

**CALIFORNIA COASTAL COMMISSION**

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



**RECORD PACKET COPY**

Filed: May 24, 2000  
49<sup>th</sup> Day: July 12, 2000  
180<sup>th</sup> Day: November 20, 2000  
Staff: ALK/LB *ALK*  
Staff Report: July 20, 2000  
Hearing Date: August 8-11, 2000  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-00-145

**APPLICANT:** William & Carol Parrish

**AGENT:** David York, Architect

**PROJECT LOCATION:** 4075 Calle Isabella, San Clemente, (Orange County)

**PROJECT DESCRIPTION:** Construction of a two-story, 5370 square foot single-family residence with pool and spa, pool house, various hardscape improvements, landscaping and attached 850 square foot four-car garage.

**PROJECT SPECIFICS:**

Lot Area:	31,000 sq. ft.
Building Area:	6,220 sq. ft.
Building Coverage:	4,817 sq. ft.
Pavement Coverage:	5,150 sq. ft.
Landscape Coverage:	21,033 sq. ft.
Parking Spaces:	4
Land Use Designation:	RL-1
Ht. above final grade:	24 ft.

**LOCAL APPROVALS RECEIVED:** Approval-in-Concept from City of San Clemente Community Development Department dated April 17, 2000.

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing to construct a new single-family home on a vacant lot in Cotton Point Estates, a private gated community in the City of San Clemente. The major issue raised by development at this site is public access. The site is subject to an existing 15' wide vertical access easement. The original subdivision permit prohibits any permanent improvement other than landscaping within the easement. Therefore, the applicant proposes to place only landscaping and crushed granite walkways within the easement.

Staff recommends the Commission **APPROVE** the proposed project subject to two (2) special conditions. Special Condition No. 1 prohibits the placement of any permanent improvement other than landscaping within the easement. Special Condition No. 2 is a notification of coastal development permit requirements for any future development within, or affecting, the underlying coastal access easement.

**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan, Coastal Development Permit No. P-81-7789, Appeal No. A-148-81, Administrative Permit No. 5-83-219, 5-96-155-W (Maxwell), 5-99-376 A-1 (Langley), and Consistency Determinations CD-100-96 and CD-101-96 (San Mateo Point).

**LIST OF EXHIBITS:**

1. Vicinity Map
2. Assessor's Parcel Map
3. Project Plans
4. Coastal Access Map
5. Staff Report for Permit No. P-81-7789
6. Staff Report for Appeal No. A-148-81
7. Cotton Point Estates CC&Rs (relevant pages)
8. Recorded Irrevocable Offer to Dedicate (relevant pages)
9. Copy of 5-96-155W

**STAFF RECOMMENDATION:**

Staff recommends that the Commission APPROVE the permit application with special conditions.

**MOTION:**

*I move that the Commission approve permit No. 5-00-145 pursuant to the staff recommendation.*

Staff recommends a YES vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

**RESOLUTION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions**

The Commission hereby APPROVES Coastal Development Permit 5-00-145 subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is between the first public road and the sea, and is consistent with the access and recreation policies of the Coastal Act, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

**II. Standard Conditions**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent,

acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. Special Conditions**

1. Conformance of Design and Construction Plans to Landscaping Plan
  - A. The applicant shall comply with the Site Plan/Conceptual Landscaping Plan (Sheet S-1) prepared by David York received May 24, 2000.
  - B. The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
2. Future Improvements

Coastal Development Permit No. 5-00-145 is only for the development located at 4075 Calle Isabella in the City of San Clemente, County of Orange, as expressly described and conditioned herein. An amendment to this permit or a new coastal development permit from the Coastal Commission or its successor agency shall be required for any future improvements or development as defined in Section 30106 of the Coastal Act which occur within, or that may affect, the area subject to the coastal access easement offer to dedicate (OTD) required as a condition of the Commission's approval of Coastal Development Permit No. P-81-7789. In the event that the OTD is not accepted on or before April 11, 2004, this condition shall not have any further force or effect.

### **IV. Findings and Declarations**

The Commission hereby finds and declares:

#### **A. Project Location, Background, and Amended Project Description**

The proposed development is located on an inland lot between the first public road and the sea at 4075 Calle Isabella within the private gated and guarded community of Cotton Point Estates

in the most southerly portion of the City of San Clemente, Orange County. The subject site borders San Diego County to the southeast. The site is bounded on the north by two residential lots in the Cotton Point Estates subdivision and the private community of Cypress Shores, to the east by a newly completed US Marine housing development, to the south by the OCTA railway with Pacific Ocean beyond, and to the west by private residential development. (See Exhibits 1 & 2, Vicinity Map & Assessor's Parcel Map)

Access to the site is gained through the guarded and locked gate community of Cypress Shores and through a locked gate entrance to Cotton Point Estates. The subject lot is part of a 17-lot subdivision, site of the former Richard Nixon estate. The Nixon residence (Casa Pacifica) and accessory structures remain at the subdivision site. Five new single-family residences have been constructed within Cotton Point Estates since the original subdivision permit was approved in 1981.

