurred as a result of the landslide. Instead, the applicant proposed to excavate and recompact the landslide material but not to change the location of the material. Based upon the copies of the easement provided to staff by the applicants and revocation requesters, there does not appear to be any language which expressly deals with landslide events. It is unclear what, if any,

**R5-97-371; R5-98-020
R5-98-064; R5-98-178; R5-98-307
Revocation Requests
Page 21 of 21**

obligation exists for a landowner to reconstruct land burdened by an easement when the character of the land has been altered by a landslide. It is also unclear whether the landowner could be prevented from developing within the easement area after the landslide. Therefore, it is not known if the landowner had the legal ability to undertake development within the easement.

It is also unclear whether the Commission would have imposed additional or different conditions or denied the applications in light of the question regarding the landowner's legal ability to undertake development within the easement. In other words, how does the landowner's ability to develop in the easement area affect the approvability of the project under Chapter 3 of the Coastal Act? Such information would be material in determining whether the Commission would have taken an action different from the existing approval.

Therefore, Commission staff recommend that, pursuant to Section 13108(c) of Title 14 of the California Code of Regulations, the Commission direct staff to perform further investigation. Specifically, the Commission requests further investigation on the following questions:

1. Could the applicant as landowner be prevented from undertaking the proposed development within the easement area?
2. Whether or not the landowner has the legal ability to develop within the easement area, how does the ability or inability of the applicant to development within the easement affect the approvability of the project under Chapter 3 of the Coastal Act?

The Commission further invites the revocation requesters and the permittees to specifically address the above questions in writing.

RECEIVED
South Coast Region

FEB 28 2000

CALIFORNIA
COASTAL COMMISSION

February 28, 2000

COPY

Peter Douglas, Executive Director
CALIFORNIA COASTAL COMMISSION
Via Fax 415.904.5400 [Five Total Pages]

Re: Enclosed Letter Seeking Revocation of Coastal Construction Permit for Projects at 23-31 Bay Drive [Originally Application Nos. 5-97-371; 5-98-020; 5-98-064; and 5-98-178]

Dear Mr. Douglas/Coastal Commission:

Enclosed please find a letter from several interested persons seeking revocation of the construction permits issued for the projects at 23-31 Bay Drive, Laguna Beach, CA [Originally Application Nos. 5-97-371; 5-98-020; 5-98-064; and 5-98-178]. The original of the enclosed letter (and two copies) are today being hand-delivered to Karl Schwing, Coastal Program Analyst at the South Coast Office in Long Beach - I have asked Mr. Schwing to forward the original to you.

The request for revocation is being made by numerous persons who hold a beach-use easement over the properties in question. These folks claim they were not provided proper notice of the Coastal Commission permitting process despite the fact that the permit seekers had actual knowledge of their existence and knew these persons to be interested parties. It is my understanding, per the statutory language cited within the enclosed letter, that the permits for these projects must be revoked and those persons who were interested parties must be given a properly noticed opportunity to be heard.

This issue is arising because construction at the site is now directly impacting the beach in a significant and dramatic way. Persons who had no idea that this project was going to permanently impact the beach and impact their ability to use and enjoy their beach-use easement are now just discovering the impact of the construction, and they are now demanding to be heard.

The construction projects, in my opinion and in the opinion of many others, encroach too close to the surf. There were earlier this month five consecutive days where the surf, at high tide, washed over the base of these projects. There have also been several other (non-consecutive) days this month where the surf has risen to the point where the beach in front of the projects has been completely obliterated and surf was washing up and over the base of the projects. The folks who have requested the permit revocations have a survey of the high tide line at the projects which dramatically conflicts with the high tide survey presented to the Coastal Commission when the permits for these projects were sought. Those requesting revocation would like the opportunity to present their evidence that the project is encroaching too close to the shore and is improperly impacting the beach.

COASTAL COMMISSION
Revocation Request

Exhibit 1: Revocation Request
Rec'd 2/28/2000

EXHIBIT # 1
PAGE 1 OF 5

Please feel free to contact me should you have any questions regarding the enclosed letter requesting revocation. While I do not formally represent the signatories, I know who most/all of the signatories are and have the ability to communicate and coordinate action with them. I am also familiar with the project, the concerns of the easements holders, and the basis for their request for revocation.

Sincerely,



Scott Runyon
13 Bay Drive
Laguna Beach, CA 92651-6780
949.499.9287 daytime phone

COPY

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 5

RECEIVED
South Coast Region

FEB 28 2000

CALIFORNIA
COASTAL COMMISSION

COPY

February 29, 2000

Peter M. Douglas, Executive Director (Original)
Karl Schwing, Staff Coastal Program Analyst (Copy)
CALIFORNIA COASTAL COMMISSION [SOUTH COAST OFFICE]
200 Oceangate, 10th Floor
Long Beach, CA 90802

Via Hand Delivery

Re: Request and Application for Revocation of Coastal Construction Permit for Projects at 23-31 Bay Drive [Originally Application Nos. 5-97-371; 5-98-020; 5-98-064; and 5-98-178] Pursuant to Administrative Regulation [Title 14, Natural Resources, Division 5.5, California Coastal Commission, Chapter 1, Article 16, §§13054(e), 13105(b), and 13106].

Dear Coastal Commission:

The undersigned hereby formally request and apply for revocation [under Coastal Administrative Regulation §13054(e), §13105(b), and §13106] of the coastal construction permit ("the Permit") granted for the projects located at 23 to 31 Bay Drive, Laguna Beach, CA 92651-6780. Grounds for this request are as follows:

1. Coastal permit regulations (§13105) state in part that a permit shall be revoked for:

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

2. Section 13054(a)(3) requires that a permit applicant identify and provide proper notice to:

"[A]ll persons known to the applicant to be interested in the application..."

3. Section 13054(e) states:

Pursuant to Sections 13104 through 13108.5, the commission shall revoke a permit if it determines that the permit was granted without proper notice having been given. (Emphasis added).

COASTAL COMMISSION

4. Section 13106 states in part:

Any person who did not have an opportunity to fully participate in the original

EXHIBIT #

PAGE 3 OF 5

permit proceeding by reason of the permit applicant's... failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. **The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105. (Emphasis added).**

4. The undersigned are, and were at the time the permit-holder(s) sought the Permit from the Coastal Commission, dominant holders of an beach-use easement ("the Easement") over the properties at issue. The Easement is properly and publicly recorded in the deeds of both the permit applicant(s) and the undersigned property holders. As such, the undersigned were "interested parties known to the applicant" within the meaning of Section 13054.

5. The undersigned hereby represent that they were not properly notified of any proceedings regarding the Permit. The undersigned also believe there are more than 50 other similarly situated property holders who also failed to receive proper notices regarding the Permit. Many Easement holders live out of the community and have no notice of the Permit, the associated project, or of any proceedings related thereto.

6. The undersigned represent that had they been given proper notice and an opportunity to be heard - they would have brought substantial and credible facts and evidence to the attention of the Commission which may have not been otherwise made known to the Commission at the time the Permit was granted. Specifically, they would have brought to the attention of the Commission, among other items:

- A. Their belief that the Permit (now granted) is based upon an inaccurate survey of the mean-high tide line of the beach at the project;
- B. The Easement holders have, and did have at the time of the Permit hearing, a survey of the tide line which is substantially in conflict with the tide line survey privately commissioned and presented by the applicants.
- C. Their belief that the Project substantially and improperly encroaches upon the Easement-holders' property rights;
- D. Their belief that the Project encroaches upon and permanently alters the beach, the natural coastal erosion process, and thus necessarily permanently alters the nature of their property rights as easement holders.

7. Further, the undersigned believe that had such evidence and commentary been heard and presented during the application process, such evidence and commentary "could have caused the commission to require additional or different conditions" on the Permit or could have caused the commission to altogether deny the Application.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 4 OF 5

8. As such, the undersigned hereby request and apply for revocation of the Permit so that their issues and concerns may be properly heard.

Sincerely,

- | <u>NAME</u> | <u>ADDRESS</u> |
|----------------------------------|-----------------------------|
| 1. <i>[Signature]</i> | 9 S. Vistas de Catalina |
| 2. <i>[Signature]</i> | <i>[Address]</i> |
| 3. <i>[Signature]</i> | 17 S. Stonington |
| 4. David Emmes | 39 N. La Sendera Dr. |
| 5. <i>[Signature]</i> | 8 S. Stonington Rd |
| <i>[Signature]</i> | 8 No. STONINGTON |

COASTAL COMMISSION

EXHIBIT # 1
PAGE 5 OF 5

CALIFORNIA COASTAL COMMISSION

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



March 8, 2000

Mr. Scott Runyon
13 Bay Drive
Laguna Beach, CA 92651-6780

**COASTAL COMMISSION
Revocation Request**

Subject: **STATUS OF REQUEST**
Coastal Development Permit Revocation Requests
R-5-97-371, R-5-98-020, R-5-98-064, R-5-98-178
23, 25, 27, 29, & 31 Bay Dr., Laguna Beach (Three Arch Bay), Orange County

EXHIBIT # 2
PAGE 1 OF 3

Dear Mr. Runyon:

On February 28, 2000, the subject coastal development permit revocation requests were submitted to our office. The revocation requests state that certain known interested parties were not notified of coastal development permit applications 5-97-371, 5-98-020, 5-98-064, and 5-98-178 at the time they were pending before the Coastal Commission. The revocation requests state that such known interested parties were required to be notified of the pending applications pursuant to Section 13054 of the California Code of Regulations. Accordingly, the revocation requests seek revocation of the subject permits on the grounds stated in Section 13105(b) of the California Code of Regulations, which states in relevant part:

Grounds for revocation of a permit shall be:

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

Commission staff have reviewed the information submitted and, based upon that information, are unable to determine whether the grounds for revocation under Section 13105(b) of the California Code of Regulations have been evidenced. Accordingly, the Executive Director cannot initiate revocation proceedings until such information has been provided.

The revocation requests state that certain persons who were interested parties known to the applicant were not notified of the subject coastal development permit applications at the time such applications were pending before the Commission pursuant to Section 13054 of the California Code of Regulations. The revocation requests state that such interested parties were known to the applicant because these persons were:

... at the time the permit-holder(s) sought the Permit from the Coastal Commission, dominant holders of an beach-use easement ("the Easement") over the properties at issue. The Easement is properly and publicly recorded in the deeds of both the permit applicant(s) and the undersigned property holders. As such, the undersigned were "interested parties known to the applicant" within the meaning of Section 13054.

Your revocation requests state that, pursuant to Section 13054 of the California Code of Regulations, the signatories to the revocation request should have been notified of the then-pending coastal development permit applications because such persons were "known interested parties". The revocation request also implies that every homeowner in the private community of Three Arch Bay should have been notified, pursuant to Section 13054. Based

**Exhibit 2: STAFF'S LETTER TO REVOCATION
REQUESTERS DATED 3/8/2000**

Revocation Request

Status

Page 2 of 3

EXHIBIT # 2

PAGE 2 OF 3

on the revocation request, such persons were known interested parties because such persons were holders of a recreational easement which crosses the subject properties and which is adjacent to the development activity. Commission staff note that the homeowners representative, Three Arch Bay Association, was listed on the notification list submitted by the applicant. Furthermore, the Three Arch Bay Association ("Association") was invited by the applicant to join as co-applicant on the coastal development permit application. In a letter dated December 17, 1997 from the Executive Director of the Association to the applicant, the Association declined to join as co-applicant and granted permission to the applicant to proceed with processing a coastal development permit application. Therefore, it appears that the representative of the homeowners in Three Arch Bay were notified of the pending applications. Given the fact that the homeowners representative group (i.e. Association) was listed on the notification list and there is evidence that the Association was aware of the project and granted permission to the applicant to proceed with the application, you must explain how the notification to the Association was not an adequate notification to parties known to be interested in the recreational easement and the proposed development and how such notification results in a failure by the applicant to comply with Section 13054 of the California Code of Regulations.

You have not submitted any evidence, including a copy of any easement, to substantiate the above claim that the signatories to the revocation request were dominant holders of a beach use easement at the time the permit-holder(s) sought the coastal development permits from the Coastal Commission. In addition, given that the homeowner's association was specifically notified, you have not submitted any evidence that such easement holders were not notified of the pending coastal development permit applications pursuant to Section 13054 of the California Code of Regulations. In order to proceed with processing the subject revocation requests, you must submit the necessary evidence to substantiate your claim.

Also, the revocation requests state:

The undersigned represent that had they been given proper notice and an opportunity to be heard - they would have brought substantial and credible facts and evidence to the attention of the Commission which may have not been otherwise made known to the Commission at the time the Permit was granted.

The revocation request goes on to state that such information includes evidence that a mean high tide line survey in existence at the time of the coastal development permit application hearing is in conflict with the privately commissioned mean high tide line survey provided by the applicant. You have stated that if this information was made known to the Commission the Commission may have imposed additional or different conditions or may have denied the application.

You have not submitted evidence, including a copy of the cited mean high tide line survey, which may substantiate your claim. Without such information, an evaluation cannot be performed based upon Chapter 3 policies of the Coastal Act which explains how such information would have caused the Commission to impose additional or different conditions, or why the Commission may have denied the application based upon such information. All of the above information must be submitted in order for the Executive Director to determine whether grounds exist for the revocation of the subject coastal development permits and in order for the Executive Director to continue to process your request for revocation.

Finally, the revocation request lists five persons as the "undersigned" requesting the subject revocation. However, in some cases the names are not legible and the contact information is

Revocation Request

Status

Page 3 of 3

incomplete. Also, the cover letter accompanying the revocation request indicates that you are a point of contact for the persons requesting the revocation, however, you do not formally represent the signatories to the revocation request. Please provide complete names and contact information for all signatories to the revocation request. In addition, please identify whom, if anyone, will be formally representing the signatories to the revocation request and evidence that this person may bind the signatories in all matters related to the request. We would also appreciate any information you can provide us regarding other homeowners who may be interested in receiving notification of the revocation request even if they are not requesting revocation.

Section 13108 of the California Code of Regulations requires that a hearing on the revocation request be scheduled at the next regularly scheduled meeting, and after the permittee and any persons known to the Executive Director to be interested in such revocation are notified. However, as discussed above, the Executive Director is unable to determine whether grounds for revocation exist without the above-identified information. In addition, we are unclear what other homeowners should be notified of the revocation request. The Commission's next regularly scheduled meeting is April 2000 in Long Beach, California. In order for Commission staff to proceed with processing your applications for revocation at the April 2000 meeting, you must submit all information necessary for the Executive Director to prepare a recommendation on Commission action as soon as possible, but no later than March 17, 2000.

Thank you for your attention to these matters. If you have any questions, please contact me at (562) 590-5071.

Sincerely,


Karl Schwing
Coastal Program Analyst

Cc: Illegible signatory, 9 S. Vista de Catalina, Signatory to revocation request
Tim Hamchuk, 17 S. Stonington Rd., Signatory to revocation request
David Emmes, 39 N. La Senda Dr., Signatory to revocation request
John Burns, 8 S. Stonington Rd., Signatory to revocation request
Illegible signatory, 8 N. Stonington Rd., Signatory to revocation request
Three Arch Bay Association
Jim Conrad, Applicant for CDP 5-97-371
Bay Drive Investment Group, Applicant of record for CDP 5-98-020
Troy and Celeste Barnes, Applicant for CDP 5-98-064
Tim McMullen, Applicant for CDP 5-98-178

COASTAL COMMISSION

EXHIBIT # 2
PAGE 3 OF 3

RECEIVED
MAR 14 2000
CALIFORNIA
COASTAL COMMISSION

March 14, 2000

Karl Schwing, Coastal Program Analyst
CALIFORNIA COASTAL COMMISSION [SOUTH COAST OFFICE]
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

Via Hand Delivery

Re: Pending Requests for Revocation of Coastal Development Permits R-5-97-371, R-5-98-020, R-5-98-064, R-5-98-178 (23-31 Bay Drive, Laguna Beach, Orange County, CA).

Dear Karl/Coastal Commission:

I am in receipt of your March 8th letter informing me that the Coastal Commission needs certain further information before it can properly evaluate the previously submitted revocation request with respect to the above-referenced permits. Contained herein and enclosed herewith are the necessary facts and evidence which will allow you to evaluate the revocation request. I would like to remind both you and the Executive Director that, pursuant to Coastal Regulation §13106, "unless the request is patently frivolous and without merit", a revocation proceeding shall be initiated. I believe, based upon the information submitted, it is clearly established that the revocation request on its face is not "patently frivolous and without merit". As such, and with the information provided herein, I hereby and again request revocation of the above-referenced permits.

1. Three Arch Bay Association Does NOT Represent Easement-holders.

The first issue raised in your March 8th letter involves your correctly pointing out that the Three Arch Bay Homeowners' Association ("TAB") was provided notice of the original permit process. Why, you ask, is that not sufficient notice to all holders of the beach use easement over the subject properties? The answer is threefold:

A. TAB Did Not Represent Easement-Holders.

TAB owns the streets and certain rights-of-way within Three Arch Bay; maintains some common areas such as the community park and tennis courts; and also maintains an Architectural Review Committee ("ARC"). The primary purpose of the ARC is to maintain uniform building regulations within the community. The easement in question is held not by TAB, but rather by a specific limited number of individual property owners within the community, many of whom are not even members of TAB. TAB and its ARC, which reviewed the developer's plans for the projects at 23-31 Bay, did not (nor did they have an interest or a right to) pass judgement on the developer's assertions regarding the high-tide line and its impact upon private property rights of the easement-holders.

EXHIBIT 3: REVOCATION REQUESTERS
RESPONSE TO STAFF LETTER

COASTAL COMMISSION
Revocation Request

EXHIBIT # 3

PAGE 1 OF 30

TAB was noticed in the prior Coastal Commission proceedings because it owns land (Bay Drive) immediately adjacent to the projects at 23-31 Bay Drive and thus by law must have been properly noticed as a landowner within 100 feet of the projects. In fact, the 23-31 Bay developments encroach upon land held by TAB immediately adjacent to Bay Drive and TAB has granted permission to the 23-31 Bay Drive property owners to sink footings on TAB property adjacent to Bay Drive in order to help anchor the projects' proposed structures.

B. Only Limited Number of Owners Within Three Arch Bay Hold Easement Rights.

Not every member of the Three Arch Bay community holds the easement rights in question. The easement rights are held by "the Lot owners in Tract 970 and Tract 971" and also the owners of certain other lots as more specifically described in the original tract map of the development. [See Exhibit "A" attached hereto, which is two oversized pages]. Exhibit "A" is a copy of the original recorded tract map containing, among others, the properties at 23-31 Bay Drive. I have highlighted the 23-31 Bay Drive properties and the easement language as contained on the original recorded tract map. On Exhibit "A", I have written in blue ink the addresses of the properties in question so you may orient yourself. Exhibit "B" (attached hereto) contains the most recent recorded deeds of the properties at 23-31 Bay Drive as they existed at the time the original permits were sought. Note that the deeds within Exhibit "B" all use the plot numbers within the tract map (Exhibit "A") to identify their respective properties.

Attached hereto as Exhibit "C" is a reduced plot map which contains all of the Tracts which comprise the community of Three Arch Bay. 23-31 Bay Drive are contained within Tract 970. The easement which has been granted across 23-31 Bay Drive is held, pursuant to the language on the original tract map (Exhibit "A"), by those properties within the highlighted portions of Exhibit "C". The easement is not held by Tract 966 or the area marked "Three Arch Palisades #1" within Exhibit "C". Thus there are only a limited number of owners within the community of Three Arch Bay which hold easement rights over the properties in question. [Property owners on Barranca Way, La Senda Place, and property owners on certain portions of N. La Senda, S. La Senda, and Cabrillo do NOT hold easement rights over 23-31 Bay Drive].

Finally, I have attached as Exhibit "D" a copy of one of the original grant deeds recorded within Tract 970 to illustrate that the easement over 23-31 Bay Drive was specifically noted in the deeds which were granted to easement-holders. (See page 2 of Exhibit "D").

C. Not Every Easement-Holder is a Member of TAB.

Not every property owner within Three Arch Bay is a member of TAB. Based upon information provided to me by TAB: **there are 21 Easement-Holders which are not members of TAB. TAB is a wholly voluntary organization. Property owners within Three Arch Bay are not required to join TAB. These property owners/easement-holders could not have been represented, in any capacity, by TAB at any prior Coastal Commission proceedings:**

1. Blanton, John & Natalie
2. Carter, Evelyn & Terry

40 N Vista De Catalina, Laguna Beach, CA 92651
18 S Vista De Catalina, Laguna Beach, CA 92651

COASTAL COMMISSION

- | | |
|-----------------------------|---|
| 3. Cloudt, Dixie | 24 S Portola, Laguna Beach, CA 92651 |
| 4. Coast Plaza Realty | 34 N Stonington, Laguna Beach, CA 92651 |
| 5. Diamondhead GP | 27 Vista Del Sol, Laguna Beach, CA 92651 |
| 6. Dilley, Jeanette | 22 N Portola, Laguna Beach, CA 92651 |
| 7. Drever, Barbara & James | 25 N Vista De La Luna, Laguna Beach, CA 92651 |
| 8. Genling, Diana & Ronald | 10 N Callecita, Laguna Beach, CA 92651 |
| 9. Goodell, Jill | 10 Cabrillo Way, Laguna Beach, CA 92651 |
| 10. Hamner, Mary & Jim | 13 S Callecita, Laguna Beach, CA 92651 |
| 11. Keast, Rand D. | 16 S Portola, Laguna Beach, CA 92651 |
| 12. Kovac, Jerry | 32282 S Coast Hwy, Laguna Beach, CA 92651 |
| 13. Hurley, Linda | 32282 S Coast Hwy, Laguna Beach, CA 92651 |
| 14. Marine, Jules | 23 N Vista De Catalina, Laguna Beach, CA 92651 |
| 15. McLean, Walter & J. | 16 N Vista De Catalina, Laguna Beach, CA 92651 |
| 16. Nelson, Marjorie | 26 S Stonington, Laguna Beach, CA 92651 |
| 17. Perelii-Minetti, A. | 1 Vista De San Clemente, Laguna Beach, CA 92651 |
| 18. Shearer, Pam & Ron | 32292 S Coast Hwy, Laguna Beach, CA 92651 |
| 19. Sundsmo, Joan & Oliver | 44 S Portola, Laguna Beach, CA 92651 |
| 20. Thorton, Linda & Jeff | 12 N Stonington, Laguna Beach, CA 92651 |
| 21. Van Westering, Patricia | 9 S Stonington, Laguna Beach, CA 92651 |

D. Conclusion: The Developers Did Not Provide Notice Despite Actual Knowledge

The bottom line is that TAB does not hold the easement for the community at large; rather certain specific property owners (many of whom are not members of TAB) privately and individually hold the easement rights. Only those specific property owners have an interest in the easement and its relationship to the high-tide line. **The easement-holders were a unique set of individuals actually known by the 23-31 Bay Drive property owners to have property rights over their land at the time property owners sought permits from the Coastal Commission.** [Attached hereto as Exhibit "E" is a 01/14/98 letter from the California State Lands Commission to the developer of the 23-31 Bay Drive projects. The letter specifically references the existence of the beach easement]. Thus, despite having actual knowledge of the easement and the easement-holders' rights, the 23-31 Bay Drive developers illegally chose not to provide proper notice to the easement-holders.

2. The Easement-Holders' Survey and the Developer's Conflicting Re-Survey.

In your March 8th letter, you request further description and documentation of the easement-holders' pre-existing survey of the high tide line. You will note that Exhibit "A" (the recorded Tract Map of the area at issue) contains a survey which includes a survey of the high-tide line. This survey was completed by a properly licensed California Land Surveyor. (See page 2 of Exhibit "A"). This survey of the high-tide line was adopted and used several times by the developers at 23-31 Bay Drive. Here is a synopsis of what transpired with respect to this survey and what is believed to be the developers' attempt to circumvent it:

A. The Original High Tide Line Survey.

The high tide line was originally (and we believe accurately) surveyed as sitting 52 feet

COASTAL COMMISSION

EXHIBIT # 3
PAGE 3 OF 30

oceanward of an easement boundary-line at the development site, as marked and recorded in the original deeds and plot maps within the community of Three Arch Bay. Due to some recent landslides, significant erosion, and the prior collapse of some houses built out into the bluff at the site, prior to commencing construction the base of the site sat approximately 31 feet oceanward of the original easement boundary line. Thus, before these projects began and according to the original high-tide survey on the Tract Map, there was only 21 feet of beach between the base of these projects and the high tide line. However, this information was not presented to the Coastal Commission.

B. The Developer's Re-Survey.

The measurements described above were contained in the original preliminary design plans filed by the developer. However, with the base of the developments only 21 feet away from the high tide line, the developer would have had difficulty obtaining final approval for the projects. The easement-holders believe, in order to solve this problem and obtain approval for his projects, the developer privately commissioned his own re-survey of the high tide line. The developer's surveyor upon re-survey found the high tide line was approximately 86 feet seaward of where it was marked on the Tract Map, and thus the developer gained approximately 86 feet along the base of each of the five lots which run along the beach. This allowed the projects to be described to the Coastal Commission as sitting 107 feet back of the high tide line, when in fact they really sit only 21 feet from the high tide line. Attached hereto as Exhibit "F" is a to-scale rendition of the two competing surveys. Exhibit "F" is a copy of the developer's re-survey of the high-tide line as of 12/11/97. I have added two highlighted lines to that re-survey: the slope-sand interface which marks the boundary of the planned development at 23-31 Bay Drive; and the original high-tide survey as marked and recorded in the original Tract Map. Also, note within Exhibit "F" that *the developer's own re-survey acknowledges the easement with bold cross-marks.*

C. Recent Developments

Last month the developer completed final grading along the base of half of the projects. This involved his pushing soil out onto the beach and recapturing ground which the ocean had eroded away over the past year. In the days since the developer's contractor set the final grade, there have been numerous occasions where at high tide the surf washes up to and over the recently graded base of the projects. Enclosed herewith as Exhibit "G" are sample pictures for your review. The surf now regularly obliterates the beach in front of the developments and in fact washes up over the base of the developments. [Note page 3 of Exhibit "G" is simply a photo of someone traversing across the beach easement during a time when the beach is exposed in front of the development].

We believe these recent developments (see Exhibit "G") reveal that the developer's privately commissioned re-survey grossly misrepresented the actual high tide line. The developer used this inaccurate re-survey to obtain Coastal Commission approval for the size and placement of the projects where they are today.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 4 OF 30

D. What Should Occur Next.

Once the existing permits are revoked a new application process must be required before the projects can proceed. The 23-31 Bay Drive permit-seekers will, upon re-application, then necessarily have to provide proper notice to the easement holders, and it can be expected that several easement holders (most of whom are unaware of what is happening, as no prior notice has been provided to them) will come forward and provide further as yet unknown evidence and documentation that the developer's re-survey of the high tide line is inaccurate. Until such time as the easement holders are properly noticed, it cannot be known what further evidence they may have or obtain which would help the Coastal Commission further determine where the high-tide line actually exists. What is known, from the evidence and documentation presented herein, is that the high-tide line does not sit out from the projects nearly as far as the permit-holders represented to the Coastal Commission. It is also known that the parties directly prejudiced by that tide-line misrepresentation (the easement holders) were intentionally omitted from the application process. Thus, revocation must be granted and re-application, after proper notice, must be sought.

3. Revocation Requestors and Formal Appointment of Representative.

Your March 8th letter asks for help identifying: (1) those persons who signed the initial revocation request; (2) other persons who may be interested in receiving notices regarding the 23-31 Bay Drive projects; and (3) the identity of a formal representative for the revocation requestors.

Attached hereto as Exhibit "H" is a letter dated 03/13/00 which sets forth the proper names and addresses of those signatories to the original revocation request letter of 02/28/00. Exhibit "H" also contains the formal appointment of myself to represent four of the five original signatories to the revocation request letter. Please note that I have been unable to contact the fifth signatory (Craig Brown of 9 Vista De Catalina). Once I have been able to reach Mr. Brown on this matter, I may eventually obtain a formal appointment to represent him as well. Please note I have also been informed that there are several other property owners/easement owners who signed the revocation request after I had already prepared and delivered the revocation request "packet" to your office on 02/28/00. I hope to eventually obtain these existing additional signatories to the original revocation letter (the revocation request is floating around somewhere in the neighborhood) and upon doing so will forward them to you. [Please note that the additional signatories on the revocation request letter previously submitted are not necessary for you to proceed with your determination of the revocation request].

As to others who may be interested in receiving notice of the Coastal Commission proceedings, I suggest that each of the easement-holders would be appropriate folks who should be provided proper notice. These folks own property on portions of 13 streets within the community. If you have a preferred format (diskette with information listed in a method compatible with your systems so you may generate mailing labels?) of obtaining their names and addresses, please let me know I will try and provide in the appropriate format as complete a list as I can obtain.

COASTAL COMMISSION

EXHIBIT # 3
PAGE 5 OF 30

4. Concluding Thoughts.

Should you have any questions or concerns regarding the easement-holders' request for revocation, please do not hesitate to contact me. If for any reason you do not believe that a revocation hearing should be set and/or you and/or the Executive Director are inclined not to recommend revocation *please* firstly contact me and provide me an opportunity to address your concerns. I realize that your time is valuable and necessarily limited, and thus I have attempted to address only those issues specifically raised in your March 8th letter and I have not addressed other potential concerns which you may/may not have regarding this matter.

Thank you for your consideration of this matter.

Sincerely,



Scott Runyon
13 Bay Drive
Laguna Beach, CA 92651-6780
949.499.9287 phone
949.499.4298 fax

COASTAL COMMISSION

EXHIBIT # 3
PAGE 6 OF 30

SOUTHEAST CORNER OF LOT 89 THREE ARCHES PALISADES N.I.L. MAPS, BK. 3, P. 3
EAST LINE OF LOT 89 OF THREE ARCHES PALISADES N.I.L. MAPS, BK. 3, P. 3

COASTAL COMMISSION

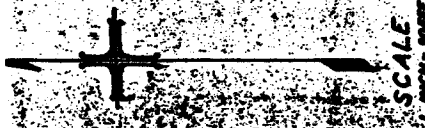
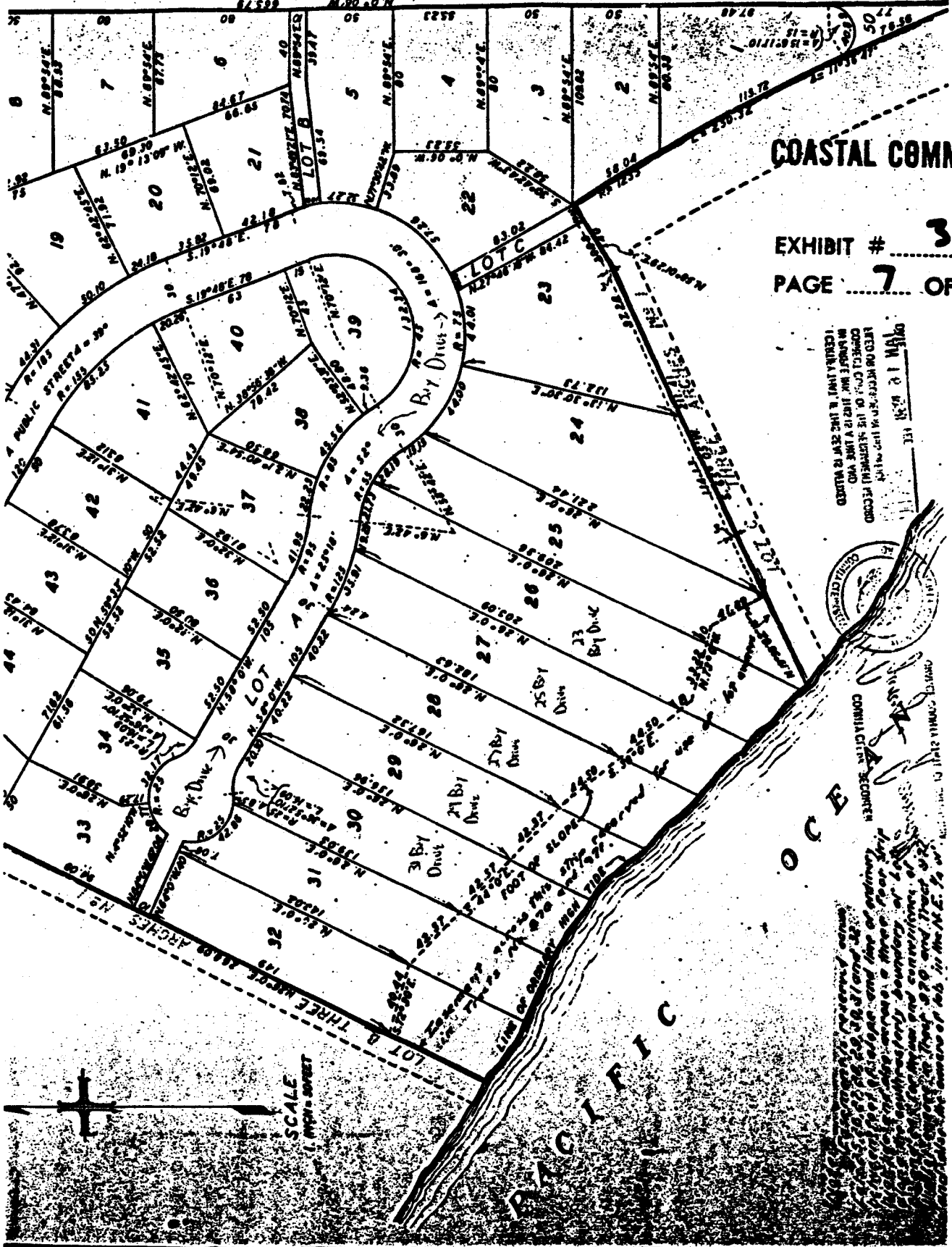
EXHIBIT # 3
PAGE 7 OF 30

APPROVED FOR RECORD
RECORDED IN THE PUBLIC RECORDS
OF THE COUNTY OF SAN DIEGO
ON FEBRUARY 12, 1934
AT 10:30 A.M.
COUNTY CLERK



RECORDED IN THE PUBLIC RECORDS
OF THE COUNTY OF SAN DIEGO
ON FEBRUARY 12, 1934
AT 10:30 A.M.
COUNTY CLERK

THIS MAP WAS PREPARED BY THE COASTAL COMMISSION OF SAN DIEGO COUNTY, CALIFORNIA, AND IS SUBJECT TO THE PROVISIONS OF THE ACT TO PREVENT THE ACQUISITION OF PUBLIC LANDS BY PRIVATE OWNERS, AS AMENDED, AND TO THE ACT TO PREVENT THE ACQUISITION OF PUBLIC LANDS BY PRIVATE OWNERS, AS AMENDED, AND TO THE ACT TO PREVENT THE ACQUISITION OF PUBLIC LANDS BY PRIVATE OWNERS, AS AMENDED.



San Diego County Seal
COUNTY CLERK
COUNTY OF SAN DIEGO
CALIFORNIA

RECORDED IN THE PUBLIC RECORDS
OF THE COUNTY OF SAN DIEGO
ON FEBRUARY 12, 1934
AT 10:30 A.M.
COUNTY CLERK

RECORDING REQUESTED B.

CHICAGO TITLE & SERVICE CO.

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW MAIL TAX STATEMENTS TO:



29.00

19980687775 04:30PM 10/09/98

RECEIVED

NAME: James E. Conrad
ADDRESS: 1590 S. Coast Highway #17
CITY & STATE: Laguna Beach CA 92651
ZIP

004 21011891 21 22
G02 2 05 0.00 6.00 3.00 0.00 0.00 0.00 0.00
20.00 0.00

MAR 14 2000

Title Order No. 8808259 Escrow No.

CALIFORNIA
COASTAL COMMISSION

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned declares that the documentary transfer tax is \$ No. consideration and is
 computed on the full value of the interest or property conveyed, or is
 computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in
 unincorporated area city of Laguna Beach and

No consideration due to transfer to partnership with both parties owning 50% of interest FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

James E. Conrad and Kathy M. Conrad, husband and wife as to an undivided one-half interest and Sue F. Freeman, an unmarried woman as to an undivided one-half interest as tenants hereby GRANT(S) to in common
Bay Drive Investment Group, LP, a California Limited Partnership

the following described real property in the
County of Laguna Beach, State of California:

Lot 26 of Tract No. 970, in the City of Laguna Beach, County of Orange, State of California, as per map recorded in Book 31, Page 5 and 6 of Miscellaneous Maps, in the office of the county recorder of said county
Excepting that portion, if any, lying below or seaward of the line of ordinary high tide of the Pacific Ocean

Dated October 8, 1998

James E. Conrad
Kathy M. Conrad
Kathy M. Conrad
Sue F. Freeman
Sue F. Freeman

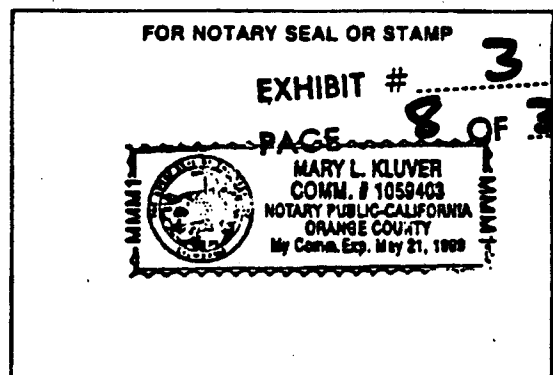
STATE OF CALIFORNIA
COUNTY OF ORANGE } S.S.

On October 8, 1998 before me,
MARY L. KLUIVER Notary, personally
appeared JAMES E. CONRAD, KATHY M. CONRAD, SUE F. FREEMAN
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Mary L. Kliver

COASTAL COMMISSION



MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

GTC-101 (9-93)

8808259-504

GOVERNMENT CODE 27361.7

I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: *Mary L. Kluever*

Date Commission Expires: *5-21-99*

Commission Number: *1054403*

Vendor Number:

County where bond is filed: *MMMJ*

Place of Execution: Irvine, California

Date: *10-9-99*

By: *[Signature]*
CHICAGO TITLE COMPANY

COASTAL COMMISSION

EXHIBIT # 3
PAGE 9 OF 30

RECORDING REQUESTED BY

CHICAGO TITLE INSURANCE CO.

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW MAIL TAX STATEMENTS TO

Recorded in the County of Orange, California

Gary L. Granville, Clerk/Recorder



9.00

19980708375 4:24pm 10/20/98

004 2012375 02 49

G02 2 55 0.00 6.00 3.00 0.00 0.00 0.00 0.00

0.00 0.00

RECEIVED
MAR 14 2000
CALIFORNIA
COMMISSION

NAME **Troy D. & Celeste R. Barnes**
ADDRESS **715 Marlin Drive**
CITY & STATE **Laguna Beach CA 92677**
ZIP

Title Order No. **8808258** Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned declares that the documentary transfer tax is \$ no consideration and is
 computed on the full value of the interest or property conveyed, or is
 computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in **Transfer to family trust**
 unincorporated area city of Laguna Beach and

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Troy D. Barnes and Celeste R. Barnes, husband and wife as joint tenants

hereby GRANT(S) to **Troy D. Barnes and Celeste R. Barnes, as Trustees of the Barnes Family Trust** under provisions of a Trust Agreement dated April 8, 1997

the following described real property in the County of Orange ^{city of} Laguna Beach

State of California:

Lot 27 of Tract No. 970, in the City of Laguna Beach, County of Orange, State of California, as per map recorded in Book 31, Page 5 and 6 of miscellaneous maps in the office of the County Recorder of said County.

Excepting that portion, if any, lying below or seaward of the line of ordinary high tide of the Pacific Ocean

Dated October 16, 1998

Troy D. Barnes
Celeste R. Barnes
Celeste R. Barnes

STATE OF CALIFORNIA } S.S.
COUNTY OF ORANGE

On October 19, 1998 before me,
MARY L. KLUVER Notary personally
appeared TROY D. BARNES & CELESTE R. BARNES

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Mary L. Kluver

COASTAL COMMISSION

FOR NOTARY SEAL OR STAMP
EXHIBIT # 3
PAGE 10 OF 30
MARY L. KLUVER
COMM. # 1089403
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
My Comm. Exp. May 21, 1999

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

GTC-101 (9-93)

Recording Requested by:

Charles T. Griswold

After Recordation, Mail

to: CHARLES T. GRISWOLD
STAR ROUTE BOX 1074
ORANGE, CA 92667

NO OWNERSHIP
STATEMENT
\$20.00

\$7.00
07

Recorded at the request of
CONTINENTAL LAWYERS TITLE CO.

9:00
A.M. JAN 18 1990

Official Records
Orange County, California
De A. Brand Recorder

Space above this line for recorder's use.

Documentary Transfer Tax: None.

Mail tax statements to: SAME

8/11/90

57-204217

QUITCLAIM DEED

For valuable consideration, receipt of which is hereby acknowledged, FRANK J. MISTRETTA and RALPH T. ROACH, Optionees under that certain Option Agreement dated July 28, 1989, and recorded as document number _____, of the Official Records of Orange County, do hereby remise, release, and forever quitclaim to CHARLES T. GRISWOLD and VALERIE L. GRISWOLD all of their right, title, and interest in the real property located in the City of Laguna, County of Orange, State of California, described as follows:

Lots 28 & 29 of Tract No. 970, per map recorded in Book 31, pages 5 and 6 of miscellaneous maps in the office of the County Recorder of Orange County, California.

This deed is given to relinquish and release any right,

"This document filed for record by Continental Land Title Company, as an accommodation only. It has not been examined as to its execution or as to its effect upon the title."

COASTAL COMMISSION

EXHIBIT # 3
PAGE 11 OF 30

title, and interest the grantors may have by virtue of said Option Agreement.

Assessor's Parcel No. 056-180-44 and 056-180-47

Executed on August 2, 1989, at _____
Upland, California.

Frank J. Mistretta
FRANK J. MISTRETТА

Ralph T. Roach
RALPH T. ROACH, Options

ACKNOWLEDGMENT

State of California)
County of Orange) ss

On this 2nd day of August, in the year 1989, before me, Catherine A. McLaugherty, a notary public, personally appeared ~~CHARLES T. GRISWOLD, VALERIE L. GRISWOLD~~ and FRANK J. MISTRETТА and RALPH T. ROACH, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to this instrument, and acknowledged that they executed it.

[Notarial Seal]

Catherine A. McLaugherty
Notary Public for the
State of California
My commission expires:
June 22, 1990



COASTAL COMMISSION

EXHIBIT # 3
PAGE 12 OF 30

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:
C & M DEVELOPMENT, LLC.
791 Barracuda
Laguna Beach, CA. 92651

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



6.00

19980696919 1:29pm 10/15/98

004 18014638 18 28

G02 1 05 55.00 6.00 0.00 0.00 0.00 55.00 0.00

0.00 0.00

Space Above This Line for Recorder's Use Only

A.P.N.:

056-180-44

Order No.: 7806790

Escrow No.: 10957-JF

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS: COUNTY \$110.00

computed on full value of property conveyed, or
computed on full value less value of liens or encumbrances remaining at time of sale,
unincorporated area; [X] City of LAGUNA BEACH, and

780679054

FOR A VALUABLE CONSIDERATION, Receipt of which is hereby acknowledged,
CHARLES T. GRISWOLD and VALERIE L. GRISWOLD, husband and wife as joint tenants

hereby GRANT(S) to Timothy J. McMullen and Deborah Johnson McMullen, husband and wife as
the following described property in the City of LAGUNA BEACH, County of Orange State of California; joint tenants

The Northwesterly half of Lot 29 in Tract 970, in the City of Laguna Beach, County of Orange County, State of
California, as per map recorded in Book 31, pages 5 and 6, of Miscellaneous Maps, records of said Orange County.
Said land is shown as a portion of Parcel 2 of Lot Line Adjustment 97-07, Recorded
October 15, 1998, as Instrument Number 98-696383 Official Records.

Charles T. Griswold
CHARLES T. GRISWOLD

Valerie L. Griswold
VALERIE L. GRISWOLD

Document Date: October 9, 1998

STATE OF CALIFORNIA)
COUNTY OF Orange)

On 10-12-98 before me, J. Fontaine

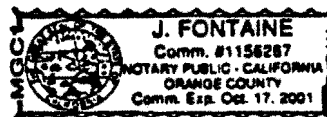
personally appeared Charles T. Griswold and Valerie L. Griswold

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Signature

This area for official notarial seal.



COASTAL COMMISSION

EXHIBIT # 3
PAGE 13 OF 30

Mail Tax Statements to: SAME AS ABOVE or Address Noted Below

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:
TIMOTHY J. MCMULLEN
DEBORAH JOHNSON MCMULLEN
709 Devis Way
Laguna Beach, CA. 92651

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder



9.00

19980696920 1:29pm 10/15/98

004 18014638 18 28

G02 2 55 0.00 6.00 3.00 0.00 0.00 0.00 0.00

0.00 0.00

Space Above This Line for Recorder's Use Only

A.P.N.:

056-180-58
056-180-44

Order No.: 8808256

Escrow No.: 11548-JF

GRANT DEED

RECEIVED
MAR 14 2000
CALIFORNIA
COASTAL COMMISSION

7806790-504
105-0629082

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS: COUNTY LA (10) - NO
computed on full value of property conveyed, or
computed on full value less value of liens or encumbrances remaining at time of sale,
unincorporated area; [X] City of LAGUNA BEACH, and

consideration -
need to confirm
title

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
TIMOTHY J. MCMULLEN and DEBORAH JOHNSON MCMULLEN, husband and wife as Joint Tenants

hereby GRANT(S) to JAMES E. CONRAD and KATHY M. CONRAD, HUSBAND AND WIFE AS TO AN
UNDIVIDED 50% INTEREST

the following described property in the City of LAGUNA BEACH, County of Orange State of California:

"see Exhibit A"

TIMOTHY J. MCMULLEN

DEBORAH JOHNSON MCMULLEN

Document Date: October 9, 1998

STATE OF CALIFORNIA)
COUNTY OF Orange) SS

On 10/9/98 before me, J. Fontaine
personally appeared Timothy J. McMullen and Deborah Johnson McMullen

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

This area for official notarial seal.



COASTAL COMMISSION

EXHIBIT # 3
PAGE 14 OF 30

Mail Tax Statements to: SAME AS ABOVE or Address Noted Below

Exhibit B p 7 of 11

LEGAL DESCRIPTION

EXHIBIT "A"

Lot 30 and the Northwestern Half of Lot 29 in Tract 970, in the City of Laguna Beach, County of Orange, State of California, as per map recorded in Book 31, Pages 5 and 6 of Miscellaneous Maps, records of said Orange County

Excepting that portion, if any, lying below or seaward of the line of ordinary high tide of the Pacific Ocean.

Also known as: 31 Bay Drive, Laguna Beach CA 92677

Said Land is Shown as Parcel 2 of Lot Line Adjustment LL-97-07
Recorded October 15, 1998 as Instrument Number 98-696383 Official Records.

RECEIVED
MAR 14 2000
CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # 3
PAGE 15 OF 30

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:
C & M DEVELOPMENT
791 Barracuda Way
Laguna Beach, CA. 92651

Recorded in the County of Orange, California

Gary L. Granville, Clerk/Recorder



19980696921 1:29pm 10/15/98

004 18014638 18 28

G02 3 55 0.00 6.00 6.00 0.00 0.00 0.00 0.00

0.00 0.00

RECEIVED
MAR 14 2000
CALIFORNIA
COASTAL COMMISSION

Space Above This Line for Recorder's Use Only

A.P.N.:

066-180-88
056-180-44

Order No.: 8808256

Escrow No.: 11548-JF

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS: COUNTY LA
computed on full value of property conveyed, or
computed on full value less value of liens or encumbrances remaining at time of sale,
unincorporated area; City of LAGUNA BEACH, and

No consideration -
Grantors hold the
same percentage
interest in the limited
liability company

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
TIMOTHY J. MCMULLEN and DEBORAH JOHNSON MCMULLEN, husband and wife as an undivided 50% interest
and JAMES E. CONRAD and KATHY M. CONRAD, husband and wife as to an UNDIVIDED 50% interest
as tenants in common

Top 06/09/98

hereby GRANT(S) to C & M DEVELOPMENT, LLC., a Limited Liability Company

the following described property in the City of LAGUNA BEACH, County of Orange State of California;

" see Exhibit A"

TIMOTHY J. MCMULLEN

DEBORAH JOHNSON MCMULLEN

JAMES E. CONRAD

KATHY M. CONRAD

COASTAL COMMISSION

Document Date: October 9, 1998

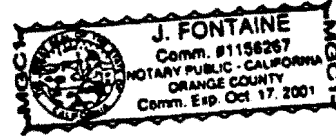
EXHIBIT # 3
PAGE 16 OF 30

STATE OF CALIFORNIA)
COUNTY OF Orange)
On 10/9/98 before me J. Fontaine

personally appeared Timothy J. McMullen and Deborah Johnson McMullen
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



Mail Tax Statements to: SAME AS ABOVE or Address Noted Below

Exhibit B P.T. 11

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 9807

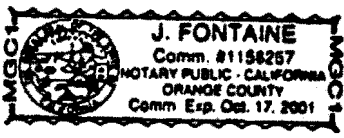
State of California

County of Orange

On 10/12/98 before me, J. Fontaine
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James A. Conrad and Kathy M. Conrad
NAME(S) OF SIGNER(S)

personally known to me - OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
[Signature]
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

COASTAL COMMISSION

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

EXHIBIT # 3

SIGNER(S) OTHER THAN NAMED ABOVE 30

Exhibit "B" p. 12 of 11

LEGAL DESCRIPTION

EXHIBIT "A"

Lot 30 and the Northwesterly Half of Lot 29 in Tract 970, in the City of Laguna Beach, County of Orange, State of California, as per map recorded in Book 31, Pages 5 and 6 of Miscellaneous Maps, records of said Orange County

Excepting that portion, if any, lying below or seaward of the line of ordinary high tide of the Pacific Ocean.

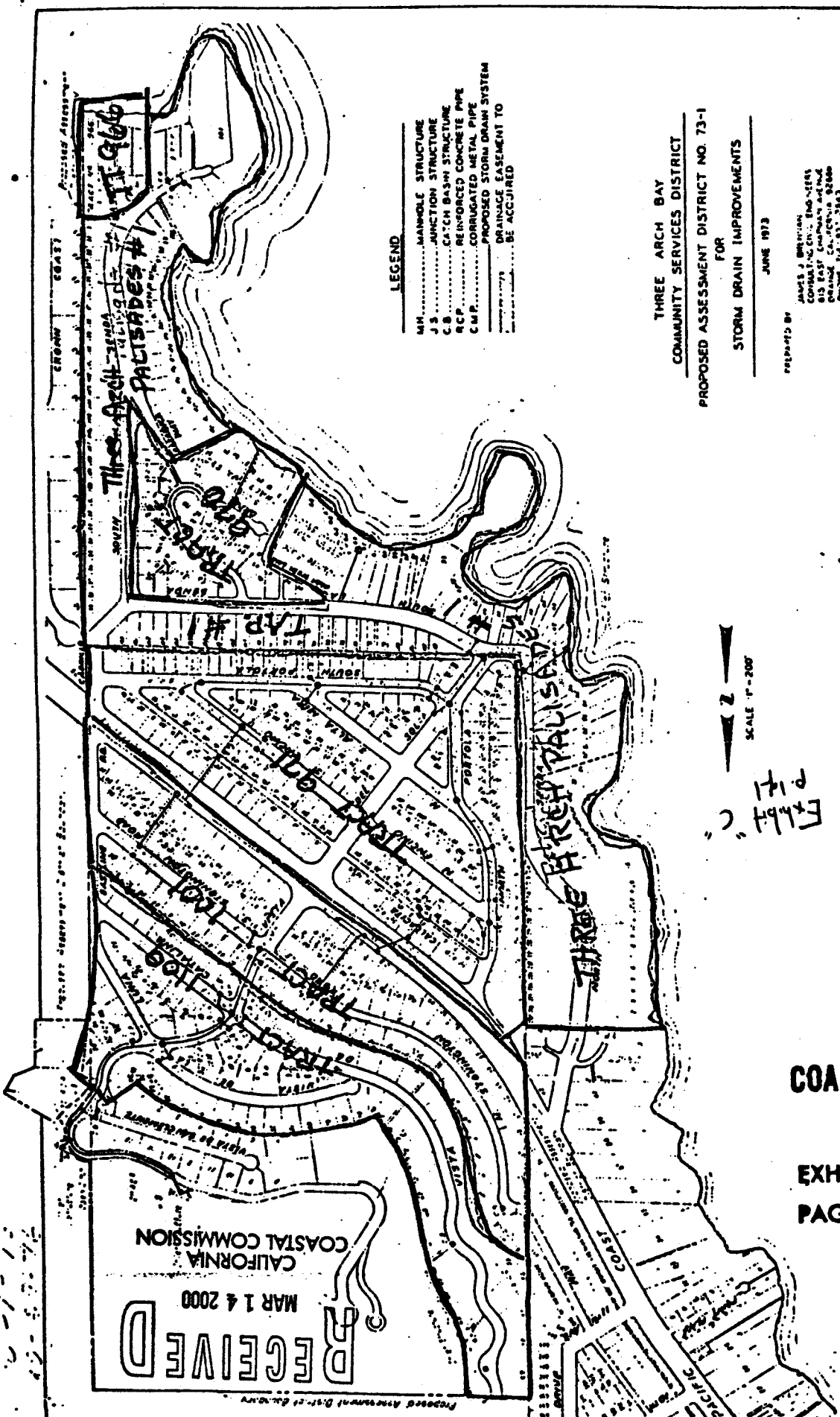
Also known as: 31 Bay Drive, Laguna Beach CA 92677

**Said Land is Shown as Parcel 2 of Lot Line Adjustment LL-97-07
Recorded October 15, 1998 as Instrument Number 98-696383 Official Records.**

COASTAL COMMISSION

**EXHIBIT # 3
PAGE 18 OF 30**

Exhibit B p 11 of 11



- LEGEND**
- MH.....MANHOLE STRUCTURE
 - JS.....JUNCTION STRUCTURE
 - CB.....CATCH BASIN STRUCTURE
 - RCP.....REINFORCED CONCRETE PIPE
 - CMP.....CORRUGATED METAL PIPE
 -PROPOSED STORM DRAIN SYSTEM
 -DRAINAGE EASEMENT TO BE ACQUIRED

THREE ARCH BAY
 COMMUNITY SERVICES DISTRICT
 PROPOSED ASSESSMENT DISTRICT NO. 73-1
 FOR
 STORM DRAIN IMPROVEMENTS
 JUNE 1973

PREPARED BY
 JAMES J. BRITTON
 CONSULTING ENGINEER
 10101 CALIFORNIA AVENUE
 PASADENA, CALIFORNIA 92306
 PHONE 714-911-2803

SCALE 1"=200'

FILED "C"
 P. 141

RECEIVED
 MAR 14 2000
 CALIFORNIA
 COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # **3**
 PAGE **19** OF **30**

State of California, }
County of Orange, } ss.

On this 20th day of November, 1931, before me, F. C. Elliott, a Notary Public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared M. A. Gardner, known to me to be the President, and H. M. Douglas, known to me to be the Asst. Secretary of the corporation described in and that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

((SEAL))

F. C. Elliott Notary Public

in and for said county and state

Filed for record at the request of Grantee, Nov. 21, 1931, at 35 min. past 8 o'clock A. M., and recorded in Book 522, page 106, Official Records of Orange County, California, Justine Whitney, Recorder, by Ruby Cameron, Deputy Recorder.

Dorothy Dresser COMPARED Ada Robinson

--- o o ---

26212

COASTAL COMMISSION

EXHIBIT # 3
PAGE 20 OF 30

GRANT DEED

THE FIRST NATIONAL BANK OF BEVERLY HILLS, a National Banking Association, with its principal place of business in the City of Beverly Hills, State of California, for and in consideration of Ten Dollars (\$10.00) to it in hand paid, receipt of which is hereby acknowledged, does hereby grant to MALLAM COOLEY, a married man, all that real property situate in the County of Orange, State of California, described as follows, to-wit:

Lot Two (2), Tract Nine Hundred Seventy (970), as per map recorded in Book 31, pages 5 and 6, of Miscellaneous Maps, in the office of the County Recorder of said County.

There is also hereby conveyed as an appurtenance to the hereinbefore described property an easement for the use and convenience of the grantee in common with the record owners of lots in Tracts 970 and 971, and the Northeast Quarter (NE¹/₄) of Section 8, Township 8 South, Range 8 West, S. B. S. & M., over that portion of Lots 25 to 32, inclusive of said Tract 970, between the foot of the slope and the line of ordinary high tide of the Pacific Ocean, as shown on a map of Tract 970, hereinbefore referred to.

And, reserving, however, unto the Seller, its successors and assigns an easement and right of way over and across said premises for the purpose of constructing, maintaining, and repairing pipe lines for water and gas and pole lines for the transmission of electrical energy or for telephone and telegraph lines.

Subject to taxes for the fiscal year 1931-32, and conditions, restrictions, reservations, easements, rights, and rights of way of record.

This property is conveyed and this conveyance is accepted subject to the following conditions and restrictions which shall apply to and be binding upon the said Grantee, his heirs, devisees, executors, administrators and assigns:

1. That said real property shall be used for no other purpose than for the erection and maintenance thereon of a first class single private residence, apartment houses, flats, double bungalows and business structures being expressly excluded. Any building to be used for said dwelling purposes may have in connection therewith the customary outbuilding and private garage, but outside toilets shall not be erected or maintained on said property.

2. That said real property shall never be conveyed to or come into possession of any person except of the white or Caucasian race, nor occupied by such person unless in the employ of the owner or his tenants residing thereon.

Exh. + D
P 244

3. All exterior building plans for a building or structure of any kind to be erected, placed or maintained upon said real property, together with the accompanying specifications, shall be submitted for approval to a committee to be known as an "Architectural Committee"; said Committee shall consist of three persons, to be appointed by Mallam Cooley, his heirs, executors, administrators, successors and/or assigns, which said committee shall serve without compensation and without liability of any kind, nature or description whatsoever, either upon themselves or the said Mallam Cooley.

Mallam Cooley, his heirs, executors, administrators, successors and/or assigns, shall have full power to make appointments from time to time to fill any vacancies in the membership of said committee and any written instrument of appointment of such committee, whether original or to fill vacancy, duly executed, may be recorded and when recorded shall impart to all persons notice of the matters therein stated. Provided, however, that upon sale by grantor of all lots in said Tract Nine Hundred Seventy (970), said Grantor, or Mallam Cooley, his heirs, executors, administrators, successors and/or assigns shall not be required further to appoint said committee and shall have no liability by reason thereof, and upon their failure to do so, said committee shall be appointed by a majority of the house owners in said Tract.

No structure of any kind shall be erected or maintained upon said real property until the plans therefor and the location of said structure on said real property shall receive the written approval of at least two members of said committee, after the written instrument of appointment be recorded, and such written approval may be recorded and shall be conclusive evidence of such approval, provided, however, that said Mallam Cooley, his heirs, executors, administrators, successors and/or assigns and/or said committee shall not be responsible for any structural defects in said plans and/or specifications nor in any building or structure erected in accordance with such plans and/or specifications.

4. That goats or hogs shall not be maintained on said real property and that chickens or rabbits shall not be raised for commercial purposes.

5. That old houses, buildings or structures of any kind or description shall not be moved onto said real property or any part thereof.

6. Provided, however, that each and all of the conditions, covenants and/or restrictions contained in paragraphs 1, 4, and 5, shall absolutely terminate on and after the 31st day of December, 1960, and the conditions in paragraph 3 as to any obligations of grantor and/or Mallam Cooley, to appoint said committee shall absolutely terminate on and after the 31st day of December, 1940, and the conditions and covenants in paragraph 2 shall be perpetual.