The site is located approximately one-quarter mile from the beach. Public vertical access is located to the southeast of the subject lot, beyond the adjacent military housing development at the Trestles accessway through an easement granted by the Federal government until the year 2021. Public lateral access is located directly beyond the OCTA railway to the south. (See Exhibit 4, Coastal Access Map)

1. Previously Approved Development at the Project Site

a. **P-81-7789**

On May 11, 1981, the Commission approved coastal development permit P-81-7789 for the subdivision of 19.2 acres of blufftop property to 17 single-family residential lots. The project included the construction of a road, utility lines and the demolition of five accessory structures. The former Nixon estate, including one home and accessory structures (i.e. guesthouses, gazebos) were to remain on site. The project was approved subject to four special conditions, as shown in Exhibit 5, P-81-7789 staff report.

Special Condition No. 2 required the recordation of an irrevocable offer of dedication for an easement 15' wide along the eastern boundary of the tract to the City of San Clemente, subject to the following stipulations:

- a) *The offer shall be valid until the year 2021 at which time it may be cancelled on three years prior written notice to City by Developer or its successors or assigns;*
- b) *Developer, through Title Insurance and Trust Co. or such other entity approved by the City Attorney, shall provide notice to the City of the existence of the offer on or about 1-1-2021 or upon termination of the access described in (c) below;*
- c) *The City agrees not to accept the offer until the existing public access to the beach across the San Clemente Point Coast Guard property or other adequate public access in the immediate area is no longer available to the public or unreasonably restricted for public use;*
- d) *Upon acceptance of the offer, the improvement of the easement shall be at the City's expense;*

- e) *No permanent improvements other than landscaping shall be placed within the easement area unless an until the offer is cancelled pursuant to (a) above;*
- f) *The existence of the offer shall be noted in the deeds and initial CC&Rs for the property subject to the offer;*
- g) *The easement shall be used exclusively for beach access.*

b. **A-148-81**

The Commission's approval of P-81-7789 was appealed on the contention that the project delegated the lowest priority use-SFD-to one of the few undeveloped coastal parcels in Orange County prior to approval of San Clemente's LCP; that there was a total lack of public access to the coast and to the number one desired visitor destination point—the Nixon home and grounds or viewpoint thereof; and that there was a lack of a substantial public benefit for the approval of the low priority use (residential development) of this valuable coastal resource.

The appellant recommended that, if the Commission were to approve the project, a limited easement on the edge of the bluff next to the former coast guard property be required and that the restrictions on the 15' easement along the eastern portion of the property be removed.

On June 17, 1981, the Commission heard the appeal and approved the project subject to a clarification of Special Condition No. 2 (Vertical Access). The vertical access condition language was modified to read as follows:

2. *Vertical Access. Prior to issuance of permit the applicant shall submit evidence of an agreement, the form and content of which has been approved by the Executive Director, offering to dedicate to a public agency or private association acceptable to the Executive Director, an easement for public access allowing the public to pass and repass over a strip of the applicant's property 15 ft. in width and running along the entire eastern boundary of the project site, from the northern property line to the railroad right-of-way. The offer of dedication shall contain a clause restricting the agency accepting the offer from opening up the accessway to the public unless and until the "Trestles" accessway across the Coast Guard property to the south is no longer available to the public or is unreasonably restricted for public use. The offer shall be made free of prior liens and encumbrances except for tax liens. The offer shall be irrevocable for a period of 21 years, running from the date of recordation and shall run with the land in favor of the people of the State of California, binding successors and assigns of the applicant.*

*In addition, prior to sale of any of the lots, the applicant shall submit evidence that the CC&Rs of the subdivision note the existence of the accessway and prohibit any permanent improvements within the accessway. (See Exhibit 6, A-148-81 staff report)*

In early March 1983, the Cotton Point CC&Rs were adopted. (See Exhibit 7, CC&Rs) The CC&Rs properly identify the existence of the accessway easement and prohibit any permanent improvements within the accessway.