Each of the restrictions, covenants and conditions hereinbefore provided are independent of each and all other restrictions herein and it is hereby agreed that if any thereof be declared void, or for any reason become invalid and/or unenforceable, each and all of the remaining restrictions herein shall be and remain in full force and effect the same as if each and all of the restrictions so declared void or otherwise become invalid and/or unenforceable had not been a part of the original restrictions herein. It is hereby further agreed that the sale of any and all of the said lots in the said Tract Nine Hundred Seventy (970), are subject to all changes as to the use, sale or other handling as are beyond the control of the grantor.

The breach of any of the foregoing conditions, restrictions and covenants by the grantor, his heirs, executors, administrators, successors and/or assigns, shall cause said real property, together with the appurtenances thereto belonging to be forfeited to and revert to the grantor or its successors in interest or assigns, who shall have the right of immediate reentry upon said real property in the event of any such breach. The failure of grantor, its successors or assigns, to object to any violation of any of the provisions hereof, shall not act as a waiver in respect thereto.

COASTAL COMMISSION

EXHIBIT #

PAGE 21 OF 30

Exhibit
D

p 34

Provided, however, that the breach of any of said conditions and/or restrictions and/or covenants or any reentry by reason of such breach shall not defeat or affect or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon said real property or any part thereof. Provided, however, that the breach of any of said covenants, conditions, and/or restrictions may be enjoined, abated, or remedied by appropriate proceedings notwithstanding the lien of or existence of the trust deed or mortgage, and provided, further, that irrespective of said deed or mortgage each and all of the said conditions, restrictions and/or covenants shall remain at all times in full force and effect as against and shall be binding upon and in full force and effect, against and shall be part of the estate acquired by anyone and the successors, assigns, heirs, administrators, and/or executors of anyone acquiring title under and/or through any such deed of trust or mortgage and/or against anyone acquiring title to said real property in any manner whatsoever, and a forfeiture and reentry may be enforced following any breach by them or any of them.

By acceptance of this deed, the grantee, his heirs, administrators, executors, assigns and/or successors shall be conclusively presumed to have agreed and it is hereby agreed that all and singular, the reservations, conditions, covenants and restrictions herein contained shall be and are covenants running with the land, in favor of the grantor, its successors and/or assigns.

The term "Grantee" wherever used in this Deed shall include the plural as well as the singular number, and the masculine and feminine as well as the neuter gender.

TO HAVE AND TO HOLD to said grantee, his heirs or assigns.

IN WITNESS WHEREOF, said The First National Bank of Beverly Hills has caused this instrument to be executed by its Vice President, and Asst. Trust Officer thereunto duly authorized, this 16th day of November, 1931.

COASTAL COMMISSION

EXHIBIT #

PAGE 22

3
30

THE FIRST NATIONAL BANK OF BEVERLY HILLS,
By Chas. E. Quirollo, Vice-President
By Chester A. Gausman Asst. Trust Officer

State of California, }
County of Los Angeles, } ss.

On this 16th day of November, 1931, before me, D. M. Jarrett, a Notary Public in and for said County, personally appeared Chas. E. Quirollo, known to me to be the Vice-President, and Chester A. Gausman, known to me to be the Asst. Trust Officer of The First National Bank of Beverly Hills, the Association that executed the within and foregoing instrument, and known to me to be the persons who executed the within instrument on behalf of the association therein named, and acknowledged to me that such association executed the same.

WITNESS my hand and official seal.

((SZAL))

D. M. Jarrett Notary Public
in and for said county and state
My commission expires Nov. 15, 1932.

Recorded at request of Grantee, Nov. 21, 1931, at 45 min. past 8 A. M., in Book 522, page 107, Official Records of Orange County, Justine Whitney, County Recorder, Ruby Cameron, Deputy.

Dorothy Dresser COMPARED Ada Robinson

EXHIBIT
D
P 464

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202



ROBERT C. HIGHT, Executive Officer
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone 1-800-735-2022
from Voice Phone 1-800-735-2022

Contact Phone: (916) 574-1822
Contact FAX: (916) 574-1825
E-Mail Address: smithj@slc.ca.gov

RECEIVED

MAR 14 2000 January 14, 1998

CALIFORNIA
COASTAL COMMISSION

File Ref: SD 97-12-15.4

COASTAL COMMISSION

State Lands Comm. Letter

5-97-371

James Conrad, Architect
1590 S. Coast Hwy. Suite 17
Laguna Beach CA 92651

EXHIBIT # 22

PAGE 1 OF 2

Dear Mr. Conrad:

SUBJECT: Coastal Development Project Review for Proposed Retaining Wall
and Grading, Three Arch Bay, Laguna Beach

This is in response to your request for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

The facts pertaining to the project, as we understand them, are these:

You propose to construct a retaining wall, fill and regrade an existing slope, and construct a subdrain system in the bluff adjacent to Lots 26, 27, 28, 29 and 30 of Tract 970, M.M. 31-5, Orange County, adjacent to Three Arch Bay, also referred to as 23, 25, 27, 29 and 31 Bay Drive in Laguna Beach. The work is needed to protect the bluff top road and reestablish the bluff due to the effects of a landslide. These lots run some 200' parallel to the ocean and are presently undeveloped. There are existing residences on the lots both up and down coast. Based on the Concept Grading Plan dated September 3, 1997 and revised September 11, 1997, the retaining wall will be located between the 50' and 85' contour and the subdrain system will terminate at the 10' contour. The plan identifies an existing recreation easement. This easement is more specifically described in the title report as a 1932 recorded easement, dedicated and conveyed to the record owners of each and every lot in Tract 970 and 971, and/or their successors in interest, as being "... an easement over that portions of Lot 25 and Lots 27 to 32, both inclusive, of said Tract 970, between the foot of the slope and the line of ordinary high tide of the Pacific Ocean as shown on ..., for ingress and regress over and across, conduct of lawful sports upon, and for the free use and enjoyment of the record owners of each and every of said lots".

As to that portion of the project involving the proposed retaining wall, it does not

COASTAL COMMISSION

EXHIBIT # 3

PAGE 23 OF 30

Exhibit E p1/2

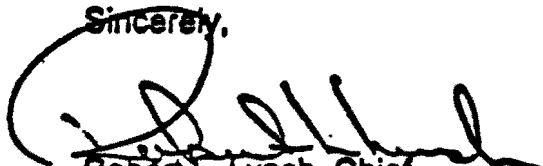
appear that it will occupy sovereign lands or intrude into an area that is subject to the public easement in navigable waters.

The subdrain system will involve the underground placement of four 12" Corrugated Metal Pipes which will drain into four eight-foot diameter outlet structures surrounded by rip rap. The outlet structures appear to terminate at or about the 10' elevation. We do not at this time have sufficient information to determine whether this portion of the project will intrude upon state sovereign lands or interfere with other public rights. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. This conclusion is based on the size and location of the property, the character and history of the adjacent development, and the minimal potential benefit to the public, even if such an inquiry were to reveal the basis for the assertion of public claims and those claims were to be pursued to an ultimate resolution in the state's favor through litigation or otherwise.

Accordingly, the CSLC presently asserts no claims that the subdrain system intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

If you have any questions, please contact Jane E. Smith, Public Land Management Specialist, at (916) 574-1892.

Sincerely,


Robert L. Lynch, Chief
Division of Land Management

5-97-371

COASTAL COMMISSION
State Lands Comm. Letter

EXHIBIT # 22
PAGE 2 OF 2

COASTAL COMMISSION

EXHIBIT # 3
PAGE 24 OF 30

Exhibit E p 24-2

TOTAL ENGINEERS
 139 AVENIDA NAVARRO
 SAN CLEMENTE, CALIFORNIA 92672
 (714) 492-8586
 FAX (714) 458-8825

SHEET NO. 5 OF 6
 CALCULATED BY MSF DATE 12-11-97
 CHECKED BY _____ DATE _____
 SCALE 1"=50'

RECEIVED
 MAR 14 2000

5-97-371
 COASTAL COMMISSION
 current mean high
 tide line survey

CALIFORNIA
 COASTAL COMMISSION

EXHIBIT # 23

PAGE 1 OF 1

COASTAL COMMISSION

SCALE: 1"=50'

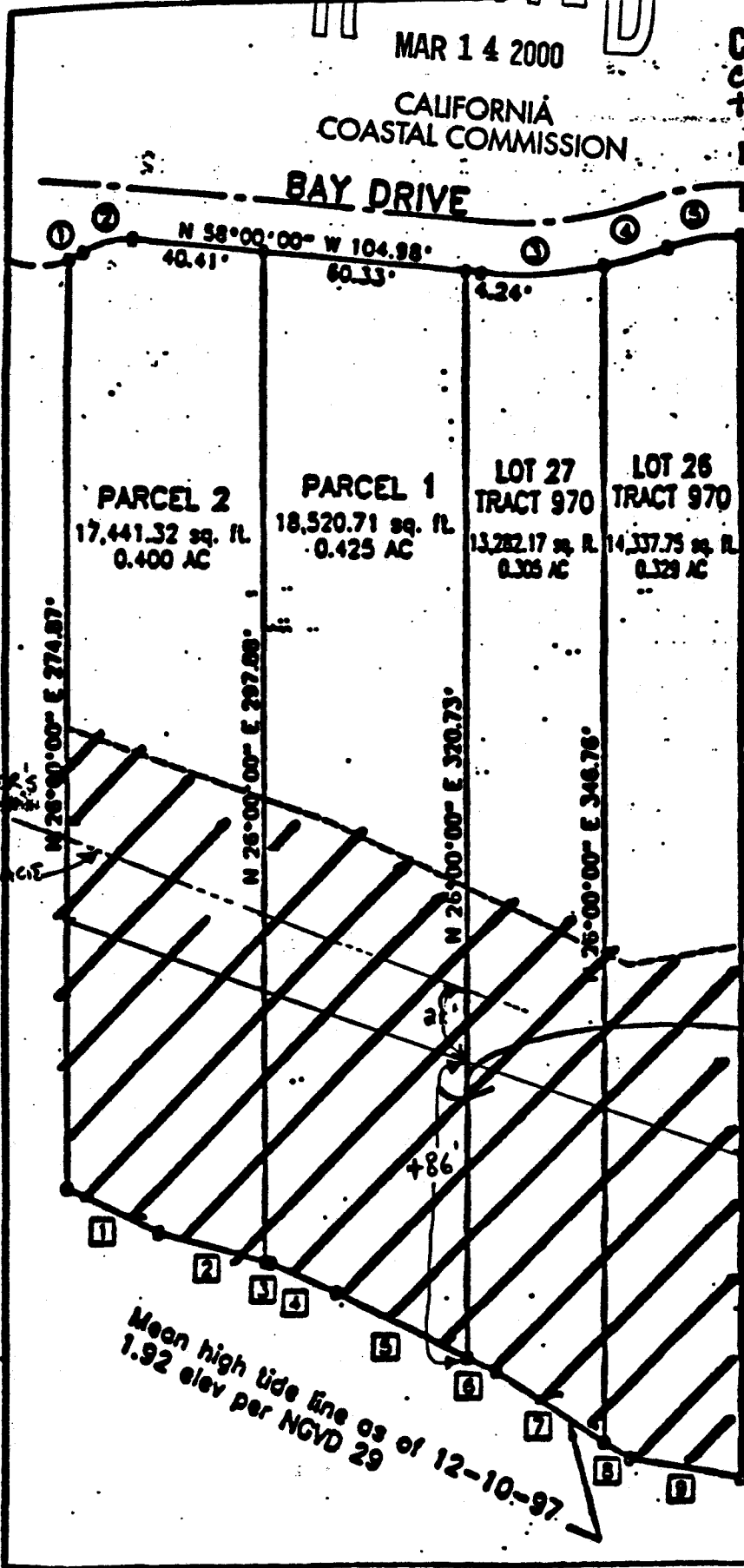


EXHIBIT # 3
 LINE TABLE
 PAGE 15 OF 30

LINE	BEARING	DISTANCE
1	N 38°11'48" W	30.84
2	N 48°35'40" W	33.20
3	N 48°35'40" W	2.00
4	N 39°49'20" W	21.34
5	N 38°43'33" W	43.22
6	N 38°43'33" W	8.14
7	N 30°44'18" W	38.09
8	N 30°44'18" W	8.89
9	N 53°48'18" W	3.10

○ CURVE TABLE

ARC	DELTA	RADIUS	LENGTH
1	11°08'55"	25.00	4.85
2	36°52'10"	25.00	18.09
3	18°27'36"	125.00	35.81
4	8°50'24"	125.00	19.29
5	22°36'13"	85.00	21.73

RECREATIONAL
 EASEMENT AREA

ORIGINAL SURVEY
 LINE OF
 ORDINARY
 HIGH TIDE



Clay S. Meum
 Clay S. Meum LS 4384

Mean high tide line as of 12-10-97
 1.92 elev per NGVD 29



CONRAD DEVELOPMENT
All views looking north
across 23,25 and 29 Bay
Drive. Sandbags and
stakes show slope/sand
interface.

#1 LOW TIDE

RECEIVED
MAR 14 2000

CALIFORNIA
COASTAL COMMISSION



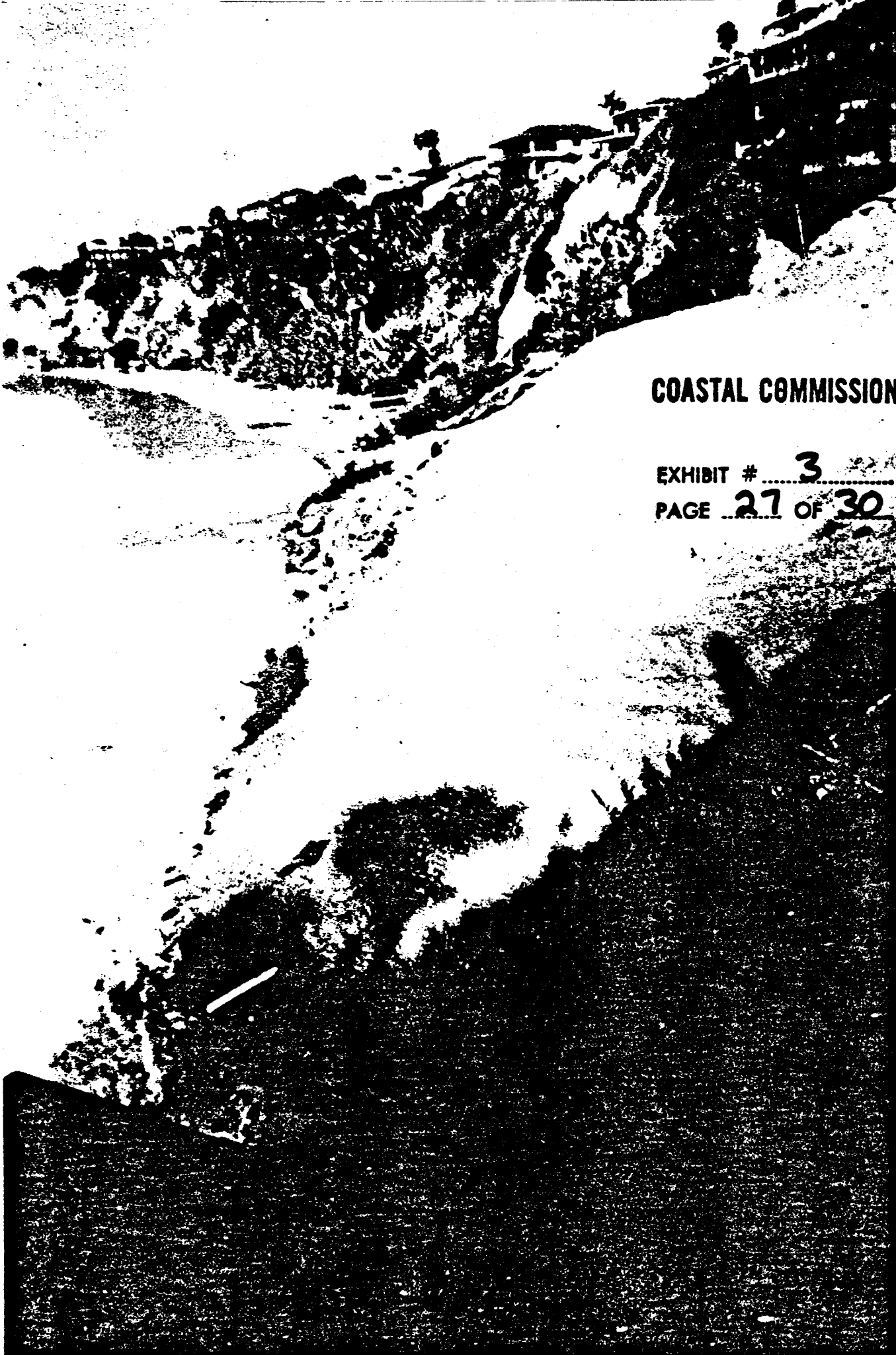
#2 HIGH TIDE

If accurate information
was supplied to Coastal
Commission, how can the
high tide line be 5 to
above interface?
The 12/97 Survey and
Staff Report indicate
over 100' clearance
between mean high tide
and interface.

#3 HIGH TIDE
RECEDING

COASTAL COMMISSION

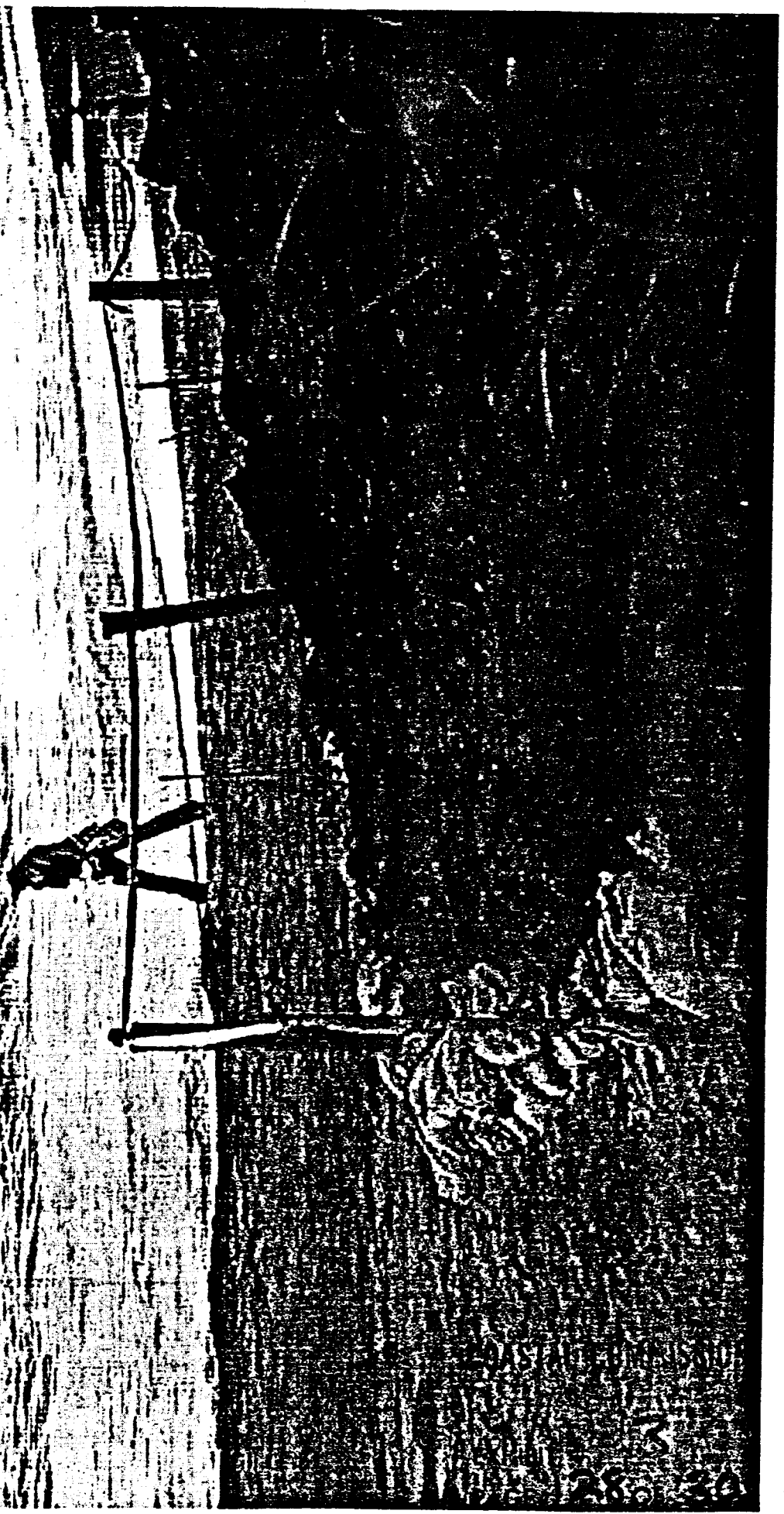
EXHIBIT # 3
PAGE 26 OF 30



COASTAL COMMISSION

EXHIBIT # 3
PAGE 27 OF 30

DECEMBER
MAR 14 2000
PENNSYLVANIA
ELECTION COMMISSION



March 13, 2000

RECEIVED
MAR 14 2000

Karl Schwing, Coastal Program Analyst
CALIFORNIA COASTAL COMMISSION [SOUTH COAST OFFICE]
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

CALIFORNIA
COASTAL COMMISSION
Via Hand Delivery

Re: Pending Requests for Revocation of Coastal Development Permits R-5-97-371, R-5-98-020, R-5-98-064, R-5-98-178 (23-31 Bay Drive, Laguna Beach, Orange County, CA).


Dear Karl/Coastal Commission:

Thank you for your March 8, 2000 letter. Therein you ask that the names and contact information for the signatories to the Revocation Request letter submitted to your office be detailed. You also asked in your letter for clarification of who will formally represent the signatories to the Revocation Request letter.

Please note, here are the names and addresses for each of the five signatories to the Revocation Request:

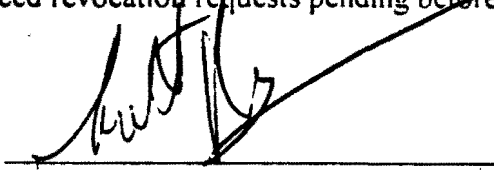
1. Craig Brown [9 Vista de Catalina, Laguna Beach, CA 92651-6780].
2. Tim Hamchuck [17 So. Stonington Rd., Laguna Beach, CA 92651-6780].
3. David Emmes [39 N. La Senda Drive, Laguna Beach, CA 92651-6780].
4. John Burns [8 So. Stonington Rd, Laguna Beach, CA 92651-6780].
5. Tom Hopper [8 N. Stonington Rd, Laguna Beach, CA 92651-6780].

The following above-named signatories hereby appoint Scott Runyon [13 Bay Drive, Laguna Beach, CA 92651-6780] to formally represent them and to give to Mr. Runyon the power to bind them in matters related to the Revocation Request [this appointment of representation is for the limited purpose, and only for the limited purpose, of handling all matters related to the Revocation Requests currently pending before the Coastal Commission regarding 23-31 Bay Drive, Laguna Beach, CA]:

	<u>NAME</u>	<u>ADDRESS</u>	COASTAL COMMISSION
1.	 THOMAS J. HOPPER	E N. STONINGTON	EXHIBIT # <u>3</u> PAGE <u>29</u> OF <u>30</u>
2.	DAVID EMMES	39 N La Senda	

	<u>NAME</u>	<u>ADDRESS</u>
3.	Tia Hamchute	175- Stonington
4.	John L. Brown	851 Stonington Rd
5.		

I hereby accept the above-described limited appointment of representation in this matter for the specific purpose of representing the signatories above in matters relating to the above-referenced revocation requests pending before the Coastal Commission:



Scott Runyon
 13 Bay Drive
 Laguna Beach, CA 92651-6780
 949.499.9287 phone
 949.499.4298 fax

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 30 OF 30

March 19, 2000

Karl Schwing, Coastal Program Analyst
 CALIFORNIA COASTAL COMMISSION [SOUTH COAST OFFICE]
 200 Oceangate, 10th Floor
 Long Beach, CA 90802-4302

Via Fax (562) 590-5084 (seven total pages)

Re: Supplemental Information Supporting Pending Requests for Revocation of Coastal Development Permits R-5-97-371, R-5-98-020, R-5-98-064, R-5-98-178 (23-31 Bay Drive, Laguna Beach, Orange County, CA).

Dear Karl/Coastal Commission:

This letter is intended to further support the existing requests for revocation of the above-referenced permits.

I. Those Requesting Revocation Hold the Easement Because They Own Property Within "the Northeast Quarter of Section 8, Township 8 South, Range 8 West, of the San Bernadino Base and Meridian".

Enclosed herewith as Exhibit "A" (two pages) is a copy of the original Dedication of Beach Privileges from Lot 26 (23 Bay Drive) which helped establish the easement in question. You will note that the easement is granted to the property owners within Tracts 970 and 971, as well as to property owners within "the Northeast Quarter of Section 8, Township 8 South, Range 8 West, S.B.B.M." This exact same easement dedication is recorded on the original plot map of Tract 970 which I have already submitted to you. Each of the signatories of the revocation request is a property owner within "the Northeast Quarter of Section 8, Township 8 South, Range 8 West, S.B.B.M." and as such holds an easement over the properties at issue. Enclosed herewith as Exhibit "B" (one page) is a copy of the United States Department of the Interior Geological Survey which includes the relevant area. Note that the "Northeast Quarter of Section 8" includes large portions of the Three Arch Bay community on both sides of Pacific Coast Highway, and includes the lots of all the signatories to the revocation request.

II. The Executive Director Has the Independent Authority to Revoke on His Own.

Note that Coastal Administrative Regulation §13106 states: "[t]he Executive Director may initiate revocation proceedings on his or her own motion when grounds for revocation have been established pursuant to the provisions of Section 13105". Section 13105(b) states that revocation is appropriate where notice was not properly provided. Thus, in a sense it is irrelevant *who* requests revocation. Once it has been established that proper notice was not provided pursuant to §13105(b), revocation should be granted. The Executive Director can and should revoke these

Exhibit 4: REVOCATION REQUESTERS
 Third Letter

COASTAL COMMISSION
 REVOCATION
 REQUEST
 EXHIBIT # 4
 PAGE 1 OF 7

permits on own his own motion. In any event, as noted above several easement-holders have formally requested revocation.

III. Had the Easement-Holders Been Properly Noticed, Several Items Within the Coastal Commission Combined Staff Report for the Permits Would Have Been Modified.

I have reviewed the Combined Staff Report and Addendum previously filed in this case. If the easement-holders had been given proper notice they would have presented facts and evidence which would have altered several items and/or conditions contained with the Coastal Commission Combined Staff Report. The Combined Staff Report is heavily relied upon by the Coastal Commission in granting or denying or imposing further conditions upon a permit application. If the Combined Staff Report had included input from the easement-holders, the Report itself would have been substantially altered and the conclusions drawn by the Coastal Commission, based upon the Staff Report, would have been markedly different.

A. Legal Ability of Applicants to Carry Out the Project.

One of the conditions to the issuance of the permits in question was that the applicant provide evidence to the Coastal Commission that he had the legal ability to carry out the proposed project, "including those portions of the project located on land not owned by the applicant nor which the applicant has a fee interest in nor the legal right to use". (Combined Staff Report, page 8, paragraph "9"). Had the easement-holders been heard, they would have presented evidence that they hold an easement over portions of the properties upon which the applicant received a permit to construct a toe wall and otherwise grade, compact, re-compact, landscape, and construct drainage.

Note the easement-holders hold their easement "as shown on a map of said Tract 970". (See Exhibit "A", page 2). The easement is recorded on the Tract 970 plot map with defined and marked lines and measured boundaries. [I previously submitted to you a large, full size map of Tract 970]. Pursuant to the Tract 970 plot map, the easement northern boundary line sits approximately between 139 feet and 209 feet seaward of Bay Drive. The Staff Report itself states the projects extend "220 to 250 feet seaward of Bay Drive" (Combined Staff Report, page 24, paragraph "4"). Thus, the easement-holders would have provided facts and evidence (the recorded Tract 970 map) which would have established that the projects encroach upon their easement and thus the applicants did not and do not have the legal right to carry out the project as approved.

B. Erosion Process Would Occur More Quickly Than Staff Report Concluded.

The Combined Staff Report assumed, based upon evidence submitted by the applicants, that the high tide line sat over 100 feet beyond the base of the projects. Using the assumptions of the applicants' coastal engineering assessment, the Staff Report concluded:

"It is not likely, therefore, that the proposed toe protection wall would be exposed

COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 7

during the lifetimes of the proposed homes, based on the low historical erosion rates identified in the coastal engineering assessment. The wall would be exposed much quicker, however, if erosion rates accelerated due to abnormally high waves resulting from unusually strong storm events". (Combined Staff Report, page 22).

However, the easement-holders would have presented evidence that the high-tide line sits substantially closer (approximately 86 feet closer)(see Exhibit "A" and Tract 970 map previously submitted) to the base of the projects and the toe wall than the applicants and their experts represented. This would imply a substantially higher erosion rate than the Combined Staff Report concluded (since the base of the projects sit only 21 feet away from the high-tide line) and would have caused the Commission to require the projects and toe wall be moved further away from the high-tide line to minimize the erosion problem created by the projects.

IV. The Projects as Approved Violate Provisions of the Coastal Act.

The easement-holders would have, if properly noticed, provided facts and evidence that the projects, as currently designed and approved, violate specific provisions of the Coastal Act

A. Projects as Designed Violate §30251 of the Coastal Act.

§30251 requires permitted development to "minimize the alteration of natural land forms". The easement-holders would have presented evidence that the slope and toe wall at issue at the base of the projects, as designed, did not minimize the alteration of natural land forms as required by §30251.