On April 11, 1983, the irrevocable offer of dedication across the easternmost 15' of the property was recorded in document no. 83-151464. (See Exhibit 8, Recorded OTD)

Since that time, five new single-family residences have been constructed within the previously approved subdivision. Two of the residences are located on lots across the street from the easement area and do not otherwise affect a previously imposed special condition; therefore, no permit amendment was required. However, along the eastern side of the subdivision (where the subject lot is located), two residences have been constructed which include permanent improvements within the vertical access easement. Each of these property owner has constructed two solid walls which cross the easement perpendicularly. Because there is encroachment into the easement, the property owners should have applied for a permit amendment. Development at one lot was granted a De Minimus Waiver and the other shows no record of permit. A third residence along the easement was approved by the Commission in January 2000 with a condition that no permanent improvements other than landscaping be allowed within the existing easement. These developments are discussed further below.

2. Previous Commission Action and Existing Development in Project Vicinity

a. **P-81-7789**

As discussed previously, P-81-7789 allowed the subdivision of the larger 19.2-acre property at the subject site.

b. **A-148-81**

Also discussed previously, A-148-81 resulted in a modification to the vertical access condition language.

c. **5-83-219**

Administrative Permit 5-83-219 allowed the construction of a gateway, perimeter walls and fencing, tennis court and pool house at 4100 Calle Isabella, the former Nixon estate.

d. **5-96-155-W**

5-96-155-W (Maxwell) allowed:

"Construction of a two-level 6703 square foot single-family detached residence with a 646 square foot 3-car garage, 278 square foot veranda and 180 square foot deck, landscaping, pool and spa. Grading consists of 230 cubic yards of cut and 359 cubic yards of fill" at 4085 Calle Isabella. (See Exhibit 9, 5-96-155-W)

This site is located one lot south of the subject lot. Although the project description does not specifically mention solid walls, "property line walls" are identified on the project plans and are shown extending across the 15' wide easement. However, as constructed, solid property line walls do not extend into the easement. Only wrought iron fencing exists within the 15' wide vertical access easement. The applicant for the subject permit (5-00-145) will share the fence that currently exists at the Maxwell site.

e. **4125 Calle Isabella**

There is no coastal development permit record for this address. However, as observed by Commission staff, a two-story single-family residence with pool,

basketball court and hardscape improvements exists at this site. There are two approximately 6' high concrete block walls crossing the vertical access easement. City of San Clemente Building Department records indicate that the residence was constructed in 1992. According to a planner with the Community Development Department, the project may have been approved by an improperly issued Categorical Exclusion Order. Commission staff is currently conducting an investigation into the existing development at this site.

f. **5-99-376-A1 (P-81-7789)**

Permit No. 5-99-376-A1, an amendment to the underlying subdivision permit (P-81-7789), allowed the construction of a one-story, 6719 square foot single-family residence with in-ground pool and spa, hardscape improvements and an attached 1432 square foot six-car garage/storage area at the inlandmost residential lot within the subdivision at 4055 Calle Isabella (two lots north of the subject lot). The applicant proposed the construction of a perimeter wall within the 15' wide coastal access easement, thereby triggering the need for a permit amendment, as it would affect a condition of the underlying subdivision permit. The Commission upheld the requirements of P-81-7789, which prohibit any improvement other than landscaping within the easement.

3. Proposed Project Description

The applicant is proposing to construct a two-story, 24' high, 5370 square foot single-family residence with pool and spa, pool house, various hardscape improvements, landscaping and an attached 850 square foot four-car garage (See Exhibit 3, Project Plans). Approximately 150 cubic yards of cut will be required for excavation of the pool and spa.

The applicant initially proposed to construct a 6' high solid wall across the easement along the eastern perimeter of the property. Commission staff informed the applicant of the underlying subdivision permit condition prohibiting any improvement other than landscaping within the coastal access easement. Consequently, the applicant submitted revised plans showing the omission of the wall along the eastern perimeter of the property and does not intend to obstruct the 15' wide easement. (No wall is proposed along the western perimeter, as one already exists as a result of 5-96-155-W discussed previously.) The revised Site Plan/Conceptual Landscape Plan (Sheet S-1) submitted May 24, 2000 clearly demonstrates that only landscaping and a crushed granite gravel walkway will be located within the easement. As such, the proposed project conforms to the underlying subdivision permit and does not trigger an amendment to P-81-7789.

B. Access

1. Coastal Act Policies

Sections 30211 and 30212 (a) of the Coastal Act contain policies regarding public access to the shoreline.

Section 30211 states:

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

Section 30212 (a) states:

*Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

The Commission, in its previous action at the subdivision site, required that lateral access be provided from the railroad right-of-way to the mean high tide line. The subject site is an inland lot within the subdivision, as shown in Exhibit 2. Therefore, the project, as it relates to lateral access, is consistent with Section 30212 of the Coastal Act.