The Tract 970 map marks exactly where the toe of the slope naturally sat some years ago. The Combined Staff Report itself notes several *unnatural* occurrences over the past 20 years, especially in 1992 when an old house at 23 Bay Dive was demolished. (See Combined Staff Report, page 14, paragraph "B"). The easement-holders, if properly noticed, would have presented evidence that the 1992 demolition of the former 23 Bay Drive home was illegally accomplished without permits and that a lawsuit ensued over the fact that the illegal demolition contributed to the degradation of the slope. The easement-holders would have argued that the *natural* land form of the permitted area included the toe of the slope sitting as it is marked on the Tract 970 plot map and that a sandy beach existed in front of the original, natural slope toe. The plot map shows the natural toe of the slope 30-40 feet north of where it sits under the current permitted plans. The easement-holders would argue that the slope was unnaturally pushed seaward by unnatural, man-made occurrences (such as the 1992 improper demolition). Thus the approved toe wall, and the developers efforts to grade, compact, re-compact, and landscape this man-created extension of the slope, substantially interfere with the natural land forms of the area in violation of §30251.

B. Projects as Designed Violate Section 30253(2) of the Coastal Act.

§30253(2) requires development to "neither create nor contribute significantly to

COASTAL COMMISSION

EXHIBIT # 4
PAGE 3 OF 7

erosion,...or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs". The projects as designed place tons of dirt and construct a toe wall over an area which naturally was a sandy beach as evidenced on the Tract 970 plot map. The projects as designed sit only approximately 21 feet from the high-tide line, as evidence by the Tract 970 plot map. As such, the projects as designed alter the natural landform of the area and, by sitting so close to the high-tide line, significantly contribute to erosion. In fact, since the projects have been recently graded out on the beach as designed significant erosion along the toe of the slope and adjoining lots has occurred.

V. Conclusion: The Permits Must be Revoked.

The easement-holders are interested parties in the properties at issue. The permits previously granted directly impact and impinge upon their easement rights over the subject properties. The permit applicants should have listed the easement holders as interested parties within their applications, and by doing so would have allowed the easement-holders to bring the above-mentioned issues, facts and evidence to the attention of the Coastal Commission. With the facts and evidence which would have been presented by the easement-holders, the Coastal Commission would not, as described above, have allowed the applicants to move forward with their projects as currently designed. As such, the permits must be revoked.

Sincerely,



Scott Runyon
13 Bay Drive
Laguna Beach, CA 92651-6780
949.499.9287 phone
949.499.4298 fax

P.S. [If for any reason you do not believe that a revocation hearing should be set and/or you and/or the Executive Director are inclined not to recommend revocation *please* firstly contact me and provide me an opportunity to address your concerns.]

COASTAL COMMISSION

EXHIBIT # 4
PAGE 4 OF 7

STATE OF CALIFORNIA)
) ss. On this 26th day of February, 1932, before me, D. W. Jarrett, a
 County of Los Angeles) Notary Public in and for said County, personally appeared William
 Cooley, known to me to be the President and Alfred Citelson, known to me to be the Secretary of
 William Cooley Enterprises, Ltd. the corporation that executed the within instrument, known to
 me to be the persons who executed the within instrument on behalf of the corporation therein
 named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.
 (SEAL)

D. W. Jarrett Notary Public
 in and for said County and State.
 My Commission Expires Nov. 16, 1932.

Received at Request of Grantor, Mar. 28, 1932, at 4 1/2 Min. past 8 A. M., in Book 540,
 Page 155, Official Records of Orange County. Justine Whitney, County Recorder. Her Aide
 Crowell, Deputy Recorder.

Muth Packer COMPANIES Mabel Wilkinson

6924

----- 0 0 0 -----
 1,546.387

DEDICATION OF BEACH PRIVILEGES

THIS INSTRUMENT, made and executed this 26th day of February, 1932, by E. C. SUMMERS and
 ELIZA E. SUMMERS, husband and wife,

WITNESSES: That,

WHEREAS E. C. Summers and Eliza E. Summers, husband and wife, are the owners of Lot
 Twenty-six (26), Tract Five Hundred Seventy (570), as per map recorded in Book 31, Pages 5 and
 6, Miscellaneous Maps, records of Orange County, California; and

WHEREAS all of the lots in said Tract Five Hundred Seventy (570), excepting lots 25 to
 32, both inclusive, of said Tract, and all of the lots in Tract Five Hundred Seventy-one (571),
 as per map recorded in Book 31, Pages 24 and 25, Miscellaneous Maps, records of Orange County,
 and the Fortunate Quarter (HQ) of Section 6, Township 5 South, Range 5 West, S. 2. T. 4 N.,
 are without any beach frontage and/or beach privileges; and

WHEREAS it is the desire of said E. C. Summers and Eliza E. Summers, husband and wife, as
 owners of said Lot Twenty-six, to dedicate and convey to the record owners of each and every
 lot or lots in said Tracts 570 and 571, the record owner of the Fortunate Quarter (HQ) of said
 Section 6, and the record owners of each and every lot or lots in said undivided acreage when
 and as the same shall be subdivided and conveyed by the First National Bank of Beverly Hills
 and/or its successors in interest, no apprehensions to not for the benefit of said lots in said
 Tracts, and said acreage when and as the same shall be so subdivided and conveyed, an agreement
 over transportation of said lot 26 between the foot of the slope and the linear ordinary high
 tide of the Pacific Ocean as shown on a map of said Tract 570 heretofore referred to, for
 ingress and egress over and across, conduct of lawful sports upon, and for the free use and
 enjoyment of the record owners of each and every of said lots;

NOW, THEREFORE, said E. C. Summers and Eliza E. Summers, husband and wife, do hereby
 dedicate and convey unto the record owners of each and every lot or lots in Tract Five Hundred
 Seventy (570) as per map recorded in Book 31, Pages 5 and 6, Miscellaneous Maps, records of

Exhibit "A" (p. 142)

COASTAL COMMISSION

Orange County: the record owners of each and every lot or lots in Tract also numbered Seventy-one (71) as per map recorded in Book 31, Page 24 and 25, Miscellaneous Maps, Records of Orange County; the record owner of the Northeast Quarter (NE¹/₄) of Section 8, Township 8 South, Range 8 West, S. 8. E. & N., and the record owners of each and every lot or lots in said undivided acreage when and as the same shall be subdivided and conveyed by said The First National Bank of Beverly Hills and/or its successors in interest, an easement over that portion of lot twenty-six (26) of said Tract 970 between the feet of the slope and the line of ordinary high tide of the Pacific Ocean as shown on a map of said Tract 970 heretofore referred to, as appertaining to and for the use and benefit of each and every lot in said Tracts 970 and 971 and the Northeast Quarter (NE¹/₄) of said Section 8, and the record owners of each and every lot or lots in said Tracts and in said undivided acreage when and as the same shall be subdivided and conveyed, for ingress and regress over and across, conduct of lawful sports uses, and for the free use and enjoyment of the record owners of each and every of said lots.

The rights herein dedicated and conveyed shall inure to the benefit of the record owners of each and every lot or lots in said Tracts and said acreage, and/or their successors in interest, and shall be binding upon the Grantors, their successors and/or assigns, and are made for the direct benefit of each and every lot or parcel of land in said Tracts and said undivided acreage.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals as of the day and year first above written.

A. C. Summers

Ella E. Summers Husband and Wife.

STATE OF CALIFORNIA }
County of Orange } ss. On this 20th day of February, 1932, before me, D. G. Hamilton, a Notary Public in and for said County, personally appeared E. C. Summers and Ella E. Summers, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

WITNESSE my hand and official seal.

((Seal))

D. G. Hamilton Notary Public

in and for said County and State.

Recorded at request of Grantor, Mar. 25, 1932, at 46 Min. past 8 A. M., in Book 540, Page 367, Official Records of Orange County. Justice Whitney, County Recorder. M'Grath Urewell, Deputy.

Area Office

COPIED

Notel Witness

Exhibit "A" (p. 2 of 2)

COASTAL COMMISSION

EXHIBIT # 4
PAGE 6 OF 7

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

NE 1/4 - NORTH EAST QUARTER
Sec 8 - SECTION 8
T8S - TOWNSHIP 8 SOUTH
R8W - RANGE 8 WEST
S604M - SAN BERNARDINO BASE & MERIDIAN

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

117°45' 33" W
33°30' N

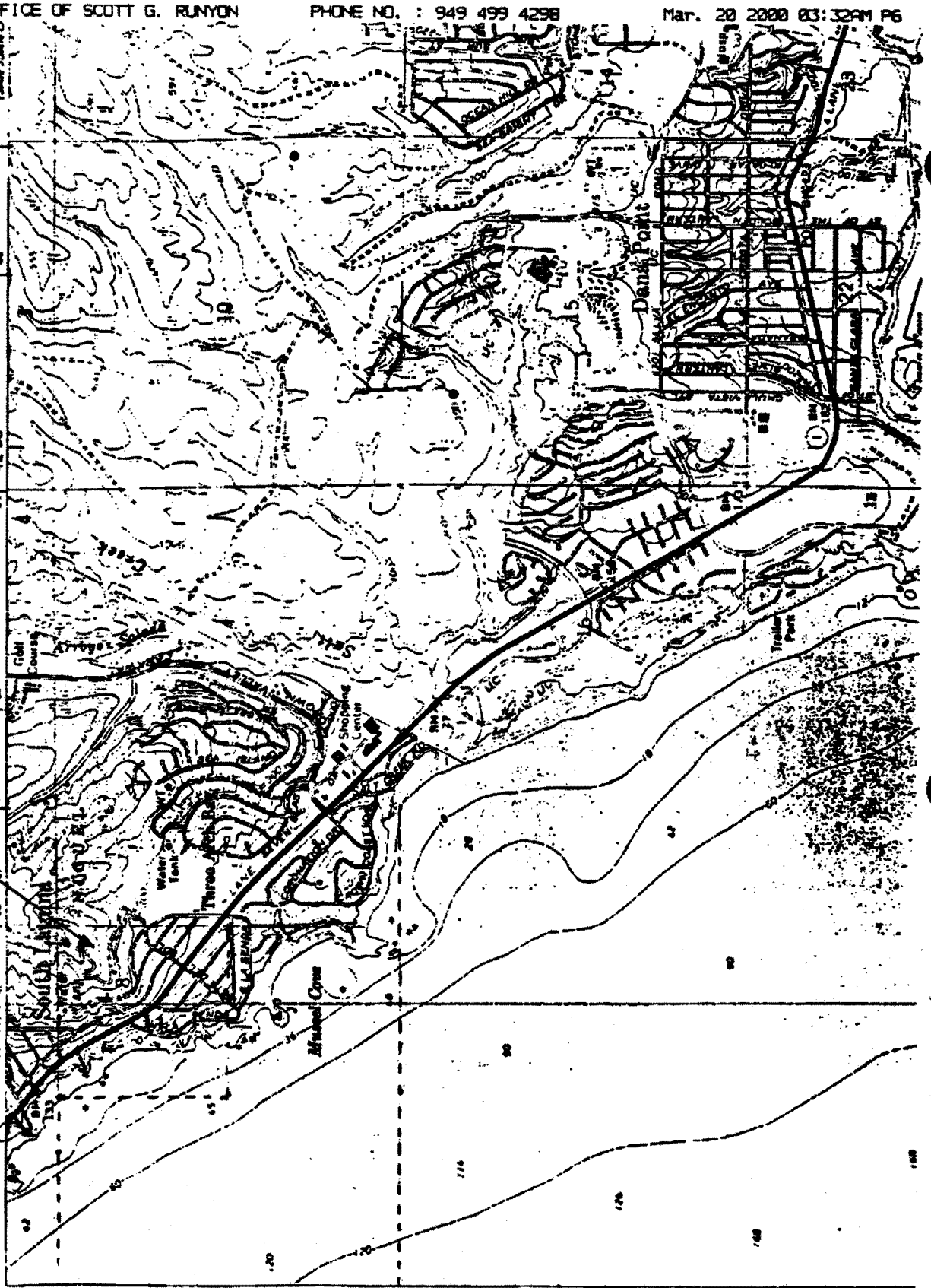


Exhibit "B" (p. 1 of 1)

COASTAL COMMISSION

EXHIBIT # 4
PAGE 7 OF 7

JAMES CONRAD, ARCHITECTS

March 15 2000

RECEIVED
MAR 20 2000

Mr. Karl Schweing
Coastal Program Analyst
California Coastal Commission
200 Oceangate Suite 1000
Long Beach, CA

CALIFORNIA
COASTAL COMMISSION

RE: BAY DRIVE RESIDENCES CDP 5-97-371, 5-98-020, 5-98-064, 5-98-178.
RESPONSE TO REVOCATION REQUEST

Dear Karl,

I received your status letter with regard to Mr. Runyon's request to have the CDP permits revoked for the residences at 23, 25, 29, & 31 Bay Drive. I am sure that after consideration of the facts, you will find that this request is frivolous and without merit and will deny the request. I have also reviewed the letter sent to you by Mr. Runyon and have the following responses.

Noticing

Mr. Runyon states that the persons listed at the end of his letter should have been notified because they were interested parties. First of all, I had no knowledge that they were interested parties. With the exception of one of the persons listed at the end of the letter, I have not even spoken to any of these people about this project. It is inconceivable that these persons, or any other resident of Three Arch Bay, were unaware of the proposed development on Bay Drive. If they were, in fact, interested parties they have had ample time to contact me or the various review boards that have held hearings on this project. The following is a partial list of items that would suggest that development was being proposed on the subject sites.

1. There were over a dozen public hearings in front of both the Architectural Review Board as well as the Board of Directors of Three Arch Bay where the development of the properties in question were discussed. These meetings took place in 1997, 98, & 99. Notices for these meetings are posted at the guard gates to notify residents of the meetings. The agendas for the meetings were posted at the association office.
(agendas enclosed)

1590 SOUTH COAST HWY., SUITE 17 • LAGUNA BEACH, CA • 92651
PHONE: (714) 497-0200 • FAX: (714) 497-0288

COASTAL COMMISSION
REVOCATION
REQUEST
EXHIBIT # 5
PAGE 1 OF 8

Exhibit 5: Permittee's Response to
Revocation Request Dated 2/29/00

2. A letter was sent to all Three Arch Bay Residents by the association detailing the development that was contemplated on Bay Drive in April of 1998 (letter enclosed).
3. The Three Arch Bay Newsletter sent in the Summer of 1998 made mention of the Bay Drive landslide issue. (Newsletter enclosed)
4. There were over a dozen public hearings in front of the City of Laguna Beach Design Review Board in 1997 & 1998. Notification of the meetings were posted on the street in front of the building sites.
5. Wooden height markers were erected on the building sites prior to the public hearings for the architectural review boards. These stakes were very tall because on the topography of the site. They were constructed of 2x4 members and iron pipes with wire cables stabilizing them. They were very visible from the private beach area of Three Arch Bay as well as from Bay Drive. These stakes were in place for over two years. (photo enclosed)
6. There were five public hearings in front of the City of Laguna Beach City Council. These hearings took place in 1997 & 1998. Notification for these hearings is published in the local newspaper.
7. There were three public hearings in front of the Coastal Commission in connection with these homes. The building sites were posted with the notification supplied by the Coastal Staff.

Given these facts, it is impossible to believe that the persons signing Mr. Runyon's letter did not know of the proposed development. In fact, one of the signatories of the letter, Mr. David Emmes, was a Board Member on the Three Arch Bay Board of Directors when the project was being reviewed. Mr. Emmes was not only aware of the proposed development, he voted in favor of the projects at the Board hearing. I also had several conversations with Mr. Emmes about the Coastal Commission hearings for the proposed homes. In those conversations, Mr. Emmes offered encouragement to me in gaining the approvals needed to construct the homes. I have tried to contact Mr. Emmes to ask why he would sign a letter like this but to date I have not received a return phone call from Mr. Emmes.

Notification of Easement Holders

Mr. Runyon states that easement holders are required to be notified of a Coastal Development hearing. If this were true, would applicants then be required to notify all easement holders. What about the electric company?, the Gas company?, the telephone company? This is not only ridiculous, it would be an unduly onerous requirement to place upon an applicant.

COASTAL COMMISSION

EXHIBIT #5.....
 PAGE2..... OF8.....

Substantial and Credible Facts not Raised

- A. *" Their belief that the permit (now granted) is based upon an inaccurate survey of the mean-high tide line of the beach at the project"*

This issue was raised to the Commission as well as to other review boards by other neighbors that did attend the meeting.

- B. *" The easement holders have , and did have at the time of the time of the permit hearing, a survey of the tide line which is substantially in conflict with the tide line survey privately commissioned and presented by the applicants. "*

If these neighbors did have this conflicting tide line survey, they had ample opportunity to present it to me or the other review boards at the numerous public meetings that we had. In fact, the issue was raised on many occasions by other neighbors opposed to the development. As you know, the mean high tide is not inanimate. Rather, the line changes continuously. This was discussed in great detail with the Coastal Staff as well as the Commission. We were also required by the Coastal Commission staff to have a Coastal engineer prepare a report on this and other coastal issues. We commissioned Mr. John Moore, with Noble & Associates, to prepare a report about this issue for the Coastal Staff and Commission to review.

Even if the neighbors had a conflicting survey of the mean high tide, I do not see how it would have any bearing on the decision of the Coastal Commission to grant the Coastal Development Permits.

- C. *" Their belief that the Project substantially and improperly encroaches upon the easement holder's property rights"*

This issue was raised at the various hearings as well as the Coastal Commission hearings by other neighbors. The request to have the beach expanded in front of the subject building sites was made on many different occasions by other concerned neighbors.

- D. *" Their belief that the project encroaches upon and permanently alters the beach, the natural coastal erosion process, and thus necessarily permanently alters the nature of their property rights as easement holders "*

This issue was also raised numerous times at the various review hearings including the Coastal Commission hearing. The report by Noble & Associates discussed the

COASTAL COMMISSION

MARCH 15, 2000

coastal erosion process and how this project would effect this process in detail.

I hope that this information provided demonstrates this revocation request should be denied by the Executive Director without troubling the staff or the Commission with a formal revocation hearing. The request is frivolous and without merit. This is obviously just another attempt by a few disgruntled neighbors to prevent the construction of the homes on Bay Drive. Doesn't it seem a little odd that this revocation request would come now, after a year of construction? The property owners on Bay Drive spent over two years in front of review boards to gain permission to build on their property. They completed the process, procured the required permits and have now been under construction for over one year stabilizing Bay Drive. Construction of their homes is under way and they are looking forward to completing their dreams.

It is unfortunate that Mr. Runyon and the persons signing the letter did not attend the many hearings that were held on these projects. If they had, they would have known that these issues as well as many others have already been discussed great detail. Please let Mr. Runyon and his clients know that the issues included in his letter have been considered by the Coastal Commission and that as new hearing will not be necessary.

Please let me know if you need anything further.

Sincerely,



James Conrad, Architect

CC: Mr. Neil Anenberg, 23 Bay Drive
Mr. Troy Barnes, 25 Bay Drive
Mr. Chuck Griswold, 29 Bay Drive
Mr. Tim McMullen, 31 Bay Drive
Mr. George Piggott, attorney for Ms. Frahm, 33 Bay Drive

COASTAL COMMISSION

EXHIBIT # 5
PAGE 4 OF 8



THREE ARCH BAY

5 BAY DRIVE, LAGUNA BEACH, CALIFORNIA 92651-6780, (949) 499-4567

March 14, 2000

RECEIVED
MAR 20 2000

CALIFORNIA
COASTAL COMMISSION

James Conrad, Architect
1590 South Coast Highway #17
Laguna Beach, CA 92651

Enclosed are copies of minutes and agenda for Three Arch Bay Association monthly meetings in which Bay Drive was discussed by the Board of Directors. Notices of meetings are posted at each of the two guard stations each month. In addition, an agenda for the upcoming meeting is posted on the door of the Three Arch Bay Office in the community.

A letter dated April 20, 1998, describing the situation on Bay Drive was sent to all homeowners in Three Arch Bay. A copy of this letter is also enclosed.

The Bay Drive Committee update is a standing item at each monthly meeting of the Three Arch Bay Association.

Please let me know if you need additional information.

Sincerely,

Dewellyn de la Cruz, CCAM
Executive Director

COASTAL COMMISSION

EXHIBIT # 5
PAGE 5 OF 8



THREE ARCH BAY

5 BAY DRIVE, SOUTH LAGUNA, CALIFORNIA 92677. (714) 499-1317

RECEIVED
MAR 20 2000

April 20, 1998

**CALIFORNIA
COASTAL COMMISSION**

Dear Neighbors:

This letter is being written in response to concerns of residents who live near and around Bay Drive. As you know there has been a number of meetings both by the Architect Review Board and the Board of Directors to address the problems surrounding Bay Drive and the building that is going on in that area. The Board has addressed those issues as a concerned neighbor and according to its duties and functions as the Board of Directors for the Association.

Three Arch Bay Association has direct responsibility for design review of any intended building within Three Arch Bay. The projects on Bay Drive went through design review, which we understand can be an advisory type proceeding if all neighbors do not agree with the building that is being proposed. The projects on Bay Drive were approved by the Architectural Review Committee. This decision was appealed to the Board of Directors, which performed its function of only approving upon the design. That is the size, scope and appearance of the proposed buildings. While the hope is that this process gives everyone an open and fair hearing and resolves all issues in dispute it is recognized that there are sometimes winners and losers in this process.

The projects are now in the hands of the City and the Coastal Commission, which are the ones responsible for engineering and geology. This is not a function of Three Arch Bay, either by its Board of Directors or Architectural Review Board, but rather an issue with the City. It is the City and the Coastal Commission that the affected residents should approach with these problems. The Board of Directors has hired consultants to look at the engineering and geology for informational purposes. However, we do not have the responsibility for approving or objecting to those plans and we have not tried to assume that task.

As your neighbors, the Board of Three Arch Bay feels it is important that neighbors work together in areas of common concern. The following has been our understanding of the gross geological situation of Bay Drive as explained to us by our consultants. We do not have the ability to make a more exact finding on the geological make up and concerns. We have been told that the following is a model that most likely is present at these sites.

It is important that each property owner gain some understanding of the geology and relative landslide risks in the Bay Drive neighborhood. The attached geologic map and cross section are provided only for general perspective. Each property owner should or may wish to consult with their own geologist or collectively retain professional advice.

The Bay Drive area of Three Arch Bay is underlain by bedrock of the San Onofre Breccia. Overlying the bedrock are terrace deposits formed during the Quaternary (within the last 1.6 million years) before the coastline was uplifted to its present elevation. The San Onofre Breccia is thought to be middle Miocene in age (about 10 to 17 million years old) and in the area of Bay Drive it is generally composed of conglomerate (gravel and cobbles cemented into rock), sandstone and siltstone with minor clay beds. The

COASTAL COMMISSION

EXHIBIT # 5
PAGE 6 OF 8

rock was formed in layers (beds) that over time have been tilted and warped to their present position by faulting. In general the beds in the vicinity of Bay Drive are tilted (dipping) toward the ocean although the amount and direction of the dip is somewhat variable. Numerous faults can be seen in the bluffs in the Three Arch Bay area, and several faults have been observed during investigations for Bay Drive. There has been no evidence to suggest these faults are active and the risk of earthquakes occurring on these faults is remote.

Much of Bay Drive rests on a cliff generally located along a fault plane in the San Onofre Breccia. The San Onofre formation contains many joints (cracks) that generally form blocks of few feet each. Over a very long period of time, these blocks have slumped off, and together with the slope wash materials have contributed to the downhill very unstable landslide materials. Some of the most northern and southern extremities of Bay Drive may rest on prior landslide or terrace deposits.

In a geological perspective, given enough time, any over-steepened slope ultimately will fail. The risks of imminent failure are increased by any one or a combination of the following factors as well as others:

- *Steepness of slope.*
- *Inherent instability of the soil or bedrock* – The presence of a weak plane that cuts through the bedrock (such as a fault) may cause the bedrock to break along that plane.
- *Presence of "Slippery" slide planes* – A bed of weak material (such as clay) can act as a lubricant and less force is required for the bedrock to fail than if no weak bed were present.
- *Degree and direction of dip (downward angle) of the formations.*
 - The landslide materials seaward of Bay Drive have no definable dip.
 - The San Onofre dips generally seaward and underlays the landslide materials.
 - The San Onofre dip varies considerably along Bay Drive.
- *Water saturation* – Ground saturation that would add to the driving forces of the slide. Water percolating through the bedrock along bedding also acts as a lubricant weakening the strength of the bedrock.
- *Lack of down-slope supporting materials* – If the materials at the toe of the slope are removed (such as by wave action at the beach) there is less mass to resist the downslope forces of the slope.

There is apparent movement on the northern extremities of Bay Drive. The risk of failures occurring in structures resting directly on the landslide materials is significantly higher than for those structures resting on or anchored well into the San Onofre Breccia.

The situation can be likened to a stack of books; while the books (beds) are lying flat they are stable, but if the books are tilted on an angle, they will slide off the stack (landslide). If one of the books is replaced by marbles (weak clay bed), the amount of tilt necessary for the books to slide is reduced. If the

COASTAL COMMISSION

EXHIBIT # 5
PAGE 7 OF 8

tilted books have stopped moving and part of one of the books is removed (erosion by wave action), then the books will start to move again until they reach equilibrium.

At the present time, movement of the landslide is ongoing and the toe of the landslide at the beach is being eroded during high tides and storm events. One solution to protect Bay Drive from becoming involved in landsliding may be to design and construct a retaining wall system along the seaward edge of Bay Drive to help stabilize the bedrock upslope from the presently active landslide. Other measures that may be used in conjunction with the retaining wall system include removal of the landslide material and placement of an earthfill buttress; construction of dewatering wells and other suitable drainage systems to decrease the amount of groundwater moving the slide; and protecting the toe area of the landslide from wave erosion.

ACTING TOGETHER, WHAT MIGHT BE DONE?

If all the affected neighbors join together, it is reasonably probable that a long-term solution could be found if the City and Coastal Commission approve the plans. Further steps, such as the shotcrete wall probably will not prevent further slumping. The retaining wall endeavor might be augmented with dewatering wells to relieve the uphill hydrostatic pressures.

We are advised that short-term efforts to mitigate the problems by encouraging the property owners to enhance surface drainage and apply plastic materials to the surface would have minimal effect.

Based upon what we believe is the geology of Bay Drive and the surrounding homes, we feel that there are many areas of common concerns that can be addressed by the residents and the parties that are building presently on the sites in question. While we recognize differences still exist, it will have to be dealt with by the residents with the City and the Coastal Commission. Since our consultant is for informational purposes, we suggest you hire your own consultant if you want an opinion for your own purposes. We feel that these areas of common concerns should be dealt with. Since it appears that some form of residence will be built on the sites in question, it is our suggestion that we set up an informational discussion, which members of the Board will help facilitate, so that residents can discuss short-term and long-term solutions to common problems that may exist to the houses on Bay Drive and the surrounding streets.

If this is of interest to you, we would like you to call the office at Three Arch Bay, so that we can try to set up a meeting that is more informal than a Board of Directors meeting, where common issues can be discussed. We hope all homeowners and new homeowners can attend.

Sincerely yours,

Board of Directors
Three Arch Bay

COASTAL COMMISSION

EXHIBIT # 5
PAGE 8 OF 8

JAMES CONRAD, ARCHITECTS

March 23, 2000

Mr. Karl Schweing
Coastal Program Analyst
California Coastal Commission
200 Ocean Gate Suite 1000
Laguna Beach, CA

RE: BAY DRIVE RESIDENCES CDP 5-97-371, 5-98-020, 5-98-064, 5-98-178.
RESPONSE TO REVOCATION REQUEST

Dear Karl,

As you know, I have just received notice of an appeal request for a revocation hearing by Mr. Runyon (dated 3/14/00) and am preparing a full response which will demonstrate, without question, that there is absolutely no basis for such revocation hearing or any other action which interferes with the legal implementation of the CDP for residences now under construction at Three Arch Bay. Mr. Runyon's concerns have already been reviewed and rejected by qualified local officials and have no basis in fact. There is no other basis for these concerns to be placed before the California Coastal Commission.

We must insist the California Coastal Commission staff properly investigate these issues before placing the matter on the April Commission agenda so that appropriate and complete information can be provided to staff to clarify the matter. A premature meeting on this matter will not only be a waste of staff and Commission time, but it will elevate a frivolous matter to an inappropriate administrative forum.

1 (D) Conclusion: The developers did not provide notice despite actual knowledge

The applicant completely and at all times fully complied with the Notice provisions. Any question regarding notice on this CDP must take into account the following:

1. The applicant notice complied with the requirements set forth in title 14 , Section 13054, which include both written notice to adjacent land owners within, and physical posting on site. In addition, the Coastal Commission staff determined this notice to be in proper order pursuant to Title 14, section 12056. Notice is not required except to residents and owners of parcels of real property.
2. The easement holders interest were and remain in effect - unaffected by this project, as their rights to recreate on the beach is unchanged.
3. Everything about this notice and the application was done in good faith, and there was no intentional or other provision of inaccurate information in the application.

1590 SOUTH COAST HWY., SUITE 17 • LAGUNA BEACH, CA • 92651
PHONE: (714) 497 0200 • FAX: (714) 497 0288

COASTAL COMMISSION
REVOCATION
REQUEST 6
EXHIBIT #
PAGE 1 OF 6

Exhibit 6: Additional Response To
Revocation Request From
Permittees

The requirements set forth in Title 14, Sections 13104 through 13107 are not met.

Both the Commission staff and the applicant were aware and open that a recreational easement existed on the properties. The applicant, and the Commission staff have always acted on good faith on this issue. In the submission for the Coastal Development permits, the applicants, in fact, showed the boundaries of the easement on documents included in the submission. They also provided to the Coastal Commission a copy of the easement for the Coastal staff's review. The Coastal Commission staff reviewed the easement. The staff did not indicate to us that additional special notice was required to those easement holders. It is normal procedure for the Commission staff to check the notice lists and inform the applicant if other interested parties need notification.

Because staff had the opportunity to review the easement and did not require that the easement holders be noticed we have to assume that they made the determination that the easement holders did not need to be noticed under the noticing regulations. We believe that this would be a reasonable conclusion for the Commission staff to come to.

The recreational easement provides the easement holders the following rights: " the right of ingress and egress and to conduct lawful sport within the easement area ". The development contemplated and approved under the CDP does not prohibit in any way the rights of the easement holders rights under the easement. Therefore, it would reasonable to conclude that the easement holders do not have an interest in the property and should not be require notice. The applicants and their agent relied on the Coastal staff to insure compliance of the application to the Coastal Regulations. If staff had found that it was necessary to notice the easement holders of the applications they could have required the applicants to provide notice to the easement holders. The staff did not make this requirement and we believe that staff came to the correct conclusion. Additionally, the applicants believe that boundary of the beach easement does not even encroach on the earth slope area of their properties. We will provide a legal opinion that will address this matter.

Even if the applicants had provided notice to all the easement holders, Mr. Runyon has not demonstrated that any new materially relevant information would have been brought to the attention of the staff by these easement holders.

The information that Mr. Runyon has provided to the staff (a copy of the deed for the recreational easement) was provided to staff at the time of the application. This is not new information, therefore, the conclusion, by staff, that the easement holders did not need to be noticed should not change either.

2. The Easement Holders Survey and the Developer's Conflicting Re-Survey.

A. The Original High Tide Line Survey

COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 6

Mr. Runyon is using a grossly outdated tide survey to assert an intentional misrepresentation of the mean high tide for this project. This is absurd and confirms the claims are frivolous and without merit. For example:

When Mr. Runyon states that the high tide line was "originally surveyed as sitting 52' oceanward of an easement boundary-line at the development". He is referring to a mean high tide line that was established in the (1930's). As you know the mean high tide line is not a static point. Conversely, the line is constantly moving. The mean high tide line is the elevation of the sandy beach above sea level. Where the mean high tide line was in the nineteen thirties has no bearing on where the mean high tide line is today.

As required by the Coastal Commission staff, and as part of a proper CDP application, we asked a certified civil engineer to prepare an updated mean high tide survey. Toal Engineering's 1997 survey was reviewed by the Coastal Commission engineer, and was properly relied upon in the CDP. Therefore, Mr. Runyon's claims about the old survey information, even if true, is not relevant to the applications.

B. The Developer's Re-Survey

Mr. Runyon asserts that the survey of the High Tide line completed by Toal Engineering is inaccurate and that the high tide survey done in the Nineteen thirties is more accurate. Mr. Runyon also assumes that the location of the mean high tide line was critical in determining the location of the "projects". Mr. Runyon is incorrect on both points. First, where the mean high tide line was established in the nineteen thirties is immaterial to the application as discussed above. Second, the location of the mean high tide line is only a small part of the information that was submitted to the Coastal Commission staff and analyzed by the staff to determine the safety of the location of the homes to be built on the building sites.

At the request of the Coastal Commission Staff, the applicants hired a licensed coastal engineering firm, Noble consultants, to provide an analysis of the potential for coastal erosion and the effect of the project on other coastal issues. The report provided by Noble consultants was submitted to the Coastal Commission staff and was used by the staff to analyze the pertinent issues relating to the siting of the homes on the site. The staff determined that the proposed siting of the homes was appropriate. The addition of a mean high tide survey established in the nineteen thirties would be immaterial to this determination.

C. Recent Developments

Mr. Runyon states that soil has been pushed out onto the beach in an effort to recapture ground eroded away over the past year. This is not true and Mr. Runyon knows it to be not true. This accusation has been made before by Mr. Runyon. I have met with Mr. Runyon and I showed him a survey showing where the slope met the sand when we stated

COASTAL COMMISSION

EXHIBIT # 6
PAGE 3 OF 6

the project and where it was as of the date of our meeting. There was some movement in the interface line of the sand and the earth slope due to natural coastal erosion processes. At that time we had not even graded the slope area where it met the sandy beach. The vegetation was still in place.

Mr. Runyon has also made this accusation to the City of Laguna Beach. At the City Building official's request, I provided photographs and a survey to the Building official showing that Mr. Runyon's claim was not factual. The building official, Mr. John Gustafson, analyzed the information and agreed that we did not push the slope onto the beach.

Mr. Runyon has again made this claim to the building official. Since the slope area has now been re-graded, I have been asked to provide a certification that the slope has been graded per the approved plans. This certification is being prepared now by the project surveyor, Concentric Surveys. I will forward a copy of the certification to you.

Mr. Runyon also states that "at high tide the surf washes up to and over the recently graded base of the projects". The photos that he has submitted were taken during an extreme high tide in which we had surf over ten feet high. This anticipated occurrence was discussed in the report prepared by Noble Consultants that was submitted with the application. In their report the coastal engineer explains that the erosion of toe of slope would occur during periods of combined extreme high tide and high surf. They discuss that these episodes are rare and that the greatest erosion would occur during these episodes. As an aside, I think it is pertinent to point out that even with this episode of combined extreme high tide and very high surf, very little erosion actually occurred at the toe of the re-graded, yet un-landscaped, slope.

Mr. Runyon also states that "the surf now regularly obliterates the beach in front of the developments and in fact washes up over the base of the development".

The enclosed photographs were taken at 2:00 p.m. on Wednesday, March 23rd, 2000. In those photos the toe of the recompactod slope is shown to be in line with the toe of the un-recompactod slope. It is obvious that the recompactod slope has not been pushed out onto the beach as Mr. Runyon claims. Mr. Runyon has no evidence that the slope has been pushed out onto the beach. He has not provided a survey or any other shred of evidence to demonstrate that this has occurred. The reason that he has not provided any evidence is that he cannot. This has not occurred. He is making a reckless claim without any basis in fact. He also does not provide any evidence that the surf regularly obliterates the beach. He does not because he cannot. This is another misrepresentation of the facts.

Mr. Runyon then states that "the privately commissioned re-survey misrepresented the actual high tide line". And that "the developers used the inaccurate re-survey to obtain approval for the size and placement of the projects where they are today.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 4 OF 6

Once again, these claims are made recklessly and with no factual basis. The mean high tide survey was prepared by a licensed surveyor, Toal Engineering. Please see the letter from Toal Engineering verifying this. Mr. Runyon claims that the survey was inaccurate but provides no evidence. He does supply a mean high tide line depicted on a document that was produced in the nineteen thirties. This is immaterial as to whether or not the Toal survey was accurate or not. Mr. Runyon cannot provide any evidence that this survey is inaccurate unless he had a survey done on the same day. He clearly does not have any evidence and therefore this claim has no basis in fact.

We are alarmed at Mr. Runyon's speculation as to why we would have misrepresented the mean high tide line is clearly reckless and possibly actionable as slanderous. He certainly has no facts to back up this claim and the claim has no basis in fact. We have been forthright and technically meticulous in all of our dealings with the Commission. We expect the Commission to protect the applicant and the CDP from this type of inflammatory and meritless accusations.

D. What should occur next

Mr. Runyon speculates that if the permits are indeed revoked and a new hearing is scheduled that yet unknown evidence can be expected to come forth. If there are any facts that were not made available to the Coastal Commission, Mr. Runyon should forward these facts to the staff to analyze.

Mr. Runyon claims that the that the "known parties prejudiced by the tide line misrepresentation were intentionally omitted from the application process" Once again this is a wild, reckless claim without any facts to substantiate the claim. Mr. Runyon does not provide any evidence that the mean high tide line was misrepresented, nor does he provide any evidence that anyone was intentionally omitted. This is pure speculation on Mr. Runyon's part and should not be considered by the Staff.

What should occur next is that the Executive Director should reject this claim because of its frivolous nature and its complete lack of merit. Mr. Runyon has not provided any evidence that any of his claims are factual. On the contrary, the claims are reckless and slanderous. The construction on this project has been underway for over one year now. The land stabilization portion of the project is about 90% complete and the home construction is now underway. The property owners completed the approval process over a two year period and have invested millions of dollars in the construction of their homes. They provided all documentation required by the California Coastal Commission in order to gain Coastal Development permits for these projects. They relied on the Coastal Commission staff to process the applications within the regulations. Any delay to this project would cause great damage to the property owners. If the project were delayed by the Coastal Commission the cost to the property owners would be extraordinary, \$ 10,000.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 5 OF 6

MARCH 23, 2000

per day plus interest costs. To delay this project after such an exhaustive review process would be unreasonable and would cause great financial harm to the property owners.

Mr. Runyon is attempting to delay the construction of the homes on Bay Drive for personal rather than legal reasons. The application approved at 33 Bay Drive has all the same elements in their approved project and they did not notice all of the easement holders, yet Mr. Runyon has not requested a revocation for this project. We believe that it is abundantly clear that Mr. Runyon's sole intention is to manipulate the mechanisms within the Coastal Development regulations to delay or prevent the construction of the homes on Bay Drive.

I hope that I have provided the information need by you do reject this claim for revocation of the Coastal development permits.

Please let me know if you need anything further.

Sincerely,



James Conrad, Architect

CC: Mr. Neil Anenberg, 23 Bay Drive
Mr. Troy Barnes, 25 Bay Drive
Mr. Chuck Griswold, 29 Bay Drive
Mr. Tim McMullen, 31 Bay Drive
Mr. George Piggott, attorney for Ms. Frahm, 33 Bay Drive
Mr. Robert Philibosian, attorney representing property owners.
Ms. Renee Robin, attorney representing the property owners.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 6 OF 6

JAMES CONRAD, ARCHITECTS

March 23, 2000

Mr. John Gustafson, Building Official
City of Laguna Beach

Via Facsimile 562-590-5084

RE: Bay Drive Shoring wall (23 - 31 Bay Drive) and Land Stabilization Project

Dear John,

Enclosed is the letter from the project surveyor, Concentric Land Surveys, that you requested to confirm that the grading on the Bay drive projects (23 - 31 Bay Drive) has not encroached onto the beach as was alleged. If you need anything further, please give me a call or you can call Kelvin Kitaota, president of Concentric Land Surveys.

Sincerely,



James Conrad, Architect

CC: Karl Schwing, California Coastal Commission

1590 SOUTH COAST HWY., SUITE 17 • LAGUNA BEACH, CA • 92651
PHONE: (714) 497-0200 • FAX: (714) 497-0200

COASTAL COMMISSION

Exhibit 7: Additional Information
Provided by Permittee

EXHIBIT # 7
PAGE 1 OF 3

Concentric Land Surveys, Inc.
3187-C Airway Avenue
Costa Mesa, Ca. 92626
Phone: (714) 708-3301 Fax: (714) 708-3318

3/23/2000

James Conrad, Architect
1590 South Coast Highway #17
Laguna Beach, CA 92651


Attn: Jim Conrad

Re: Grading Limit Certification 26, 27, 29 & 30 Bay Drive-
Three Arch Bay- Laguna Beach, CA

Dear Sir:

This is to state that , as of 3/23/00, the Completed Grading along the Shoreline limits includes a 100 feet Westerly from the Easterly line of Lot 26 (Anenberg's Residence). Said limits are in Compliance to the As Built Shoreline surveyed on July 26, 1999.

The above mentioned As Built Shoreline located was determined to be Landward up to the Common Property Line of Parcel's 1 and 2 (Griswold Residence/McMullen Residence Respectively) of the Vegetation/ Sand Interface Line Delineated on Toal Engineering, Inc.'s Rough Grading Plan Stamp Dated 2/18/99 and received by J.C. Baldwin on 2-22-99.

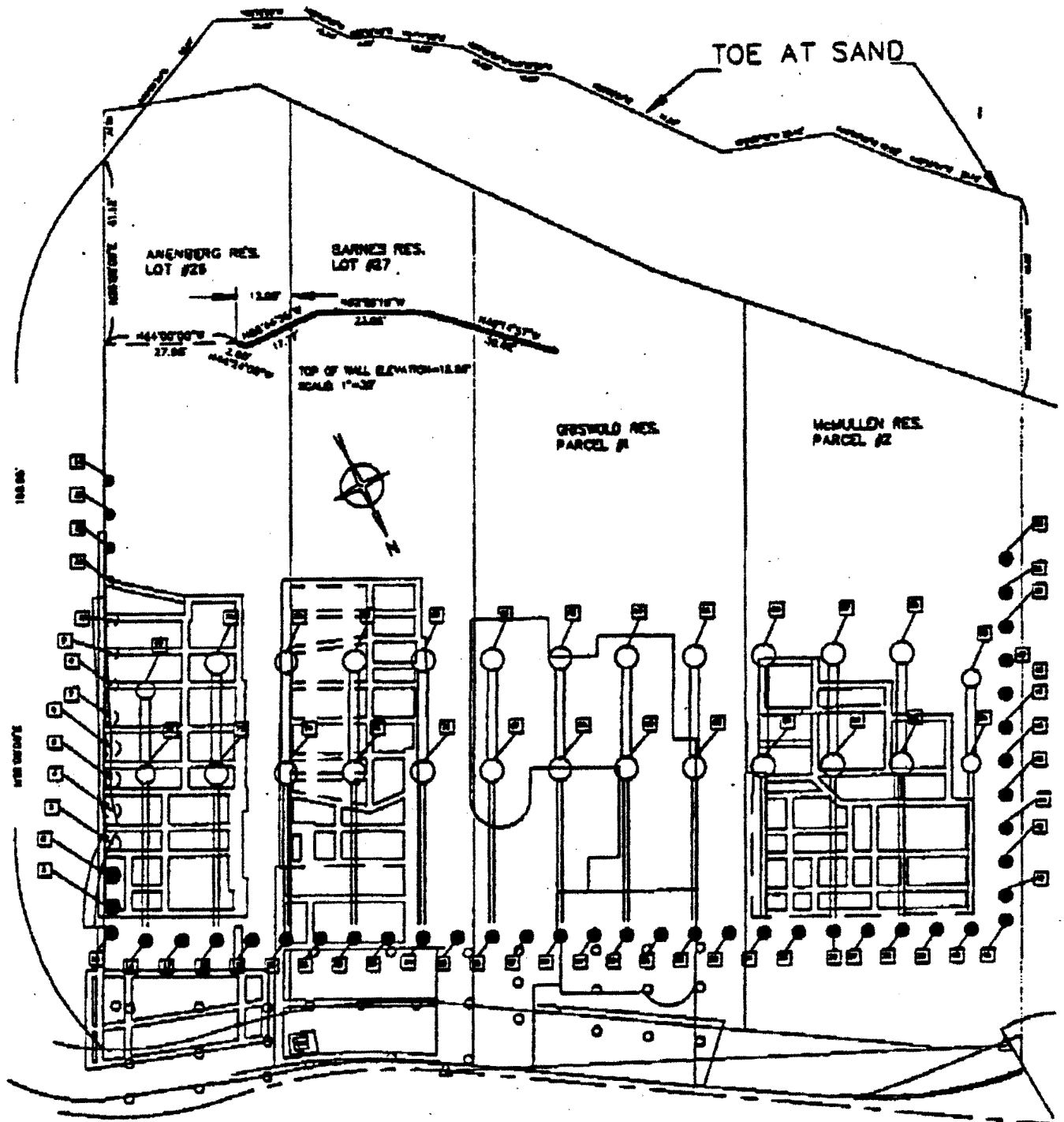

Kelvin Kitaoka
President
PLS 6178
Concentric Land Surveys, Inc.



KKJ/r

COASTAL COMMISSION

EXHIBIT # 7
PAGE 2 OF 3



PREPARED BY:
 CONCENTRIC LAND SURVEYS, INC.
 3187-C AIRWAY AVE.
 COSTA MESA, CA. 92626

EXHIBIT SHOWING:
 CONSTRUCTED TOE WALL LOCATED ON MARCH 1, 2000

JOB NO. 99-332
 DATE: MARCH 21, 2000

COASTAL COMMISSION

EXHIBIT # 7
 PAGE 3 OF 3

FROM :

PHONE NO. :

Mar. 22 2000 04:42PM P2

TOAL ENGINEERING, INC.
CIVIL ENGINEERS, LAND PLANNERS AND LAND SURVEYORS
139 AVENIDA NAVARRO • SAN CLEMENTE, CA 92672
(949) 492-8586 • Fax (949) 498-8625
e-mail Toaleng@aol.com

RAYMOND R. TOAL, BCE 16889
CLAY S. MEUM L.S. 4384
MICHAEL A. ROTH L.S. 6211

MAILING ADDRESS
P.O. Box 3878
SAN CLEMENTE, CALIFORNIA 92676

March 23, 200

Coastal Commission
200 Occangate, #1000
Long Beach CA 90803-4302

Attention: Karl Schwing

Subject: Mean High Tide
Bay Drive
Lots 26 & 27, Tract 970
Parcels 1 & 2 of L.L. Adj.
Laguna Beach
JN 8397

Dear Mr. Conrad:

On 12-10-97, this office established the mean high tide along the subject property. This line was established at the 1.92 foot contour line, as the ground was existing at that time, and as shown on the attached drawing.

This mean high tide line falls on the sandy beach, and is subject to substantial fluctuations depending on the ebb and flow of the sand. Especially the winter storms can make noticeable changes to the elevations of the sandy beach.

If you have any questions concerning the foregoing, call us at your convenience.

Very truly yours,

Clay S. Meum
Clay S. Meum



OSM:mct
8397meantide

cc: Jim Conrad

Exhibit 8: Additional INFO From
PERMITTEES REGARDING
LOCATION OF MAT

COASTAL COMMISSION
Revocation Request

EXHIBIT # 8
PAGE 1 OF 2

FROM :

PHONE NO. :

Mar. 22 2000 04:43PM P3

TOAL ENGINEERING
 139 AVENIDA NAVARRO
 SAN CLEMENTE, CALIFORNIA 92672
 (714) 492-8586
 FAX (714) 498-8625

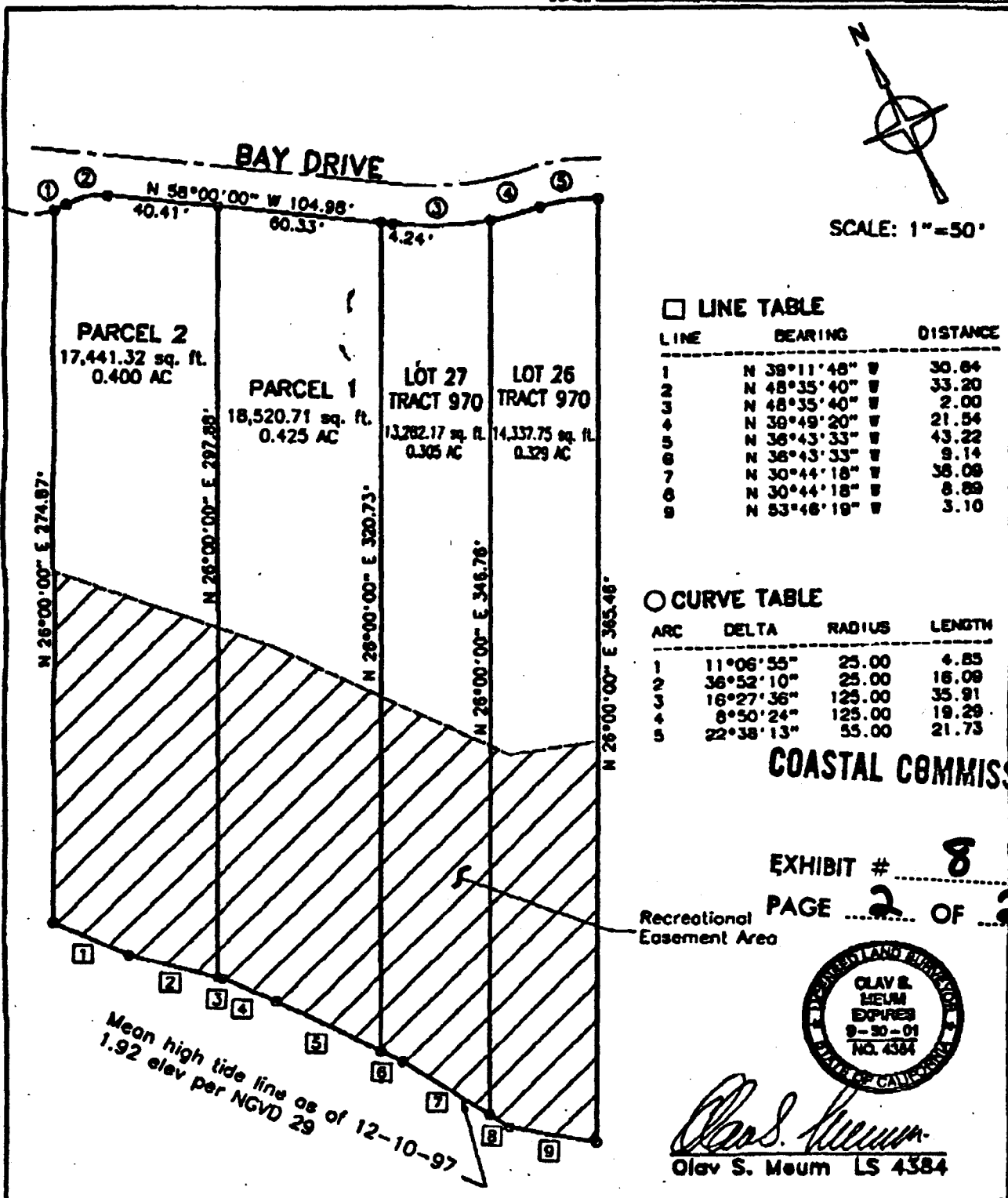
JOB 0397

SHEET NO. _____ OF _____

CALCULATED BY MSF DATE 12-11-97

CHECKED BY _____ DATE _____

SCALE 1"=50'



SCALE: 1"=50'

LINE TABLE

LINE	BEARING	DISTANCE
1	N 38°11'48" W	30.84
2	N 48°35'40" W	33.20
3	N 48°35'40" W	2.00
4	N 38°49'20" W	21.54
5	N 36°43'33" W	43.22
6	N 36°43'33" W	9.14
7	N 30°44'18" W	36.08
8	N 30°44'18" W	8.88
9	N 83°46'19" W	3.10

CURVE TABLE

ARC	DELTA	RADIUS	LENGTH
1	11°06'55"	23.00	4.85
2	36°52'10"	25.00	16.08
3	16°27'36"	125.00	35.91
4	8°50'24"	125.00	19.29
5	22°38'13"	55.00	21.73

COASTAL COMMISSION

EXHIBIT # 8

PAGE 2 OF 2

Recreational Easement Area



Olav S. Meum
 Olav S. Meum LS 4384

JAMES CONRAD, ARCHITECTS

March 24, 2000

Mr. Karl Schweing
Coastal Program Analyst
California Coastal Commission
200 Oceangate Suite 1000
Long Beach, CA

RE: BAY DRIVE RESIDENCES CDP 5-97-371, 5-98-020, 5-98-064, 5-98-178.
RESPONSE TO REVOCATION REQUEST

Dear Karl,

I met with Mr. Scott Runyon this morning to discuss the revocation request that he has submitted on behalf of his clients. Mr. Runyon agreed to discuss with you the mechanism by which you could table their request for a period of two months. In exchange for this gesture on their part we have agreed to discuss with them, during that period, the possibility of amending our plans to cause the current location of the toe of slope to move back away from the sandy beach.

I hope that you will grant their request and allow us the opportunity to negotiate a suitable settlement.

Please let me know if you need anything further.

Sincerely,



James Conrad, Architect

- CC: Mr. Neil Anenberg, 23 Bay Drive
- Mr. Troy Barnes, 25 Bay Drive
- Mr. Chuck Griswold, 29 Bay Drive
- Mr. Tim McMullen, 31 Bay Drive
- Mr. George Piggott, attorney for Ms. Frahm, 33 Bay Drive
- Mr. Robert Philibosian, attorney representing property owners.
- Ms. Renee Robin, attorney representing the property owners.
- Mr. Scott Runyon

1590 SOUTH COAST HWY., SUITE 17 • LAGUNA BEACH, CA • 92651
PHONE: (949) 497-0200 • FAX: (949) 497-0288

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 1

Exhibit 9: Permittees Request To
Postpone Hearing on
Revocation

CALIFORNIA COASTAL COMMISSION

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



	5-97-371	5-98-020	5-98-064	5-98-178
Filed	12/30/97	1/20/98	4/6/98	7/15/98
49th Day	2/17/98	3/10/98	5/25/98	9/2/98
180th Day	6/28/98	7/19/98	10/3/98	1/11/99
270th Day	9/26/98	10/17/98	N/A	N/A

Staff: John T. Auyong *JAW*
Staff Report: October 16, 1998
Hearing on Findings: November 6, 1998
Commission Action on Findings:

COMBINED STAFF REPORT: REVISED FINDINGS

APPLICATION NOS.: 5-97-371, 5-98-020, 5-98-064, and 5-98-178

	5-97-371	5-98-020	5-98-064	5-98-178
Applicant	Jim Conrad	Jim Conrad	Troy and Celeste Barnes	Tim McMullen
Project Location	23, 25, 27, 29, and 31 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	23 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	25 Bay Drive, Three Arch Bay, Laguna Beach, Orange County	31 Bay Drive, Three Arch Bay, Laguna Beach, Orange County

COMMISSION ACTION: Approval with Conditions

DATE OF COMMISSION ACTION: August 13, 1998

COMMISSIONERS ON PREVAILING SIDE: Brothers, Dettloff, Flemming, Herron, Johnson, Nava, Potter, Reilly, Tuttle, Wan, Chairman Areias (same vote for all for permits)

PROJECT DESCRIPTIONS:

5-97-371 Rebuild a failed slope. Construct a shoring system across five lots to stabilize Bay Drive. The shoring system and slope repair includes the installation of: 1) a shoring wall comprised of shoring piles and shotcrete adjacent to Bay Drive and the adjacent homes at 21 and 33 Bay Drive, 2) overexcavation and recompaction of slide debris (44,000 cubic yards of grading--22,000 cubic yards of cut and 22,000 cubic yards of fill) to create a stable fill, 3) a buried toe protection wall near the toe of the slope, and 4) installation of drainage devices. No

Exhibit 10: Commission's Findings For
5-97-371, 5-98-020, 5-98-064
5-98-178

COASTAL COMMISSION
Revocation Request
EXHIBIT # 10
PAGE 1 OF 38

**5-97-371 (Conrad), 5-98-020 (Conrad),
5-98-064 (Barnes), and 5-98-178 (McMullen)
Revised Findings; Page 2**

homes are proposed to be constructed as part of this project. Merge three of the five lots into two (resulting in a new total of 4 lots, with the 27 Bay Drive address eliminated as a result).

5-98-020 Construction of a 3,720 square foot, 5-level, single-family home with an attached two-car garage and two uncovered parking spaces, 997 square feet of deck area, an 840 square foot swimming pool terrace with swimming pool and hardscape. The proposed home would step down a repaired coastal bluff and be 57'6" from its lowest level to the highest point of the roof. The top of the proposed home would extend ten feet above the centerline of Bay Drive. Also proposed is 9,984 cubic yards of grading (4,992 cubic yards of cut and 4,992 cubic yards of fill).

5-98-064 Construction of a 3,719 square foot, 5-level, single-family residence with a 662 square foot two-car garage, 812 square feet of decks, a covered, open-air pool terrace and game room, swimming pool and patio area, and 7,662 cubic yards of grading (3,831 cubic yards of cut and 3,831 cubic yards of fill). The proposed home would terrace down a rebuilt coastal bluff and be 61 feet high from the pool terrace level to the top of the roof of the garage, with the top of the home extending 11' above Bay Drive.

5-98-178 Construction of a 5,099 square foot, 5-level, single-family residence with attached 742 square foot three car garage, 1,935 square feet of deck area, swimming pool, spa, landscaping, and 12,900 cubic yards of grading (6,450 cubic yards of cut and 6,450 cubic yards of fill). The proposed home would terrace down a repaired coastal bluff and be 62 feet tall from the pool level to the top of the roof of the garage. The proposed home would only extend 11' above the centerline of Bay Drive.

LOCAL APPROVALS RECEIVED: See Appendix A

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's approval with conditions of coastal development permit application 5-97-371 (the proposed shoring system) on August 13, 1998. The adopted special conditions concern: 1) an assumption-of-risk deed restriction, including requirements that no seawalls shall be built on the site and that the applicant shall be solely responsible for removal of debris resulting from hazards on the property, 2) conformance with geotechnical recommendations of the applicant's geotechnical consultants as well as the consultant's of the applicant's neighbors, including that deviations to the plans such as proposed changes identified after completion of additional slope stability analysis require a permit amendment, 3) modification of the design of the side wall adjacent to 33 Bay Drive to achieve a factor of safety of at least 1.5 and acceptable pile

COASTAL COMMISSION

EXHIBIT # 10

PAGE 2 OF 38

**5-97-371 (Conrad), 5-98-020 (Conrad),
5-98-064 (Barnes), and 5-98-178 (McMullen)
Revised Findings; Page 3**

deflections, 4) requirements concerning how any future homes must be built on the approved lots, including compliance with structure and deck stringlines, 5) the use of drought-tolerant landscaping to reduce the amount of water added to groundwater levels on-site to minimize slope instability, 6) prohibition on the placement of construction materials and equipment on the beach to minimize water quality impacts, 7) disposal of construction debris, 8) the installation of inclinometers to monitor earth movement/bluff instability, and 9) the applicant's legal ability to undertake the development proposed.

Staff is separately recommending that the Commission adopt the following revised findings in support of the Commission's separate actions on August 13, 1998, approving with special conditions the coastal development permit applications for the homes currently before the Commission (permit applications 5-98-020, 5-98-064, and 5-98-178). The adopted special conditions concern: 1) an assumption-of-risk deed restriction, including requirements that no seawalls shall be built on the site and that the applicant shall be solely responsible for removal of debris resulting from hazards on the property, 2) conformance with geotechnical recommendations, 3) the use of drought-tolerant landscaping, 4) prohibition on the placement of construction materials and equipment on the beach, 5) disposal of construction debris, and 6) mitigation measures to minimize leaks from proposed swimming pools and spas which would result bluff erosion and instability. These conditions would apply to all three applications for proposed homes.

SUMMARY OF RECOMMENDED SPECIAL CONDITIONS				
Special Conditions	Permit Application			
	5-97-371 Shoring System/Lot Merger	5-98-020 Conrad House	5-98-064 Barnes House	5-98-178 McMullen House
Assumption of Risk	X	X	X	X
Comply w/Geotechnical Recommendations.	X	X	X	X
Revised side wall design	X			
Requirements for Future Homes	X			
Landscaping	X	X	X	X
Staging and Construction	X	X	X	X
Disposal	X	X	X	X
Inclinometers	X			
Pool/Spa mitigation	X	X	X	X
Legal Ability	X			

COASTAL COMMISSION

EXHIBIT # 10
PAGE 3 OF 38

5-97-371 (Conrad), 5-98-020 (Conrad),
5-98-064 (Barnes), and 5-98-178 (McMullen)
Revised Findings; Page 4

The revised findings essentially take the July 24, 1998 staff report for these permits and include the modifications in the August 11, 1998 addendum and provide findings for the changes to the assumption-of-risk conditions verbally made by staff at the hearing.

TABLE OF CONTENTS

I.	APPROVAL WITH CONDITIONS. _____	5
II.	STANDARD CONDITIONS. (Applicable to all permits) _____	5
III.	SPECIAL CONDITIONS. _____	6
	Special Conditions for the Proposed Shoring System and Lot Merger; Coastal Development Permit 5-97-371 _____	6
	Special Conditions for the Proposed Homes; Applicable to Coastal Development Permits 5-98-020, 5-98-064, and 5-98-178 _____	9
IV.	FINDINGS AND DECLARATIONS _____	11
A.	Detailed Project Description and Location _____	11
1.	Bluff Repair/Shoring System (Permit Application 5-97-371) _____	11
2.	Lot Merger _____	13
3.	Proposed Homes _____	13
B.	History of Landslide Activity/Development on the Subject Site _____	15
C.	Chapter 3 Policy Analysis _____	15
1.	Geologic Hazards _____	15
a.	Stabilization of Site and Adjacent Properties (Application 5-97-371) _____	16
b.	Stability of Proposed Homes (Applications 5-98-020, 5-98-064, and 5-98-178) _____	21
2.	Shoreline Protective Devices _____	24
a.	Construction Which Alters Natural Shoreline Processes (Section 30235) _____	25
b.	Protection of Existing Structures (Section 30235) _____	25
c.	Adverse Impacts on Shoreline Sand Supply (Section 30235) _____	26
3.	Marine Resources/Water Quality _____	28
4.	Public Access _____	29
5.	Visual Quality _____	30
D.	Local Coastal Program _____	32
E.	California Environmental Quality Act _____	33
	APPENDIX A _____	35
	LIST OF EXHIBITS _____	37

COASTAL COMMISSION

EXHIBIT # 10
PAGE 4 OF 38

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution separately for each permit application:

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, located between the nearest public roadway and the shoreline, would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, would 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 would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS. (Applicable to all permits)

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 would 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 would 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.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 5 OF 38

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.

Special Conditions for the Proposed Shoring System and Lot Merger; Coastal Development Permit 5-97-371

1. **Assumption-of-Risk.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant and all landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant and all landowners understand that the entire site may be subject to extraordinary hazards from landslides/slope failure and wave attack, and the applicant assumes the liability from such hazards; (b) that the applicant and all landowners unconditionally waive any claim of liability on the part of the Commission and agree to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to the natural hazards, and (c) that the applicant agrees that no shoreline protective devices shall be constructed on the parcel; and (d) the applicant accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures or erosion on this site. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. **Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two sets of final revised grading, drainage, foundation, and engineering plans for the proposed shoring system slope stabilization to be built on all lots on the subject site. The final revised plans shall be consistent with the preliminary plans received by the Commission on July 14, 1998, as generally depicted in the exhibits to the staff report for the August 1998 hearing for this report except that the final revised plans shall incorporate the recommendations contained in: 1) the "Preliminary Geotechnical Investigation", Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2) excluding the requirements for benching and subdrains, 2) the "Supplemental Geotechnical Investigation", Proposed Residential Development, Lots 26, 27, 28, 29, and 30 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc. (Project No. 1800.3) excluding the

COASTAL COMMISSION

requirements for benching and subdrains, 3) the letter from Ninyo & Moore to Ms. Shirley Frahm dated July 15, 1998 (Project No. 201351-01), 4) the letter from Josephson Werdowatz & Associates, Inc. to George B. Piggott, Esq. dated July 15, 1998, 5) the letter from Post, Buckley, Schuh & Jernigan, Inc. to George B. Piggott dated July 15, 1998, 6) the letter from Sid Danenhauer to Coastal Commission staff dated July 15, 1998, and 7) the August 11, 1998 letter from Osman Pekin of Leighton and Associates, Inc. to Three Arch Bay (Leighton and Associates, Inc. Project No. 1971218-001). Prior to issuance of the coastal development permit, the applicant shall submit, for the Executive Director's review and approval, evidence that the appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans incorporates all of the recommendations specified in the above referenced documents.

The approved development shall be constructed in accordance with the final revised plans as approved by the Executive Director. Any deviations from said plans including any proposed changes which are identified after the additional slope stability analysis shall require a Coastal Commission-approved amendment to this permit unless the Executive Director determines a permit amendment is not needed.

3. Revised Side Wall Design. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised plans which demonstrate that: 1) the design of the side wall section of the proposed shoring wall adjacent to the property at 33 Bay Drive achieves a minimum 1.5 factor of safety for the slope, 2) the side wall piles shall be designed to accommodate both construction loads and final project loads with acceptable bending and deflection, and 3) the side wall shall be modified using some combination of tiebacks, increased embedment depth of piles, increased pile strength, lagging, and/or more piles. The applicant shall undertake development consistent with the plans approved by the Executive Director.

4. Requirements for Homes Which May be Built on the Lots. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant and all landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

(a) any proposed homes, accessory structures, and hardscape (such as patios and swimming pools) to be built on the subject site shall be designed and constructed in a manner which maintains the factor of safety established by the proposed shoring system approved by this permit (with a minimum factor of safety of 1.5),

(b) any swimming pools, spas, or water features proposed shall include measures to mitigate against leakage from the swimming pools, spas, water features or associated plumbing,

COASTAL COMMISSION

- (c) any proposed homes shall comply with the structure stringline and any proposed accessory structures, including pools, and all hardscape shall comply with the deck stringline, and
- (d) the entire portion of the sites seaward of any proposed homes shall be fully vegetated with drought tolerant, primarily native non-invasive vegetation, and no pathways, whether paved or unpaved, are allowed between the homes or hardscape area seaward of the homes and the beach.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Landscaping. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised landscaping plans. The revised landscaping plans shall: 1) be consistent with the preliminary landscaping plans dated September 12, 1997 prepared by Lawson's Landscape Services, 2) be prepared by a licensed landscaped architect, and 3) incorporate the following criteria: (a) planting shall be of drought tolerant plants (native, non-invasive drought tolerant plants are preferred); (b) the turf grass areas depicted seaward of the proposed homes shall be deleted, (c) Only temporary irrigation to help establish the landscaping shall be allowed; and (d) The plantings established shall provide 90% cover in 90 days. The applicant shall comply with the plans approved by the Executive Director.

6. Staging and Storage of Construction Materials and Equipment. Construction material and equipment shall not be staged or stored on the beach. Any accidental spills of construction equipment fluids shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.

7. Disposal of Landslide and Construction Debris. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the exported excavated soil resulting from the proposed project. If the disposal site is located in the coastal zone, a coastal development permit must be obtained before disposal occurs. Disposal shall occur at the approved disposal site.

8. Installation of Inclinometers/Remedial measures. The applicant shall monitor on-site ground movement which may cause distress on immediately adjacent off-site properties. The applicant shall install inclinometers to monitor ground movement. The inclinometers shall be installed on-site along the perimeter of the site, adjacent to the Bay Drive roadway and the adjacent homes at 21 and 33 Bay Drive. Should the inclinometers indicate that severe ground

COASTAL COMMISSION

EXHIBIT # 10

8 21 38

movement is imminent which would jeopardize the stability and structural integrity of Bay Drive and the adjacent properties at 21 and 33 Bay Drive, the neighbors at 21 and 33 Bay Drive, the Three Arch Bay Homeowner's Association or the operator of Bay Drive, and the Executive Director shall be immediately notified of the situation. An application to amend permit 5-97-371 shall be submitted for any emergency remedial measures which may be necessary.

9. Legal Ability to Undertake Development. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, written evidence demonstrating that the applicant has the legal ability to: 1) carry out the approved project, including those portions of the project located on land not owned by the applicant nor which the applicant has a fee interest in nor legal right to use, and 2) carry out all conditions of approval of this permit.

Special Conditions for the Proposed Homes; Applicable to Coastal Development Permits 5-98-020, 5-98-064, and 5-98-178

1. Assumption-of-Risk. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant and all landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant and all landowners understand that the entire site may be subject to extraordinary hazards from landslides/slope failure and wave attack, and the applicant assumes the liability from such hazards; (b) that the applicant and all landowners unconditionally waive any claim of liability on the part of the Commission and agree to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to the natural hazards, and (c) that the applicant agrees that no shoreline protective devices shall be constructed on the parcel; and (d) the applicant accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures or erosion on the site. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Geotechnical Recommendations. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two sets of final revised site plans, floor plans, elevations, grading, drainage, foundation, and engineering plans for the proposed home and related accessory development (e.g., swimming pools, patios, etc.) approved by this permit. These plans shall show all cut and fill slope profiles extending the entire length of the site from the existing beach/toe of existing slope interface through the seaward edge of Bay Drive. These plans shall be consistent with the preliminary plans received by the Commission on July 14, as generally depicted in the exhibits at

COASTAL COMMISSION

the staff report for the August 1998 hearing for this permit except that these plans shall incorporate the recommendations pertaining to the homes and accessory development contained in both; 1) the "Preliminary Geotechnical Investigation", Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2), 2) the "Supplemental Geotechnical Investigation", Proposed Residential Development, Lots 26, 27, 28, 29, and 30 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc. (Project No. 1800.3), and 3) the August 11, 1998 letter from Osman Pekin of Leighton and Associates, Inc. to Three Arch Bay (Leighton and Associates, Inc. Project No. 1971218-001).

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that the appropriate licensed professional has reviewed and approval all final design and construction plans and certified that each of those final plans incorporates all of the recommendations specified in the above referenced documents.

The approved development shall be constructed in accordance with the final revised plans as approved by the Executive Director. Any proposed deviations from said plans shall require a Coastal Commission-approved amendment to this permit, unless the Executive Director determines a permit amendment is not needed.

3. Landscaping. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised landscaping plans. The revised landscaping plans shall: 1) be consistent with the preliminary landscaping plans dated September 12, 1997 prepared by Lawson's Landscape Services, 2) be prepared by a licensed landscaped architect, and 3) incorporate the following criteria: (a) planting shall be of drought tolerant plants (native, non-invasive drought tolerant plants are preferred); (b) the turf grass areas depicted seaward of the proposed homes shall be deleted, (c) the stone paths leading from the pool terraces of each home to the beach shall be eliminated and replaced with drought tolerant plants, and (d) only temporary irrigation to help establish the landscaping shall be allowed. The applicant shall comply with the plans approved by the Executive Director.

4. Staging and Storage of Construction Materials and Equipment. Construction material and equipment shall not be staged or stored on the beach. Any accidental spills of construction equipment fluids shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.

5. Disposal of Landslide and Construction Debris. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the

COASTAL COMMISSION

review and approval of the Executive Director, the location of the disposal site of the exported excavated soil resulting from the proposed project. A coastal development permit shall be obtained for the disposal site prior to disposal occurring. Disposal shall occur at the approved disposal site.

6. Minimizing Swimming Pool Impacts. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a written plan to mitigate for the potential for leakage from the proposed swimming pools and spas. The plan shall include, at a minimum: 1) installing separate water meters for each pool and spa which are separate from the water meters for the houses to allow for the monitoring of water usage for the pools and spas, and 2) identification of the materials, such as plastic linings or specially treated cement, to be used to waterproof the undersides of the pools and spas to prevent leakage, and information regarding the past success rates of these materials. The applicant shall comply with the mitigation plan approved by the Executive Director.

IV. FINDINGS AND DECLARATIONS

A. *Detailed Project Description and Location*

The applicant is proposing to repair a failed slope located on five beachfront lots in Three Arch Bay in the City of Laguna Beach, as well as merge two of the lots into one and construct a home on each of the resultant lots. The lot numbers for the legal descriptions and the site addresses correspond as follows:

Lot Number (Tract 970)	Corresponding Street Address
26	23 Bay Drive; 5-98-020 (Conrad)
27	25 Bay Drive; 5-98-064 (Barnes)
28	27 Bay Drive (To be eliminated after proposed lot merger)
29	29 Bay Drive (Home not before the Commission)
30	31 Bay Drive; 5-98-178 (McMullen)

1. **Bluff Repair/Shoring System (Permit Application 5-97-371)**

The applicant is proposing to repair a failed bluff. The top of the subject site is approximately 90 feet above sea level. The proposed project consists of: 1) a shoring wall, 2) buttress fill, 3) toe protection for the buttress fill, and 4) a drainage system. (see Exhibit 8)

COASTAL COMMISSION

EXHIBIT # 10
PAGE 11 OF 38

a. Shoring Wall

Part of the proposal includes the construction of a shoring wall to stabilize Bay Drive and adjacent homes. The shoring wall is intended both to provide temporary shoring while the existing bluff material is recompacted and the buttress fill installed, as well as serving as part of the permanent overall shoring system. The shoring wall would be "U" shaped, with the bottom of the "U" adjacent to and parallel with Bay Drive, with the legs of the "U" running about halfway towards the sea down the side property lines between the subject site and adjacent properties. (see Exhibit 8, Page 3) The tunnel located deep under Bay Drive landward of the proposed shoring wall, as shown on the plans, is an existing tunnel built in the early part of this century which directs off-site drainage to Aliso Creek a few miles upcoast. (see Exhibit 8, Page 5)

The proposed shoring wall would be comprised of fifty-one (51) thirty inch (30") concrete with reinforced steel cage diameter piles spaced at eight foot (8') intervals along the length of the wall with a system of gunnite and steel bridging between the piles. The proposed piles are to be founded ten feet (10') into bedrock below the projected failure plane (clay seam). The height of the piles would range from slightly less than forty feet to about fifty-five feet. Approximately ten feet of the wall would protrude above grade. The remainder would be buried. To withstand the presence of groundwater within the site area, the wall would be waterproofed with a bentonite system, in addition to a proposed drainage system described further below.

A system of tiebacks is proposed to anchor the shoring wall in place. (see Exhibit 8, Page 1) The proposed tiebacks would be between forty and fifty feet long. The proposed tiebacks would be installed at a 30 degree angle below horizontal and extend approximately thirty-five feet into bedrock beyond the identified failure plane. The proposed tiebacks would be designed so that they would run under Bay Drive but would not extend landward of Bay Drive. The proposed tiebacks would also extend across the property line onto the adjacent property at the downcoast end, but not the property at the upcoast end.

b. Buttress Fill

Once the proposed shoring wall is completed, the existing landslide material is proposed to be overexcavated and recompacted (22,000 cubic yards of cut and 22,000 cubic yards of fill for 44,000 cubic yards of total grading) for the construction of a buttress fill. The proposed buttress fill would constitute the primary method of shoring Bay Drive and the adjacent properties.

The proposed buttress fill would extend to the current interface between the beach/sand and the existing toe of the landslide debris. The landslide debris on-site would be excavated down below the identified clay seam/failure plane in the San Onofre Breccia (bedrock) identified by the consulting geologist. The proposed buttress fill includes a thirty foot(30') wide key way cut into the bedrock near the seaward edge of the buttress fill. The proposed buttress fill would be stabilized by the construction of the soil key way

COASTAL COMMISSION

Approximately six thousand (6,000) cubic yards of the excavated landslide debris would be removed from the site because it is unsuitable for recompaction due to high levels of moisture and organic material. The 6,000 cubic yards of exported material would be replaced with a like amount of imported material. The imported material and the remaining 16,000 cubic yards of non-exported excavated material would be recompacted on-site to construct the proposed buttress fill.

c. Toe Protection for the Buttress Fill

The applicant is also proposing a buried wall near the toe of the buttress fill to protect the toe of the buttress fill from eroding. The toe protection wall would protect the soil key way described above which stabilizes the buttress fill. The proposed toe protection wall would be located roughly along the 27 foot contour line (in plan view). The proposed toe protection wall is to be founded in bedrock below the failure plane and would extend up to 25 feet above sea level, so it would be buried about two feet below the surface of the buttress fill.

d. Drainage System

The proposed drainage system would be comprised of a mira-drain barrier, located behind the proposed shoring wall (i.e., on the landward side of the shoring wall, between the wall and Bay Drive, parallel to the wall and Bay Drive), which would channel groundwater to french drains located at the bottom of the shoring wall. The french drains would be situated perpendicular to Bay Drive at the center of each lot. From this point, groundwater would be conveyed to the beach via non-erosive drain lines. Where the proposed drain lines meet the beach, seepage pits are proposed to be installed to promote seepage of the ground water into the ground rather than having the water run across the sand to the ocean and causing beach erosion.

2. Lot Merger

The subject site is zoned for Village Low Density residential use, which allows a density of 3-7 dwelling units per acre. The applicant is also proposing to merge three of the existing lots into two. (see Exhibit 7) The three lots to be merged are Lots 28, 29 and 30. The 27 Bay Drive address would be eliminated as a result of the proposed lot merger. As a result, there would be a new total of four single-family residential lots on the site. The proposed lot at 23 Bay Drive would be 14,337 square feet in size. The proposed lot at 25 Bay Drive would be 13,282 square feet in size. The proposed lot at 29 Bay Drive would be 18,520 square feet in size. The proposed lot at 31 Bay drive would be 17,441 square feet in size.

3. Proposed Homes

The applicant is also proposing to build four homes; one of each of the four proposed lots. At the present time, the proposed home at 29 Bay Drive has received approval from the City of

COASTAL COMMISSION

Laguna Beach Design Review Board, but the appeal period to the City Council has not yet expired. Therefore, there is no permit application for this home before the Commission, but the applicant has included drawings of it for reference. (see Exhibit 5)

The proposed homes would be consistent with a stringline drawn between the two nearest adjacent existing residences (see Exhibit 2) and would be setback more than one hundred feet from the current slope/sand interface. The proposed homes would be situated between 45'-50' above mean high tide line and would be built on caisson/grade beam/structural slab foundations which would be tied into the proposed shoring wall. The proposed homes would be multi-level, with the garages at street level and the living area of the proposed homes stepped down the hillside below street level. Therefore, only the garages would be visible at the level of Bay Drive. The two immediately adjacent homes at 21 and 33 Bay Drive are similarly situated, with garages at street level and the living areas cascading down the hillside below. The subject site and two immediately adjacent homes have very little level land on which to build. The other blufftop lots in Three Arch Bay are more typical of blufftop lots, with a large flat area on the top on which to build a home, a relatively defined bluff edge and a sharp drop-off to the beach below.

a. Proposed Home at 23 Bay Drive; Permit Application 5-98-020 (Conrad)

The applicant is proposing to construct a 3,720 square foot, 5-level, single-family home with an attached two-car garage and two uncovered parking spaces, 997 square feet of deck area and an 840 square foot swimming pool terrace. The proposed home would be 57'6" from its lowest level to the highest point of the roof. The highest point of the structure would extend ten feet above the centerline of Bay Drive. (see Exhibit 3) Also proposed is 9,984 cubic yards of grading (4,992 cubic yards of cut and 4,992 cubic yards of fill).

b. Proposed Home at 25 Bay Drive; Permit Application 5-98-064 (Barnes)

The applicant is proposing to construct a 3,719 square foot, 5-level, single-family residence with a 662 square foot two-car garage, 812 square feet of decks, a covered, open-air pool terrace and game room, swimming pool and patio area, and 7,662 cubic yards of grading (3,831 cubic yards of cut and 3,831 cubic yards of fill). The proposed home would be 61 feet high from the pool terrace level to the top of the roof of the garage. The top of the roof of the garage would extend eleven feet above the centerline of Bay Drive. (see Exhibit 4)

c. Proposed Home at 31 Bay Drive; Permit Application 5-98-178 (McMullen)

The applicant is proposing to construct a 5,099 square foot, 5-level, single-family residence with attached 742 square foot three car garage, 1,935 square feet of deck area, swimming pool, spa, landscaping, and 12,900 cubic yards of grading (6,450 cubic yards of cut and 6,450 cubic yards of fill). The proposed

COASTAL COMMISSION

EXHIBIT # 10
PAGE 14 OF 38

home would be 62 feet tall from the pool level to the top of the roof of the garage. The top of the garage would extend eleven feet above the centerline of Bay Drive. (see Exhibit 6)

d. Proposed home at 29 Bay Drive

A coastal development permit application has not been submitted to the Coastal Commission for the proposed home at 29 Bay Drive because the local appeal period has not run out. The local appeal period is expected to end before the August Coastal Commission hearing, provided no appeals are filed at the local level. (see Exhibit 5)

B. History of Landslide Activity/Development on the Subject Site

The subject site has had a history of landslides in the past. A geology report prepared in 1992 for the property at 21 Bay Drive adjacent to the subject site provides some history of the landslides on the subject site, as does the applicant and the applicant's geology report. A home was built on Lot 26 (23 Bay Drive) in the 1920's, and a home was built in the 1930's which straddled Lots 30 and 31 (31 and 33 Bay Drive). Only a portion of this house was on the subject site (33 Bay Drive is not part of the subject site). Landslide activity on the subject site typically occurred during years when rainfall was unusually heavy. A clay seam/failure plane underlying the site is lubricated by excessive rainfall which causes the land above the seam to slide. In addition, the toe of the previously existing slope was also subject to instability due to wave attack.

In 1952, when rainfall was more than 25 inches (the fourth wettest year between 1926 and 1992), stability of the site was at issue. Lot 28 (27 Bay Drive) had a small accessory structure near the beach which was demolished in the 1950's due to high surf and landslide activity. In 1978-79, 24+ inches of rain fell, and slide movement occurred. This landslide activity caused the destruction of the home on Lots 30 and 31. Subsequently, a home was rebuilt on Lot 31 only. This home, which currently exists immediately adjacent to the upcoast end of the subject site, was built on caissons. During the 1982-83 El Nino winter season, when rainfall was 23.53 inches, the home at 23 Bay Drive was damaged. This house was demolished in 1992. Also in 1992, the Three Arch Bay Homeowner's Association constructed a wall parallel to Bay Drive to provide shoring. That wall, however, is being undermined by further movement of the slide material on-site.

C. Chapter 3 Policy Analysis

1. Geologic Hazards

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

COASTAL COMMISSION

EXHIBIT # 10
PAGE 15 OF 38

- (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.*

The proposed project involves the repair of a landslide on five residential blufftop lots. Three of the lots would be merged into two for a new total of four lots. The subject site is currently vacant, although homes or accessory structures previously existed on three of the existing lots. A home is proposed to be built on each of the proposed lots. The previously existing homes were destroyed by landslides or demolished because of landslide damage. The geotechnical reports provided by the applicant address both the proposed shoring system and the proposed homes. In addition, neighbors of the subject site also had geotechnical consultants review the plans for the proposed project.

The geotechnical reports submitted by the applicant's geotechnical consultant are: 1) the "Preliminary Geotechnical Investigation, Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California", dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2), 2) the "Supplemental Geotechnical Investigation, Proposed Residential Development, Lots 26, 27, 28, 29 and 30 of Tract 970, Three Arch Bay, South Laguna Beach", dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc., (Job No. 1800.3, Log No. 4376), and 3) the "Preliminary Geotechnical Parameters for Structural Design of Toe Wall" prepared by Hetherington Engineering, Inc. on June 19, 1998 (Project No. 1800.3, Log No. 4561). In addition, George Piggott, the attorney for the neighbor at 33 Bay Drive, submitted the following comments geotechnical and structural engineering consultants on the proposed shoring system: 1) Ninyo & Moore report dated July 15, 1998 (Project No. 201351-01), 2) a July 15, 1998 letter from Josephson Werdowatz to George Piggott, and 3) a July 15, 1998 letter from Post, Buckley, Schuh & Jernigan, Inc. to George Piggott. (see Exhibits 11, 12, and 13) Sid Danenhauer, who owns a home on the inland side of Bay Drive adjacent to the subject site also provided a summary of his geotechnical consultant's comments. (see Exhibit 14) Also submitted is an August 11, 1998 letter from Leighton and Associates to Three Arch Bay. (see Exhibit 39)

a. *Stabilization of Site and Adjacent Properties (Application 5-97-371)*

The applicant's geotechnical report indicates that the subject site has slid several times in the past; in 1952, the late 1970's/early 1980's, and the late 1980's/early 1990's. The report indicates that the slides coincided with periods of heavy rainfall, and that groundwater seepage at the site is a problem. In 1992, the Three Arch Bay Association (which serves as a homeowners group)

COASTAL COMMISSION

EXHIBIT # 10

PAGE 16 OF 38

placed tiebacks, caissons, and shotcrete to protect the slope immediately bounded by Bay Drive, according to the report. The report indicates, however, that the slope still shows signs of movement in some areas.

The primary goal of the proposed shoring system is to provide support for Bay Drive and the homes at 21 and 33 Bay Drive adjacent to the subject site, as well as having the buttress fill recreate the slope in approximately the same landform that previously existed prior to the landslide. Due to the landslide, Bay Drive and adjacent properties seaward of Bay Drive to the east and west of the subject site have lost lateral structural support.

The proposed bluff repair needs to be carried out in a manner which meets the minimum factor of safety of 1.5 which is required by the City of Laguna Beach and Orange County, regardless of what types of homes, if any, are built on the site. The geotechnical consultant has determined that the proposed project is feasible from a geotechnical standpoint and is able to achieve a minimum factor of safety of 1.5. The proposed project is beneficial since it reduces slide potential and stabilizes Bay Drive and the adjacent residences.

The applicant indicates that other alternatives to the slope repair, including crib block, buttress walls located at the sand line, soil nailing, chemical grouting, buttress fills without a shoring wall, chemical grouting, and a seawall at the toe of the slope were considered. The proposed shoring system alternative was selected in part because it is similar to a method of construction that has been used elsewhere by the applicant in Laguna Beach.

Furthermore, a shoring wall, similar to the proposed shoring wall, was installed in the Wyland Gallery project in downtown Laguna Beach. The applicant's neighbors indicated at the April 7, 1998 Coastal Commission meeting that the bluff seaward of the Wyland Gallery eroded this past winter. The applicant's geologist indicated that the bluff at the Wyland Gallery eroded because it was not protected by a seawall, not because of defects with the shoring wall, and shoreline erosion was anticipated. (see Exhibit 16) For the proposed Bay Drive shoring project, the applicant proposes to install a toe protection wall near the base of the proposed buttress fill to prevent the type of erosion of the buttress fill that occurred at the Wyland Gallery.

While the other alternatives may provide site stability, they do not all provide for the proper drainage of the site. Thus, the alternatives which did not provide for proper drainage were rejected. Although the rejected soil nailing alternative would allow for the installation of necessary drainage improvements, this alternative would not achieve an acceptable level of safety without similar excavation and recompaction (landform alteration) and a shoring wall similar to what is being proposed under the proposed project.

The proposed project is an acceptable method to achieve long-term stability of the site, adjacent road (Bay Drive), and adjacent properties. Drainage would be collected on-site to minimize

COASTAL COMMISSION

off-site adverse impacts from erosion and would be discharged in a manner that minimizes beach erosion. The repaired bluff would mimic the original bluff profile and tie in to the slope profile of the adjacent properties in a manner that does not result in significant differences at the interface between the subject site and adjacent properties. The geotechnical consultant has indicated that the proposed project would not result in adverse impacts to adjacent off-site properties. (see Exhibit 10) The minimum factor of safety of 1.5 would be met.

Further, the proposed project would provide a level of stability not achieved before on the subject site, and would minimize further occurrences of landslides on the site. This is because the proposed project: 1) is a comprehensive slope stability project, 2) would remove the major identified slide plane by excavating below the identified clay seam/failure plane, 3) provides drainage controls which address the issue of reducing groundwater on the site that contributes to landslides, and 4) provide toe protection which would stabilize the slope.

The geotechnical reports indicate that the proposed development is feasible from a geotechnical standpoint. The geotechnical reports contains recommendations that, if incorporated into the proposed project design, would assure stability and structural integrity. The recommendations include: 1) removal of the active landslide debris and reconstruction as compacted fill, 2) installation of drainage systems (as proposed), 3) construction of the slope at a 2:1 (horizontal to vertical) ratio to assure gross and surficial stability, 4) construction of a buttress keyway at the toe of the identified slide plane, 5) benching, and 6) installation of a toe protection wall inland of the buttress key, founded a minimum of 3 feet into dense bedrock.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic hazard. The applicant's geotechnical reports indicate that the subject site has slid several times in the past. To minimize risks to life and property, the project must achieve a minimum factor of safety of 1.5. In a letter dated August 3, 1998, Hetherington Engineering stated that the proposed slopes and shoring system will achieve a 1.5 factor of safety. (see Exhibit 35) Hetherington Engineering, Inc. clarified in a letter dated August 5, 1998 that the slope at the bottom of the fill would not exceed 5:1 (horizontal to vertical) and as a consequence benching would not be necessary to achieve the required factor of safety. (see Exhibit 36) Therefore, the Commission finds that the project is consistent with Section 30253 since benching is not necessary for purposes of minimizing risks to life and property considering that the slope at the bottom of the fill would not exceed 5:1 and the project will achieve a 1.5 factor of safety.

The applicant, by letter dated July 16, 1998, proposed to remove the proposed benches and subdrains and install in their place "... a series of french drain trenches that would be situated perpendicular to Bay Drive at the center of each lot." (see Exhibit 9, Page 4) In addition, by later dated July 21, 1998, the applicant stated that Mark Hetherington, the applicant's engineering geologist, had omitted the previously proposed benching because the slope of the identified

COASTAL COMMISSION

failure plane was only 2.5:1 and benching is typically required for slopes greater than 5:1. (see Exhibit 9, Page 1)

(1) Conformance with Geotechnical Recommendations/Revised Side Wall plans

The geotechnical consultants for the applicant's neighbors did not indicate that the proposed project was infeasible or that it would not provide the stability indicated. They did, however, provide written comments on the proposed project and made a number of recommendations to ensure that the proposed shoring system would perform as anticipated. The installation of inclinometers was proposed to monitor movement of the land during construction. In addition, further analysis of the expected stability of the portion of the proposed shoring wall adjacent to 33 Bay Drive was another recommendation put forth. To assure that other geotechnical evaluations are taken into consideration, a special condition is imposed to require that the applicant's geotechnical consultant incorporate the recommendations of the other geotechnical consultants except the requirement for benching. The benching requirement was deleted based on an August 3, 1998 by Hetherington Engineering, Inc. (see Exhibit 35)

Therefore, as a condition of approval, the Commission finds that it is necessary to require the applicant to submit final revised plans which include signed statements of the applicant's geotechnical consultants and which incorporate the recommendations of the neighbors geotechnical consultants certifying that the final revised plans incorporate the geotechnical recommendations. As a condition of approval, the Commission also finds that the applicant shall prepare revised side wall plans that ensure the stability of the portion of the proposed shoring wall adjacent to 33 Bay Drive for both construction conditions and final project conditions.

(2) Assumption-of-Risk Deed Restriction

Because landsliding has occurred several times on the subject site, the Commission finds that, as a condition of approval, the applicant and all landowners of the subject site must record an assumption-of-risk deed restriction to inform the applicant and all current and future owners of the subject site that the site is subject to hazards from landslides and coastal erosion/wave attack. This is especially important since homes would likely be rebuilt on the subject site.

The proposed stabilization project involves eliminating a clay seam/failure plane that was a chief cause of previous landslides and construction of a toe protection wall that would support the proposed buttress fill, which in turn supports the approved shoring wall, which in turn protects existing structures such as the Bay Drive roadway and adjacent homes. The applicant's geotechnical and coastal engineering consultants assert that the proposed stabilization project would be designed in a geotechnically safe manner, and that the proposed stabilization project would provide support for future homes on the site.

COASTAL COMMISSION

However, geologists employed by adjacent property owners and the homeowners' association indicated the need for further refinement of the design of the proposed stabilization project to ensure that it will in fact perform as intended. Further, geotechnical evaluations do not guarantee that future bluff retreat or further landslides will not affect the stability of the proposed stabilization project. There is always some risk of an unforeseen natural disaster, such as an unexpected landslide due to an unknown failure plane, erosion of the bluff seaward of the toe protection wall due to unusually large waves, etc., that would result in complete or partial destruction of the proposed stabilization project.

In case such an unexpected event occurs on the subject property, the Commission attaches Special Condition No. 1(d), which requires recordation of a deed restriction whereby the landowner assumes the risks of extraordinary erosion and geologic hazards of the property and accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site.

The Commission further finds that Special Condition No. 1(a) must be attached because recordation of the deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely in the future.

In addition, although the applicant understands that the site has the potential for future geologic hazard, no one can predict when or if there might be bluff failure that might affect the proposed development since such failure appears to be episodic in nature. The Commission thus attaches Special Condition No. 1(b), which also requires recordation of a deed restriction whereby the landowner assumes the risks of extraordinary erosion and geologic hazards of the property and waives any claim of liability on the part of the Commission or its officers, agents, and employees for any damage due to these natural hazards; in addition, the landowner accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site.

The Commission notes that the applicant specifically claims that a seawall will not be necessary and, at the August 1998 Commission hearing, agreed to the imposition of this condition.

(3) Installation of Inclinometers

To ensure structural integrity and geologic stability, the Commission finds that the applicant shall, as required by Special Condition No. 8: 1) install inclinometers along the perimeter of the subject site to monitor ground movement so that imminent movements can be better identified

COASTAL COMMISSION

and appropriate remedial measures prepared, 2) notify the neighbors and Executive Director of landslides, and 3) submit a coastal development permit application for the remedial measures.

(4) Requirements for Future Homes

The Commission finds that, because homes are proposed to be built on the subject site, parameters for the construction of future homes must be set forth. These parameters include: 1) requiring that future homes to be built on the site are designed and constructed in a manner which maintains the minimum factor of safety of 1.5 for the subject site, 2) the submittal of measures to minimize and mitigate leakage from proposed swimming pools and spas to reduce the amount of groundwater on-site, and 3) conformance with the structural and deck stringlines, and 4) that the slope seaward of the proposed homes be entirely vegetated with drought-tolerant, primarily native non-invasive vegetation. Regarding landscaping, the Commission finds that yarrow does not constitute turf and thus its use for landscaping is acceptable.

(5) Landscaping

Because groundwater levels have contributed to the landslide episodes on the subject site, the Commission finds that it is necessary to minimize irrigation on the site and require drought-tolerant landscaping. Minimizing irrigation and use of drought-tolerant landscaping would lessen the amount of water added to the groundwater supply that would cause erosion. Also, the Commission finds that it is necessary to require the elimination of the proposed paths from the proposed homes to the beach below. This is because the construction of paths, where paved or unpaved, would serve as a conduit for runoff whereby rain would collect and be funneled along the paths, causing gullying and erosion which would lead to slope instability.

(6) Conclusion (Geologic Hazards – Shoring System)

Therefore, as conditioned for: 1) recordation of an assumption-of-risk deed restriction, including requirements that no seawalls shall be built on the site and that the applicant shall be solely responsible for removal of debris resulting from hazards on the property, 2) the incorporation of geotechnical recommendations of the applicant's geologist, 3) revised side wall plans, 3) the use of drought-tolerant landscaping, 4) setting forth requirements for construction of future homes on the site including conformance with the stringline, and 5) the installation of inclinometers, the Commission finds that the proposed shoring system is consistent with Section 30253 of the Coastal Act.

b. Stability of Proposed Homes (Applications 5-98-020, 5-98-064, and 5-98-178)

Coastal development permit applications 5-98-020 (Conrad; 23 Bay Drive), 5-98-064 (Barnes; 25 Bay Drive), and 5-98-178 (McMullen; 31 Bay Drive), are for proposed homes to be built on

COASTAL COMMISSION

the buttress fill proposed under coastal development permit application 5-97-371 (Conrad). Structural integrity would be ensured in part because: 1) the proposed homes would be setback 100 feet from the seacliff toe while the proposed patio/swimming pool areas would be setback 70 feet from the seacliff toe, and 2) the proposed slope protection includes a buttress keyway and a toe protection wall would stabilize the adjacent structures and also provide protection for the proposed homes.

(1) Conformance with Geotechnical Recommendations

The proposed homes would be built on caisson-grade beam foundations which would be tied into the proposed shoring wall to provide stability. The supplemental geotechnical report dated January 26, 1998 (Hetherington Engineering, Inc. Project No. 1800.3, Log No. 4376) provided by the applicant includes recommendations that the drilled piers for the proposed foundations extend at least 10 feet into the bedrock, provide a minimum horizontal clearance of 30 feet from the face of the slope to the outer edge of the bearing surface, and that the piers be a minimum diameter of two feet. In addition, the geologist for the homeowners association also provided additional geotechnical recommendations. Therefore, the Commission finds that it is necessary for the applicant to submit plans depicting the final foundation and house designs which incorporate the recommendations contained in the geotechnical reports to further assure structural integrity.

(2) Assumption-of-Risk Deed Restrictions

As described above, the Commission finds that coastal development permit 5-97-371 (Conrad) for the stabilization of the subject site, as conditioned, is consistent with Section 30253 of the Coastal Act regarding geologic hazards. The proposed stabilization project involves eliminating a clay seam/failure plane that was a chief cause of previous landslides. The proposed stabilization project also involves the construction of a toe protection wall that would support the approved buttress fill, which in turn would support the approved shoring wall, which in turn would protect existing structures such as the Bay Drive roadway and adjacent homes. The applicant's geotechnical and coastal engineering consultants assert that the proposed stabilization project would be designed in a geotechnically safe manner, and that the stabilization project would provide support for the proposed homes.

However, geologists employed by adjacent property owners and the homeowners' association indicated the need for further refinement of the design of the proposed stabilization project to ensure that it will in fact perform as intended. Further, geotechnical evaluations do not guarantee that future bluff retreat or further landslides will not affect the stability of the proposed stabilization project, which in turn would affect the stability of the proposed homes. There is always some risk of an unforeseen natural disaster, such as an unexpected landslide due to an unknown failure plane, erosion of the bluff seaward of the toe protection wall due to unusually

COASTAL COMMISSION

large waves, etc., that would result in complete or partial destruction of the proposed houses or the proposed stabilization project.

In case such an unexpected event occurs on the subject property, the Commission attaches Special Condition No. 1(d), which requires recordation of a deed restriction whereby the landowner assumes the risks of extraordinary erosion and geologic hazards of the property and accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site.

The Commission further finds that Special Condition No. 1(a) must be attached because recordation of the deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely in the future.

In addition, although the applicant understands that the site has the potential for future geologic hazard, no one can predict when or if there might be bluff failure that might affect the proposed development since such failure appears to be episodic in nature. The Commission thus attaches Special Condition No. 1(b), which also requires recordation of a deed restriction whereby the landowner assumes the risks of extraordinary erosion and geologic hazards of the property and waives any claim of liability on the part of the Commission or its officers, agents, and employees for any damage due to these natural hazards; in addition, the landowner accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site.

The Commission notes that Jim Conrad, the applicant for permit 5-98-020 and the agent for permit applications 5-98-064 (Barnes) and 5-98-178 (McMullen), specifically claims that a seawall will not be necessary and, at the August 1998 Commission hearing, agreed to the imposition of such a condition on each of the subject permits precluding construction of future protective devices on the subject sites.

(3) Minimizing Groundwater

Because groundwater levels have contributed to the landslide episodes on the subject site, the Commission also finds that it is necessary to lessen the amount of groundwater on-site. Therefore, the Commission finds that it is necessary to: 1) require the submittal of measures to minimize and mitigate leakage from proposed swimming pools and spas to reduce the amount of groundwater on-site, 2) minimize irrigation on the site and require drought-tolerant landscaping, and 3) require conformance with the deck and structural stringlines to minimize the creation of hardscape, pools, and paths which could serve as conduits for runoff which would cause gullying and erosion leading to bluff instability.

COASTAL COMMISSION

Further because landsliding has occurred several times on the subject site, the Commission also finds that, as a condition of approval, the applicant and all landowners of the subject site must record an assumption-of-risk deed restriction to inform the applicant and all current and future owners of the subject site that the site is subject to hazards from landslides and coastal erosion/wave attack.

(4) Conclusion (Geologic Hazards – Proposed Homes)

As conditioned for: 1) an assumption-of-risk deed restriction, 2) the incorporation of the recommendations contained in the applicant's geotechnical reports, 3) the elimination of water dependent landscaping areas, 4) conformance with deck and structural stringlines, and 5) measures to mitigate swimming pool leakage, the proposed homes are consistent with Section 30253 of the Coastal Act..

2. **Shoreline Protective Devices**

Section 30235 of the Coastal Act states, in relevant part:

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

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(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.

The subject site is on a beach. The subject beach is a deep pocket beach approximately 1,400 feet long flanked by headlands that project seaward from either end of the crescent shaped beach by about 800 feet. Coastal development application 5-97-371 (Conrad) is for a bluff repair/stabilization project that involves construction of both a shoring wall along Bay Drive and part way along the sides of the adjacent properties, and a buried vertical wall seaward of the toe of the repaired slope. Coastal development permit applications 5-98-020 (Conrad), 5-98-064 (Barnes), and 5-98-178 (McMullen) are for the construction of homes on the stabilized slope

COASTAL COMMISSION

located landward of the proposed buried vertical toe protection wall. The firm of Noble Consultants prepared a coastal engineering assessment (dated April 2, 1998) of the subject site, local and subregional shoreline processes of the Laguna Beach Mini Cells littoral system. (see Exhibit 20) The littoral system consists of the bluffs, rocky shoreline, and cove beaches that start at the north at the Corona del Mar bluffs (just south of the Newport Harbor entrance) to Dana Point Harbor at the south adjacent to the Dana Point Headlands promontory.

a. Construction Which Alters Natural Shoreline Processes (Section 30235)

The proposed project involves the construction of a buried vertical wall and a shoring wall that would reduce or limit bluff retreat, thus reducing the amount of bluff material for natural beach replenishment. (See Exhibit C) Bluff retreat is caused in part by wave attack at the toe of a coastal bluff, which leads to bluff erosion. Bluff retreat and erosion are natural shoreline processes.

A coastal engineering assessment of the proposed bluff repair acknowledges that the proposed buried vertical wall and larger shoring wall adjacent to Bay Drive would deprive the littoral cell of upper terrace deposit sediments that would otherwise enter the littoral system through seacliff retreat and slope sloughing processes. Therefore, the proposed project involves construction which alters natural shoreline processes. Thus, the Commission must find that the proposed shoring wall and vertical wall are: 1) required to protect existing structures, and 2) are designed to mitigate adverse impacts on shoreline sand supply.

b. Protection of Existing Structures (Section 30235)

Section 30235 allows the construction of a shoreline protection device which alter natural shoreline processes if the protective device is required to protect existing structures in danger from erosion. As described above, the proposed shoring wall and toe protection would alter natural shoreline processes. The proposed toe protection wall, which the applicant's coastal engineer recommends be located approximately 25-30 feet landward of the existing slope/sand boundary line, would protect the proposed soil key way at the toe of the proposed buttress fill from erosion due to wave attack. The proposed keyway would stabilize the proposed buttress fill, which in turn provides the primary shoring support for the Bay Drive roadway, the homes on the landward side of Bay Drive (which is a relatively narrow street), and the existing adjacent homes at 21 Bay Drive and 33 Bay Drive. Therefore, it is important to ensure that the proposed keyway is protected from wave attack by a toe-protection wall.

In addition, the proposed toe protection wall is situated at the 27 foot contour line and is buried. Until such time as the beach and slope seaward of the proposed toe protection wall completely erode away, causing the proposed toe protection wall to be exposed to wave action, the toe protection wall would serve primarily as a retaining wall for the proposed buttress fill rather than

COASTAL COMMISSION

a seawall. The applicant's geologist has indicated that the toe protection wall would allow for the construction of a larger buttress fill than could be constructed without some sort of wall near the toe. The applicant's geologist further indicated that the larger the buttress fill, the greater the support for existing structures (e.g., the Bay Drive roadway and the homes at 21 and 33 Bay Drive). Thus, the toe protection wall allows for the construction of a larger buttress fill to provide additional support for existing structures.

The proposed shoring wall would provide temporary support during construction of the proposed buttress fill, as well as providing permanent support once the buttress fill is constructed. Therefore, the Commission finds that the proposed buried toe protection wall and shoring wall are needed to protect existing structures.

c. Adverse Impacts on Shoreline Sand Supply (Section 30235)

Section 30235 also allows the construction of a structure which alters natural shoreline processes only when the structure is designed to minimize adverse impacts to shoreline sand supply. The coastal engineering assessment indicates that seacliff erosion in the area is episodic and occurs sporadically rather than continuously, during times of heavy storm events coupled with high tides. The assessment notes that the presence of dense vegetation at the toe of the bluffs in Three Arch Bay implies that wave activity which would wash away the vegetation doesn't often reach the bluff toe, thus implying that bluff erosion from wave activity is low.

On an average annual basis, the assessment estimates the rate of seacliff retreat in the area to be approximately 0.1 to 0.2 feet per year. The assessment concludes that the estimated annual average volume contributed to the sediment supply of the cove beach from seacliff retreat in Three Arch Bay is less than two hundred (200) cubic yards per year. Thus, the bluffs in Three Arch Bay do not contribute a large amount of sand to the local cove beach.

In addition to the bluffs in Three Arch Bay not contributing the sand supply of the local beach itself, the bluffs only nominally contribute to the larger subregional sand supply. The assessment indicates that the major source of sand in the area is the approximately twelve thousand (12,000) cubic yards of sediment which comes down nearby Aliso Creek every year. In addition, the assessment concludes that alongshore transport of sand in the Laguna Beach Mini Cells littoral system for the most part bypasses the subject beach. The shoreline processes of the subject beach are more dominated by cross shore sand exchanges. In essence, the sand supply of the subject beach is relatively stable. The sand moves offshore and then back onshore in response to sea conditions which change with the seasons, rather than moving upcoast or downcoast to a new location, never to return. Thus, permanent loss of sand from the subject beach to the offshore littoral drift which would contribute to subregional sand supply is minimal.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 26 OF 38

Further, the proposed toe protection wall is situated at the 27 foot contour line and is buried. Until such time as the beach and slope seaward of the proposed toe protection wall completely erode away so that the wall is directly exposed to wave attack, the proposed toe protection wall would not affect the process of slope material being added to the beach sand supply. The rate of erosion due to wave attack at the toe of the slope at the subject site is fairly low, according to the coastal engineering assessment (further described below). The assessment also concludes that the two hundred (200) foot stretch of bluff would likely impact less than 0.2 percent of the overall alongshore subregional sand transport volume. It is not likely, therefore, that the proposed toe protection wall would be exposed during the lifetimes of the proposed homes, based on the low historical erosion rates identified in the coastal engineering assessment. The wall would be exposed much quicker, however, if erosion rates accelerated due to abnormally high waves resulting from unusually strong storm events.

Since the subject beach and sand supply are somewhat static and isolated from the larger subregional system, the limitation on bluff retreat would not have a significant impact on the sand supply of either the local cove beach nor on the larger subregional system. Therefore, the specific nature of the subject beach and the local and subregional shoreline processes are such that the reduction in on-site bluff material for natural sand replenishment, which is minimal, that would result from the proposed project, does not constitute an adverse impact on local shoreline sand supply.

d. No future seawalls allowed (Section 30253)

The approved vertical toe protection wall would be located seaward of the proposed home. As discussed above, the vertical toe protection wall would provide some measure of protection for the proposed home. Also, the applicant's coastal engineer indicates that seacliff erosion on the site appears to be low, and that the proposed home would likely be "... well over 100 years away from seacliff retreat encroachment." (Noble Consultants April 2, 1998 letter to Jim Conrad, Page 3) Thus, no additional toe protection walls should be necessary. Therefore, the Commission attaches Special Condition No. 1(c), which requires that the landowner agrees through recordation of the deed restriction that no bluff or shoreline protective devices shall be constructed on the subject site. This requirement is consistent with Section 30253 of the Coastal Act, which provides that new development shall not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The Commission notes that Jim Conrad, the agent for the subject permit application, specifically claims that a seawall will not be necessary and, at the August 1998 Commission hearing, agreed to the imposition of such a condition on each of the subject permits precluding construction of future protective devices on the subject sites.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 27 OF 38

e. Conclusion (Shoreline protective devices)

The Commission finds that the proposed project involves construction that would alter natural shoreline process. However, the Commission finds that: 1) the proposed project is necessary to protect existing structures (the Bay Drive roadway and the homes at 21 and 33 Bay Drive), 2) the proposed project will not result in adverse impacts to natural shoreline sand supply, and 3) no additional toe protection walls should be necessary. Thus, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act.

3. Marine Resources/Water Quality

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

The proposed project consists of the construction of a drainage system which would collect runoff and groundwater. The drains would direct the collected water to the beach through four outlets. Where the proposed drain lines meet the beach, seepage pits are proposed to be installed to promote seepage of the groundwater into the ground rather than having the water run across the sand to the ocean and causing beach erosion. The proposed drainage system would collect water which already seeps onto the beach from the subject site and inland areas. The California Regional Water Quality Control Board, San Diego Region ("RWQCB"), sent the applicant a letter indicating that they have no objection to the construction of the proposed drainage system. (See Exhibit D) An off-site drainage system to the east of the site also discharges to the

COASTAL COMMISSION

The applicant has indicated that no construction equipment or supplies would be placed upon the sandy beach. (See Exhibit L, Page 4) The applicant has indicated that a flat pad would be graded approximately midway on the slope for temporary storage of equipment and materials to be used in the construction of the proposed shoring wall. The applicant has indicated that contractors would be briefed as to minimizing the occurrence of and containing spills of petroleum and other toxic fluids. A health risk to marine life and swimmers would be created if toxic substances were to get on the beach and leak into the ocean. In addition, staging or storing construction equipment and material on the beach would take up beach area needed for grunion spawning, thus resulting in adverse impacts on the grunion.

In order to ensure that adverse impacts to marine resources and water quality are minimized, the Commission finds that it is necessary to require a condition which prohibits the staging or storing of construction equipment or materials on the beach and to minimize and control spillage of toxic substances. Further, the Commission finds that the construction debris must be disposed of outside the coastal zone, or at an approved site in the coastal zone, to minimize adverse impacts on marine resources. As conditioned, the proposed project is consistent with Section 30231 of the Coastal Act.

4. Public Access

Section 30212 of the Coastal Act states, in relevant part:

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

(2) adequate access exists nearby . . .

The subject site is a beachfront site located between the nearest public roadway and the shoreline in the private community of Three Arch Bay. The toe of the proposed repair slope contains an easement, between 46 to 57 feet wide, for access and recreation purposes solely for the residents of the private Three Arch Bay community. The beach is a cove beach separated from public beaches by rocky headlands. Thus, the beach is not readily accessible from nearby public beaches. A December 10, 1997 survey of the mean high tide line indicates that the mean high tide line is anywhere from approximately 275 feet to 365 feet from Bay Drive. The seaward most extent of the proposed project would be only 220 to 250 feet seaward of Bay Drive. The California State Lands Commission ("CSLC") has acknowledged the presence of the above mentioned private recreation easement on the beach. Thus, it appears the proposed project would not extend seaward of the mean high tide line onto sovereign land.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 29 OF 38

In addition, the CSLC has written the applicant regarding the issue of encroachment of the proposed development onto state lands. (see Exhibit H) The CSLC is not asserting any claim at this time that the proposed development intrudes onto state lands. However, the CSLC indicates that the decision not to assert a claim at this time does not prejudice any future assertion of state ownership or public rights.

The subject site is in a private community. The proposed development would not result in direct adverse impacts, either individually or cumulatively, on physical vertical or lateral public access, or on sovereign lands seaward of the mean high tide line. Vertical public access and public recreation opportunities are provided at nearby Salt Creek County Beach Park a mile to the southeast. Therefore, the Commission finds that no public access is necessary with the proposed development. Thus, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

5. Visual Quality

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 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 project is to repair a failed slope. The proposed slope repair involves the installation of a shoring wall and caissons. Only the uppermost five feet of the wall would extend above ground. A crib wall near the base of the slope is also proposed, but it would be entirely underground. Therefore, the proposed wall would not be visible for the most part. Further, the proposed homes would obscure the upper portion of the slope repair. The lower portion of the proposed slope repair would be vegetated. The proposed homes are stepped down the hillside, with only the proposed garages located at street level. The proposed garages would only extend 10 to 11 feet above the centerline of Bay Drive. Thus, when viewed from the level of Bay Drive (a private street), only the garages would be visible. This is similar to the character of the existing adjacent homes at 21 and 33 Bay Drive, where only the garages of the homes are visible since the remainder of the homes step down the hillside.

In addition, the proposed project is located in a private community. Therefore, the proposed project would not block any public views to the shoreline. Public views along the coast from

COASTAL COMMISSION

public trust land seaward of the mean high tide line would be similar to the views which currently exist since the bluffs are altered and developed with homes which step down the bluff face. Further, since the private beach is flanked on either side by rocky headlands which extend several hundred feet into the ocean, it would be difficult for the public to access the part of the beach seaward of the mean high tide line in order to view the bluffs. Even if the public were to be able to view the private bluffs (e.g., from a boat offshore), the proposed homes would be consistent with the character of the existing adjacent homes at 21 and 33 Bay Drive which are also multi-level and step down the hillside. The proposed development would also remove weedy, non-native vegetation which has grown haphazardly on the site, creating an unattractive sight. Also, reconstructing the bluff as proposed would hide the exposed underside of Bay Drive.

However, as a condition of approval for permit 5-97-371 (Conrad) for the underlying slope repair and lot merger, a deed restriction is being required stating that any homes to be built on the repaired slope must conform to deck and structural stringlines, as described previously. The Commission finds that to allow development, such as swimming pools or paths and stairs to the beach, seaward of the stringlines would not be in character with the nature of existing development and would result in adverse visual impacts.

The City's certified local coastal program ("LCP") is not effective in Three Arch Bay because the area is not certified, but it can be used for guidance. The LCP generally requires a structural setback of 25 feet from the edge of the bluff or a setback ascertained by a stringline, whichever is more restrictive. The Commission has consistently required in Orange County that development be setback a minimum of 25 feet from the edge of a coastal bluff. The Commission has also recognized that in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies, no part of the proposed development should be built further seaward than a line drawn between the nearest adjacent corners of either decks or structures of the immediately adjacent homes.

In this case, the applicability of the 25 foot setback from the edge of a coastal bluff is moot since the proposed development is occurring on a bluff face. The use of a stringline therefore is the appropriate solution for determining the seaward extent of development considering that the proposed residential development is infill development. Normally, the stringline is applied to a new house which is being built between two existing houses. However, in this situation, because of a prior landslide which destroyed prior development, the application of the stringline must be modified to use existing residential structures and accessory structures on either side of the proposed development that were not affected by the landslide as the "anchors" for determining the stringline since this is bluff face development. Taking this approach is reasonable and equitable since it would limit new development to the seaward extent of existing development.

The applicant is proposing development seaward of the stringlines drawn between the nearest existing decks and structures on either side of the subject site. (See Exhibit B, Page 1). The

COASTAL COMMISSION

structure stringline limits the seaward extent of enclosed living areas. The deck stringline limits the seaward extent of all other accessory structures including swimming pools, spas, hardscape, decks, and at-grade patios. Though the proposed residence complies with the structural stringline, development occurring seaward of the deck stringline consists of hardscape, patios, stairs, and paths. The purpose of the stringline is to minimize the impacts of new development on both bluff stability and visual resources. The geologic instability of the project site has been detailed in preceding sections of this report. Though development is occurring on the bluff face rather than the bluff top because virtually no bluff top exists on the subject site, forcing the development to step down the hillside, the intent of the stringline and bluff top setback policies must be kept intact.

The Commission's regularly used stringline policy applies to all structures whether they are at grade or above grade since all impermeable surfaces act to accelerate and increase the amount of runoff and erosion of slope areas and may adversely impact bluff stability and visual resources. The Commission has routinely required that all non-habitable accessory structures and hardscape conform to the deck stringline.

The intent of the bluff top and stringline policies of the LCP is similar to the Commission's policy for controlling seaward encroachment of development, including hardscape. Chapter 25.50.004 of the City's Zoning Code states that "no new buildings, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or be closer than twenty-five feet to the top of an ocean front bluff; the more restrictive shall apply." While the City does allow hardscape up to ten feet from the bluff edge, it does not usually allow development on the bluff face.

In the case of the subject application, the adjacent existing residences do not have beach paths or stairways to the beach or hardscape seaward of the deck stringline. To allow such development with the proposed project would result in an adverse visual impact and would not be consistent with existing development patterns. Therefore, the Commission finds it necessary to impose a special condition requiring the applicant to submit revised landscape plans which show that the hardscape and other structural development seaward of the deck stringline have been deleted. Further, this was a requirement of the approval of permit 5-97-371 for the underlying bluff stabilization and lot merger as well as the approvals of the permits for the other three homes on the stabilized slope. Thus, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

D. Local Coastal Program

The City of Laguna Beach local coastal program ("LCP") is effectively certified. However, several locked-gate beachfront communities are deferred, including Three Arch Bay. The subject site is located in Three Arch Bay. Therefore, the standard of review for the proposed

COASTAL COMMISSION

project is conformity with the Chapter 3 policies of the Coastal Act and not the certified LCP. However, Section 30604(a) provides that a coastal development permit should not be approved for development which would prejudice the ability of the local government to prepare an LCP consistent with the Chapter 3 policies.

The proposed project is also consistent with the certified LCP, which may be used for guidance in non-certified area. Land Use Plan Policy 10-C provides, in part, that projects located in geological hazards areas are required to be designed to void the hazards where feasible. The proposed project would eliminate the clay seam/failure plane which has been identified as a major cause of landslide activity on the site. The proposed project also complies with the stringline provisions of the certified LCP.

Further, the proposed project, as conditioned, would be consistent with the geologic hazards policies of Chapter 3 of the Coastal Act. Therefore, the Commission finds that the proposed project would not prejudice the ability of the City of Laguna Beach to prepare an LCP for the Three Arch Bay community, the location of the subject site, that is consistent with the Chapter 3 policies of the Coastal Act.

E. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, 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 applicant considered other geotechnical alternatives including soil nailing, buttress fills without a shoring wall, chemical grouting and a seawall at the toe of the slope. The primary goal of the proposed project is to recreate the slope in approximately the same landform that previously existed prior to the landslide and to return it to its previous use as residential sites as well as to stabilize the road (Bay Drive) at the top of the bluff. Due to the landslide, Bay Drive, and adjacent properties seaward of Bay Drive to the east and west of the subject site, have lost lateral structural support.

While the rejected alternatives may provide site stability, they do not all provide for the proper drainage of the site and thus were rejected. Although the rejected soil nailing alternative would allow for the installation of necessary drainage improvements, this alternative would not achieve an acceptable level of safety without similar excavation and recompaction (landform alteration)

COASTAL COMMISSION

EXHIBIT # 10
PAGE 33 OF 38

and a shoring wall similar to what is being proposed under the proposed project. Further, the applicant could not obtain local government approval for a seawall located at the toe of the bluff.

The chosen alternative would not have significant adverse effects on the environment. The proposed project is an acceptable method to achieve long-term stability of the site, adjacent road, and adjacent properties. The proposed project would have no adverse impacts on the stability of adjacent properties. Further, the proposed development is located in an urban area. Development previously existed on the subject site. All infrastructure necessary to serve the site exist in the area.

The proposed project has been conditioned in order to be found consistent with the development policies regarding hazards, shoreline protection devices, and marine resources of Chapter Three of the Coastal Act. To assure structural stability and to minimize risks to life and property from geologic hazards, feasible mitigation measures requiring: 1) an assumption-of-risk deed restriction, 2) conformance with geotechnical recommendations, 3) landscaping requirements, 4) prohibiting the staging and storing of construction equipment and materials on the beach, and 5) identifying the disposal site; would minimize all significant adverse environmental effects.

As conditioned, there are no feasible alternatives or feasible mitigation measures available 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, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 34 OF 38

APPENDIX A

Substantive File Documents

- ◇ "Preliminary Geotechnical Investigation", Proposed Four Lot Residential Development, Lots 26, 27, 28, and 29 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated April 11, 1997, prepared for James Conrad by Hetherington Engineering, Inc. (Job No. 1800.2).
- ◇ "Supplemental Geotechnical Investigation", Proposed Residential Development, Lots 26, 27, 28, 29, and 30 of Tract 970, Three Arch Bay, South Laguna Beach, California, dated January 26, 1998, prepared for James Conrad by Hetherington Engineering, Inc. (Project No. 1800.3).
- ◇ Letter from Hetherington Engineering, Inc. to Coastal Commission staff dated March 18, 1998.
- ◇ Letter from Hetherington Engineering, Inc. to James Conrad dated June 19, 1998.
- ◇ Letter from Hetherington Engineering, Inc. to Jim Conrad dated July 6, 1998.
- ◇ Letter from Hetherington Engineering, Inc. to Coastal Commission staff dated August 3, 1998.
- ◇ Letter from Hetherington Engineering, Inc. to James Conrad dated August 5, 1998.
- ◇ Letter from Noble Consultants to James Conrad dated March 6, 1998(#823-01).
- ◇ Letter from Noble Consultants to James Conrad dated April 2, 1998.
- ◇ Letter from Noble Consultants to James Conrad dated May 12, 1998.
- ◇ Letter from Noble Consultants to James Conrad dated June 23, 1998.
- ◇ Ninyo & Moore geology report dated July 15, 1998 for Shirley Frahm (Project No. 201351-01).
- ◇ Letter from Josephson Werdowatz to George Piggott dated July 15, 1998.
- ◇ Letter from Post, Buckley, Schuh & Jernigan to George Piggott dated July 15, 1998.
- ◇ Letter from Leighton and Associates, Inc. to Three Arch Bay Homeowners Association dated August 11, 1998 (Project No. 1971218-001)
- ◇ "Engineering Geologic Investigation, 21 Bay Drive, Laguna Beach, California," dated August 8, 1992 prepared by Gerald Raymond by Coastal Geotechnical.
- ◇ December 17, 1997 letter from the California Regional Water Quality Control Board - San Diego Region to James Conrad.
- ◇ January 14, 1998 letter from the California State Lands Commission to James Conrad (File Ref: SD 97-12-15.4).
- ◇ Letter from James Conrad to Coastal Commission dated July 29, 1998.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 35 OF 38

APPENDIX A (Cont'd)

Local Approvals

5-97-371 (Conrad); Shoring System: Variance 6425; Design Review 97-039; City of Laguna Beach Lot Line Adjustment 97-07.

5-98-020 (Conrad); Home at 23 Bay Drive: Variance Application 6446; Design Review 97-206

5-98-064 (Barnes); Home at 25 Bay Drive: Variance Application 6449; Design Review 97-212.

5-98-178 (McMullen); Home at 31 Bay Drive: Variance Application 6478; Design Review 98-031.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 36 OF 38

LIST OF EXHIBITS

1. Vicinity Map

Plans

2. Site Plan (all four proposed lots, with homes)
3. Plans for proposed home at 23 Bay Drive: Permit Application 5-98-020 (Conrad)
4. Plans for proposed home at 25 Bay Drive: Permit Application 5-98-064 (Barnes)
5. Plans for proposed home at 29 Bay Drive: NOT BEFORE THE COMMISSION
6. Plans for proposed home at 31 Bay Drive: Permit Application 5-98-178 (McMullen)
7. Lot Line Adjustment 97-07: Permit Application 5-97-371 (Conrad)
8. Shoring System Plans: Permit Application 5-97-371 (Conrad)

Geotechnical Information

9. Applicant's letters regarding geology
10. Applicant's geologist's March 18, 1998 letter regarding off-site impacts
Comments from neighbors regarding geology
11. Ninyo & Moore geology report
12. Comments from Josephson Werdowatz
13. Comments from Post, Buckley, Schuh & Jernigan
14. Letter from Sid Danenhauer
15. Applicant's response to neighbors comments

Coastal Engineering Information

16. Applicant's geologist's comments on Wyland Gallery project
17. Applicant's coastal engineer's calculations for toe protection
18. Applicant's geologist's recommendations for toe protection
19. Applicant's coastal engineer's assessment of the need for toe protection
20. Applicant's coastal engineer's assessment of shoreline processes

Other Exhibits

21. Letter from the Regional Water Quality Control Board regarding drainage
22. Letter from the California State Lands Commission regarding public trust lands
23. Mean High Tide Line survey
Letters of permission from landowners
24. Three Arch Bay Homeowner's Association; owner of Bay Drive private recreation easement
25. Owner of 25 Bay Drive Barnes)
26. Owners of 29 Bay Drive (Griswold)
27. Owner of 31 Bay Drive (McMullen)
28. Owner of off-site adjacent property at 21 Bay Drive (letter of intent)

COASTAL COMMISSION

EXHIBIT # 10
PAGE 37 OF 38

5-97-371 (Conrad), 5-98-020 (Conrad),
5-98-064 (Barnes), and 5-98-178 (McMullen)
Revised Findings; Page 38

Time Extensions

29. Coastal development permit application 5-97-371 (Conrad)
30. Coastal development permit application 5-98-020 (Conrad)

{The following additional exhibits will be sent under separate cover at a later date}

31. July 23, 1998 letter from Hetherington Engineering, Inc. to the Coastal Commission
32. Plans for toe wall at base of buttress fill
33. Plans for energy dissipator for drainage system
34. July 29, 1998 letter from James Conrad to Coastal Commission staff
35. August 3, 1998 letter from Hetherington Engineering, Inc. to the Coastal Commission
36. August 5, 1998 letter from Hetherington Engineering, Inc. to James Conrad
37. August 11, 1998 letter from James Conrad to Coastal Commission staff
38. August 3, 1998 letter from Elite Pools • Spas to Coastal Commission staff
39. August 11, 1998 letter from Leighton and Associates to Three Arch Bay
40. Roll Call Vote Record

5-97-371, 5-98-020, 5-98-064, 5-98-178 Revised Findings (Conrad)

COASTAL COMMISSION

EXHIBIT # 10
PAGE 38 OF 38

CALIFORNIA COASTAL COMMISSION

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



Via Facsimile and U.S. Mail

December 8, 1997

Jim Conrad, Architect
 1590 South Coast Highway, Suite 17
 Laguna Beach, CA 92651

SUBJECT: Coastal development permit 5-97-371; Additional information needed

Dear Mr. Conrad:

On November 14, 1997, we received the above-referenced coastal development permit application. After preliminary review, it has been determined that additional items and information are needed to complete the file. Until the items and information requested below are received, the application shall be deemed incomplete. They are not listed in any particular order of importance. Where questions are asked below, please submit the answers in writing. The items and information requested below may not be all that are necessary to complete the file. Additional items and information may be requested at a later date.

1. Please submit a written alternatives analysis for the slope repair. Are there other methods for repairing the slope and how feasible are they?
2. Is the proposed slope repair designed specifically to accommodate the reconstruction of homes on the sites? If so, would the repaired slope meet the minimum factor of safety necessary to allow the homes to be rebuilt?
3. Please submit envelopes addressed to each of the persons on the mailing list. I am enclosing a copy of the mailing list for your use. The envelopes must be letter size and cannot have a pre-printed return address on them. Each envelope must have a 32 cent stamp on it. Metered postage is not acceptable.
4. Please submit a landscape plan for the proposed slope repair. The landscape plan should emphasize the use of native, drought-tolerant vegetation.
5. Regarding the mean high tide line, the plans submitted indicate a mean high tide line as of 1932. Was there a court case or an agreement which fixed the mean high tide

COASTAL COMMISSION

**Exhibit II: STAFF'S INCOMPLETE LETTER
 REQUESTING COMPLIANCE
 WITH 30601.5 OF CONSUAAT**

EXHIBIT # 11
 PAGE 1 OF 4

Jim Conrad
 5-97-371 Incomplete
 December 8, 1997

line in the location where it existed in 1932? Please confirm this in writing. Please also submit plans showing where the mean high tide line exists today. The proximity of the actual mean high tide line as it exists today is important because we need to know how the extent to which wave action would hit the toe of the slope under normal circumstances. Please also submit seasonal profiles of the beach.

6. When did the slope slide most recently, and what was the cause, other than heavy rainfall, of the slide? Please document this in writing.

7. The plans submitted indicate an existing slope profile. Is this the slope as it exists after the landslide, or as it existed before the most recent slide? Please confirm this in writing. If the existing slope profile is post-slide, please submit a cross-section showing the profile of the slope before the most recent slide.

8. Why was the proposed slope repair submitted to the Coastal Commission separately from the proposed homes? Is the proposed slope repair necessary to stabilize Bay Drive and the homes inland of Bay Drive regardless of whether homes are rebuilt on the subject site? Please submit a supplement to the geotechnical report to address this issue if necessary.

9. Please submit a visual analysis of the proposed slope repair. How much of the repaired slope would be hidden from view once the proposed homes are built? The proposed repaired slope should look as natural as possible, consistent with Section 30251 of the Coastal Act.

10. Please submit proof-of-ownership for all four lots. The title insurance policy submitted appears to cover only your house (Lot 26). Also, consistent with Section 30601.5 of the Coastal Act, the holder of the recreation easement must either join in as a co-applicant or provide you with written permission to undertake the proposed work in the easement area. Please submit the written permission from the easement holder as well as documentation that you've invited the easement holder to join as a co-applicant. The easement holder does not have to join as a co-applicant. If the mean high tide line as describe in Item #5 above is not set by an agreement, please contact the California State Lands Commission ("CSLC"), which administers lands seaward of the mean high tide line, and submit written documentation that you have contacted the CSLC. The CSLC can be reached at:

COASTAL COMMISSION

EXHIBIT # 11
 PAGE 2 OF 4

Jim Conrad
5-97-371 Incomplete
December 8, 1997

*California State Lands Commission
100 Howe Avenue, Suite 100
Sacramento, CA 95825
(916) 574-1800
Jane Smith*

11. What is the potential that a seawall will be needed in the future to protect homes on the subject site?
12. Please describe what effects, if any, the proposed project would have on the beach's sand supply; e.g., would it cause increased erosion?
13. The geotechnical report indicates that dewatering of the slope would be necessary. Please describe how this would occur. Please also contact the California Regional Water Quality Control Board, Santa Ana Region ("RWQCB") to see whether your proposed dewatering process would fall within their jurisdiction. Please submit written evidence that you have contacted the RWQCB. If the RWQCB has jurisdiction over your project, then please submit written evidence that the RWQCB has approved the proposed project. The RWQCB can be reached at:

*California Regional Water Quality Control Board,
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3339
(909) 782-4130*

14. Please submit an additional application fee of three thousand, seven hundred fifty dollars (US\$3,750) in addition to the \$250 already paid. The application fee for projects costing between \$500,001 and \$1,250,000 is \$4,000. The proposed project costs one million dollars and falls within this category.
15. When were the homes which most recently existed on the subject site destroyed or demolished? Do you have reduced copies of plans for these homes? Were the homes built before 1972?
16. Please submit one set of reduced 8 1/2"x11" copies of the plans for the proposed slope repair. I need them to use as exhibits for the staff report.

COASTAL COMMISSION

EXHIBIT # 11
PAGE 3 OF 4

Jim Conrad
5-97-371 Incomplete
December 8, 1997

17. Will construction equipment or materials be stored or placed on the beach during construction?

* * * * *

Please submit the items requested above as soon as possible, but in any event no later than Friday, December 19, 1997. You do not have to submit all the items together. It would be preferable to send each item as soon as you can obtain it. Please do not hesitate to contact me with any questions you may have regarding the items and information requested above or any other aspect of coastal development permit application 5-97-371.

Sincerely,

J. T. Auyong

John T. Auyong
Staff Analyst

COASTAL COMMISSION

James Conrad, Architect

Telephone (714) 497-0200
Fax (714) 497-0288

December 10, 1997

RECEIVED
DEC 11 1997
CALIFORNIA
COASTAL COMMISSION

Mr. John T. Auyong
Staff Analyst
200 Oceangate, Suite 1000
Long Beach, CA 90802-4303

RE: Coastal development Permit application 5-97-371. The Bay Drive Improvement.

Dear Mr. Auyong,

Thank you for your prompt response to my coastal development permit application. The following is my response to the questions that you raised.

1. Please see attached " written alternative analysis ".
2. The slope from Bay Drive down to the sandy beach is in need of repair whether or not homes are built on the building sites. The repair will be most effective if it is completed as one contiguous operation across all five vacant lots. The problem has been festering for some time. The reason that it hasn't been attempted in such a comprehensive way before is because there has never been enough cooperation among the Bay Drive property owners.

I am the architect for all of the vacant property owners on Bay Drive. I am also one of the property owners. I have negotiated an agreement between all of the property owners to fund the repair of the slope. This is the most efficient way of solving the problem.

The design of the wall takes into account the imminent construction of homes adjacent to it. Whether homes are built or not the wall will repair the slope so that a minimum factor of safety will result as required by engineering standards.

3. Envelopes to follow.
4. Please see attached landscape plans.

COASTAL COMMISSION

Exhibit 12: Permittees Response
re: 30601.5

EXHIBIT # 12
PAGE 1 OF 5

1590 S. Coast Hwy. Suite 17 Laguna Beach CA 92651

5. The mean high tide as shown on the plans is the line established in 1935 for the federal courts in the case of Borax consolidated Ltd. v. Los Angeles (296 U.S. 10). The mean high tide is different today and is shown on the survey that I had done by Toal Engineering in December of this year (survey to follow).

The topographic site plan shows the location of the sandy beach and the point that it intersects the earth slope. The sand profile does vary during the year but is much less effected than some beaches because of the natural protection afforded to the Muscle Cove area. This natural protection is enjoyed because of the extent that both Pescadero Point and Whale Rock extend oceanward of the sandy beach bay.

During concurrent high tides and storm surge events the wave action does impact the slope beyond the sandy beach. Because of this potential hazard, the homes proposed are setback more than 100 feet from the sandy beach. This conservative setback should protect the homes from having to install sea walls in the future.

6. The most recent significant sliding of the property occurred during 1990 & 1991. The primary cause for the sliding was heavy rainfall. The heavy rainfall was exacerbated by the existence of a half demolished home at 23 Bay Drive. The demolished home's foundation was partially intact and it acted as a pool for rain water to accumulate on the slope. This pooling intensified the saturation of the soil on the slope and resulted in the sliding of the hillside.

7. The existing slope as shown on the plan is the slope that currently exists.

8. The slope repair has been submitted separately from the homes to be built for several reasons. At the outset of this project we did not know how many homes were to be built right away, we still are not sure of this as they are owned by separate people. I concentrated my effort to forge an agreement, among the property owners, to repair the slope. We all knew that the slope needed repair regardless if we built or not. The other related reason was timing. I did not want the whole project to be delayed by the inability of one property owner to proceed with his project.

The slope does need repair regardless of whether or not home are to be built. This fact is has been discussed at length in Three Arch Bay Board meetings. The Three Arch Bay Board hired Leighton & Associates to review the proposed slope repair. At their July Meeting, Mr. Osman Pekin, of Leighton & Associates made a presentation to the Board. in that presentation he concurred with my geologist that the slope was in a critical situation and he urged the Board to move ahead with a repair. (Please see the minutes from the July meeting).

COASTAL COMMISSION

EXHIBIT # 12
PAGE 2 OF 5

9. The shoring wall at completion will have a minimal visual effect on the surrounding area. The bulk of the wall will be below finished grade or under the subsequently built homes. There will be some areas of the wall where it protrudes above finished grade. These protrusions would be between the homes to be built and will not extend any higher than six feet above grade. (please see photos).

10. Copies of the Deeds showing proof of ownership for the five vacant parcels of land are attached. The invitation to Three Arch Bay to join the application is attached. The response to the invitation will follow.

I have contacted Jane Smith at the California State lands Commission in an effort to confirm jurisdiction.. Please see copy of transmittal.

11. I am aware of the reluctance of the California Coastal Commission to approve projects that have sea walls or projects that may need them in the future. Because of this, I have designed the project in a way that minimizes the future need for a seawall. The geographic shape of Muscle Cove is such that erosion is not a problem. Historical photos show that the line between the land and the sandy beach is in approximately the same place that it was 60 years ago. To be on the safe side I have sited the future residences over one hundred feet back from the sandy beach.

Because of these facts and the precautions that I have taken, I believe the possible future need for a seawall in this location is negligible.

12. The project would have no effect whatsoever on the sand supply for Muscle Cove or surrounding beaches. The structures proposed are more than 100 feet back from the sandy beach.

13. The site has a groundwater visibly seeping out of the hillside. This situation has existed historically and needs attention to make the stabilization of the hillside safe. The geotechnical engineer along with the civil engineer propose that a system of subdrains be employed behind the shoring wall as well as within the benches on the site. The final design of this system will be submitted to the City of Laguna Beach , Department of Building and Safety for review after approval of the coastal development permit.

I have contacted the California Regional Water Quality Control Board to ascertain whether the dewatering project falls within their jurisdiction. I will communicate their response when I receive it.

14. Please find the enclosed check for \$3,750. for the Coastal Development Permit.

15. The home that most recently existed on the site was the home located on lot 26 (23 Bay Drive). It was demolished in 1990. I do not have a copy of the plans but I do have a photograph. Please see attached photograph.

COASTAL COMMISSION

16. Please find the attached 8-1/2" x 11" copies of the plans for the proposed slope repair.

17. No construction equipment or materials will be stored on the sandy beach. There is plenty of room on site for storage of material.

Thank you again for your prompt attention to this application. We are concerned about the safety of the situation even more so in light of the rainfall this past weekend.

Respectfully Submitted,



James Conrad, Architect
Owner of 23 Bay Drive. (lot 26)

CC: Mr. Troy Barnes 25 bay Drive (lot 27)
Mr. Charles Griswold 29 Bay Drive (lots 28 & 29)
Mr. Timothy McMullen 31 Bay Drive (lot 30)

COASTAL COMMISSION

EXHIBIT # 12
PAGE 4 OF 5



THREE ARCH BAY

3 BAY DRIVE, SOUTH LAGUNA, CALIFORNIA 92677, (714) 499-4567

December 17, 1997

James Conrad, Architect
1590 South Coast Highway - Suite 17
Laguna Beach, CA 92651

RE: Shoring Wall/Bay Drive
Coastal Development Permit 5-97-371

Thank you for your invitation to join you as a co-applicant on your petition to the Coastal Commission.

While the Association does not wish to participate as a co-applicant at the present time, you are granted permission to proceed with your application.

Please let us know if we can assist in anyway.

Sincerely,

Dewellyn de la Cruz, CCAM
Executive Director

cc Board of Directors

COASTAL COMMISSION

EXHIBIT # 12
PAGE 5 OF 5

JAN. 21. 1999 11:32AM CTIC RESIDENTIAL IRV

NO. 396 P. 1/B



CHICAGO TITLE COMPANY

South Coast Region

ok Bay Drive

PRELIMINARY REPORT

FEB 4 1999

FIRST AMENDED

Dated as of: December 21, 1998 at 7:30 AM

Order No.: 8809434 - S04

CALIFORNIA
COASTAL COMMISSION

Regarding:

23 BAY DRIVE
LAGUNA BEACH, CA

CHICAGO TITLE COMPANY hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception in Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in the attached list. Copies of the Policy forms are available upon request.

Please read the exceptions shown or referred to in Schedule B and the exceptions and exclusions set forth in the attached list of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

The form of policy of title insurance contemplated by this report is:

AMERICAN LAND TITLE ASSOCIATION LOAN EXTENDED COVERAGE POLICY

Title Department:



CHICAGO TITLE COMPANY

16909 VON KARMAN
IRVINE, CA 92614
(949)263-2500 fax: (949)263-0872

COASTAL COMMISSION

PATTY HARTLEY
TITLE OFFICER

EXHIBIT # 13
PAGE 1 OF 4

Exhibit 13: Prelim Title Report
Showing Presence of
Easement & Easement Holders

JAN.21.1999 11:33AM

CTIC RESIDENTIAL IRV

NO.396

P.2/8

SCHEDULE A

Order No: 8809434 S04

Your Ref:

1. The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE

2. Title to said estate or interest at the date hereof is vested in:

BAY DRIVE INVESTMENT GROUP, LP, A CALIFORNIA LIMITED PARTNERSHIP

3. The land referred to in this report is situated in the State of California, County of ORANGE and is described as follows:

LOT 26 OF TRACT NO. 970, IN THE CITY OF LAGUNA BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 5 AND 6 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THAT PORTION, IF ANY, LYING BELOW OR SEAWARD OF THE LINE OF ORDINARY HIGH TIDE OF THE PACIFIC OCEAN.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 2 OF 4

SCHEDULE B

Page 1

Order No: 8809434 504

Your Ref:

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in the policy form designated on the face page of this Report would be as follows:

1. PROPERTY TAXES, INCLUDING ANY PERSONAL PROPERTY TAXES AND ANY ASSESSMENTS COLLECTED WITH TAXES, FOR THE FISCAL YEAR 1998-1999

1ST INSTALLMENT: \$2,332.55 (PAID)
2ND INSTALLMENT: \$2,332.55
PENALTY AND COST: \$243.25 (DUE AFTER APRIL 10)
HOMEOWNERS
EXEMPTION: \$
CODE AREA: 05029
ASSESSMENT NO: 056-180-29

2. THE LIEN OF SUPPLEMENTAL OR ESCAPED ASSESSMENTS OF PROPERTY TAXES, IF ANY, MADE PURSUANT TO THE PROVISIONS OF PART 0.5, CHAPTER 3.5 OR PART 2, CHAPTER 3, ARTICLES 3 AND 4 RESPECTIVELY (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA AS A RESULT OF THE TRANSFER OF TITLE TO THE VESTER NAMED IN SCHEDULE A; OR AS A RESULT OF CHANGES IN OWNERSHIP OR NEW CONSTRUCTION OCCURRING PRIOR TO DATE OF POLICY.

3. ANY ADVERSE CLAIM BAISED UPON THE ASSERTION THAT ANY PORTION OF SAID LAND WAS NOT TIDELANDS SUBJECT TO DISPOSITION BY THE STATE OF CALIFORNIA, OR THAT ANY PORTION THEREOF HAS CHANGED TO BE TIDELANDS BY REASON OF EROSION OR BY REASON OF HAVING BECOME UPLAND BY ACCRETION, OR THAT ANY PORTION THEREOF HAS BEEN CREATED BY ARTIFICIAL MEANS OR HAS ACCRETED TO SUCH PORTIONS SO CREATED.

4. ANY RIGHTS, INTEREST, OR EASEMENTS IN FAVOR OF THE PUBLIC, WHICH EXISTS OR IS CLAIMED TO EXIST OVER A PORTION OF SAID LAND WHICH PRESENTLY IS, OR HAS EVER IN THE PAST, BEEN COVERED BY WATER.

5. ANY RIGHTS, INTEREST, OR EASEMENTS IN FAVOR OF THE PUBLIC, WHICH EXISTS OR IS CLAIMED TO EXIST OVER A PORTION OF SAID LAND WHICH PRESENTLY IS, OR HAS EVER IN THE PAST, BEEN COVERED BY WATER.

6. WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT SHOWN BY THE PUBLIC RECORDS.



7. AN EASEMENT ACROSS SAID LOT 26 BETWEEN FOOT OF SLOPE AND LINE ORDINARY HIGH TIDE FOR THE USE AND CONVENIENCE OF THE LOT OWNERS IN TRACT 970 AND TRACT 971, AND ALSO THE OWNERS OF LOTS IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY INDORSEMENT ON THE MAP OF SAID TRACT 970 AND AS CONVEYED BY VARIOUS DEEDS OF RECORD.

8. THE DEDICATION OF THE PORTION OF SAID LOT BETWEEN THE FOOT OF THE SLOPE

COASTAL COMMISSION

**SCHEDULE B
(continued)**

Page 2

Order No: 8809434 S04

Your Ref:



AND THE LINE OF THE ORDINARY HIGH TIDE TO THE USE OF THE LOT OWNERS IN SAID TRACT 970 AND OF 971, AS SAID TRACT 971 IS SHOWN ON MAP RECORDED IN BOOK 31 PAGES 24 AND 25, MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, FOR THE PURPOSE OF INGRESS AND REGRESS OVER SAID LAND ACROSS THE SAME, THE CONDUCT OF LAWFUL SPORTS AND FOR THE FREE USE AND ENJOYMENT OF THE RECORD OWNERS OF EACH AND EVERY LOT IN SAID TRACTS, AS PROVIDED BY AN INSTRUMENT RECORDED MARCH 28, 1932 IN BOOK 540 PAGE 385 AND IN BOOK 540 PAGE 387, BOTH OF OFFICIAL RECORDS.

- 9. AN EASEMENT FOR THE PURPOSE SHOWN BELOW AND RIGHTS INCIDENTAL THERETO AS SET FORTH IN A DOCUMENT

PURPOSE: WATER LINES
RECORDED: IN BOOK 663 PAGE 118, OFFICIAL RECORDS
AFFECTS: A PORTION OF SAID LAND

- 10. AN EASEMENT FOR THE PURPOSE SHOWN BELOW AND RIGHTS INCIDENTAL THERETO AS SET FORTH IN A DOCUMENT

PURPOSE: TUNNEL PURPOSES
RECORDED: IN BOOK 2507 PAGE 578, OFFICIAL RECORDS
AFFECTS: A PORTION OF SAID LAND

REFERENCE IS MADE TO SAID DOCUMENT FOR FULL PARTICULARS.

- 11. COVENANTS, CONDITIONS AND RESTRICTIONS (BUT OMITTING THEREFROM ANY COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN, IF ANY, UNLESS AND ONLY TO THE EXTENT THAT SAID COVENANT (A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS) AS SET FORTH IN THE DOCUMENT.

RECORDED: IN BOOK 13647 PAGE 256, OFFICIAL RECORDS

SAID COVENANTS, CONDITIONS AND RESTRICTIONS PROVIDE THAT A VIOLATION THEREOF SHALL NOT DEFEAT THE LIEN OF ANY MORTGAGE OR DEED OF TRUST MADE IN GOOD FAITH AND FOR VALUE.

- 12. A LICENSE AGREEMENT EXECUTED BY MICHAEL MERCURIO AND E.C. PITTS AND THREE ARCH BAY ASSOCIATION, RECORDED JANUARY 16, 1984 AS INSTRUMENT NO. 84-20568, OFFICIAL RECORDS.

REFERENCE IS MADE TO SAID DOCUMENT FOR FULL PARTICULARS.

- 13. A DEED OF TRUST TO SECURE AN INDEBTEDNESS IN THE ORIGINAL AMOUNT SHOWN BELOW
AMOUNT: \$1,269,000.00

COASTAL COMMISSION

1590 South Coast Hwy., Suite 17, Laguna Beach CA 92651
Phn. (949) 497-0200
Fax (949) 497-0288

James Conrad,
Architect

Fax Cover

To: Mr. Karl Schweig	From: Jim Conrad
Fax No.: (562) 580-6084	Date: April 15, 1999
Re: Bay Drive Shoring Wall	CC: Ms. Teresa Henry
Pages Sent: 2	Ms. Deborah Lee

Enclosed:

1. Letter from Three Arch Bay authorizing the issuance of a permit for the Bay Drive Land Stabilization project.

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Please distribute copies of this to the persons listed above.

Sincerely,

James Conrad

RECEIVED
South Coast Region

APR 15 1999

CALIFORNIA
COASTAL COMMISSION

**Exhibit 14: Permittee's Showing
Regarding Legal Ability
To Undertake Development
Provided during Condition
Compliance**

COASTAL COMMISSION

EXHIBIT # 14
PAGE 1 OF 2



THREE ARCH BAY

5 BAY DRIVE, LAGUNA BEACH, CALIFORNIA 92651-6780, (949) 499-4567

April 13, 1999

James Conrad
1590 South Coast Hwy. Ste. #17
Laguna Beach, CA 92651

Dear Mr. Conrad,

The Three Arch Bay Association grants permission to the owners of 23, 25, 29, and 31 Bay Drive to access Association owned property for the purpose of constructing a shoring wall per plans prepared by James Conrad, Architect, and Toal Engineering and approved by the Coastal Commission and the City of Laguna Beach. The Association owned property is generally located (1) between the easterly property lines of 23, 25, 29, and 31 Bay Drive and the improved roadway portion of Bay Drive, within an area approximately 12 feet wide and 200 feet long; and (2) within a recreational easement located along the beach side of said properties. The terms of the Association's grant of this access are specified in an agreement between the Association and James Conrad.

The Three Arch Bay Association is not a permitting entity for the project. The provisions of this letter should not be construed as an "approval" of the project, but should be construed mainly as a temporary grant of access upon Association owned property.

Sincerely,

Tony West, President
Three Arch Bay Association

RECEIVED
South Coast Region

COASTAL COMMISSION

APR 14 1999

15 #

CALIFORNIA

COASTAL COMMISSION

EXHIBIT # 14

PAGE 2 OF 2

11/11/11