In regard to vertical access, existing public vertical access to the beach is located approximately one-quarter mile south of the subject property at the improved Trestles accessway in San Diego County. (See Exhibit 4, Coastal Access Map) A newly completed military housing development at San Mateo Point lies between the subject site and the Trestles accessway. The Trestles accessway is located on Federal Coast Guard property and is available to the public through an easement granted by the Department of the Navy to the State of California until the year 2021. Another coastal development permit (P-80-7164, Cyprus West) was conditioned to provide a 100-space parking lot to serve this accessway. Vertical access to the north exists at San Clemente State Beach approximately 1600 yards upcoast from the subject site.

The City of San Clemente required, as a condition of approval of the original Tentative Tract Map for the subdivision where the subject lot is located, an irrevocable offer of a 15-foot wide vertical easement across the eastern boundary of the tract. The coastal access easement extends across the rear portion of the subject property. The rationale for this requirement was that, in the event that the public easement at Trestles accessway is revoked or restricted, public access through the applicant's property to the beach could be obtained. This condition was repeated as a condition of approval of the original coastal development permit (P-81-7789, Title Insurance and Trust Company). The offer to dedicate (OTD) was recorded on April 11, 1983 in document no. 83-151465, as shown in Exhibit 8. The OTD has yet to be accepted by an appropriate agency. The offer will expire 21 years from the date of recordation, or April 11, 2004, unless the offer is accepted prior to that time.

If the OTD is accepted prior to 2004, it may not be opened up to the public until such time as the Trestles accessway across US Coast Guard property is "unreasonably restricted or closed to the public." The improved Trestles accessway is currently open to the public and there is no indication that the accessway will become restricted or closed to the public.

Nevertheless, in the event that the Trestles accessway were to be closed to the public, the 15' wide coastal access easement running along the southern boundary of the subject site may provide an alternative accessway to the beach. As such, no permanent obstruction, such as fencing, should be constructed within the easement. The applicant is aware of this restriction and has removed all permanent improvements within the easement area from the project plans and is now proposing to place only landscaping (i.e. trees, shrubs, and flowers) and a crushed granite walkway within the 15' wide easement area.

To ensure compliance with the underlying access requirements, the Commission imposes Special Condition 1. This condition requires the applicant to carry out development in conformance with the Site Plan/Conceptual Landscape Plan submitted on May 24, 2000, which shows only landscaping within the easement.

In addition, to ensure that future development conforms to the underlying conditions of approval, including those required by P-81-7789, the Commission imposes Special Condition 2. Special Condition 2 notifies the applicant that any future improvements within, or that may affect, the coastal access easement will require an amendment to this permit (5-00-145) or a new coastal development permit.

The development, as previously conditioned for the provision of vertical public access, will ensure potential public access to the seaside portion of the subdivision if necessary. As conditioned by the current permit through Special Conditions 1 and 2, the development remains consistent with the previously imposed public access requirement. Therefore, the proposed project, as conditioned, is consistent with the access provisions of the Coastal Act, specifically Sections 30211 and 30212.

## 2. City of San Clemente Land Use Plan Policies

Sections IX.14 and IX.15 of the City of San Clemente Certified Land Use Plan (LUP) contain policies regarding public access to the shoreline. However, until such time as the City's Local Coastal Program (LCP) has been certified by the Commission, the Chapter Three policies of the Coastal Act are applied as the standard of review.

Section IX.14 states:

*Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (a) it is inconsistent with public safety, military security needs or the protection of fragile coastal resources; (b) adequate access exists nearby; or (c) agriculture would be adversely affected.*

Section IX.15 states:

*New developments lying between the first public road and the shoreline shall provide both physical and visual access to the coastline. (a) Any new development proposed by the private communities listed below shall be required to provide an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line. Such offers of dedication shall run with the land in favor of a public agency or private association approved by the Executive Director of the Coastal Commission. Such offer shall be in effect for a period of twenty-one (21) years, and shall be recorded free of prior liens, except tax liens. The access easement shall measure at least 10 feet wide. Development permits will require public vertical access for new development at the following private communities:*

- *Private beach areas between Capistrano Shores and the northern City limit*
- *Capistrano Shores Mobile Home Park*
- *La Ladera (La Boca del Canon)*
- *Cypress Shores (Avenida de Las Palmeras/Calle Ariana)*
- *Cotton Point*

The development, as previously conditioned for the provision of vertical public access, will ensure potential public access to the seaside portion of the subdivision if necessary. As conditioned by the current permit, the development remains consistent with the previously imposed public access requirement. Therefore, the proposed project, as conditioned, is consistent with the access provisions of the access policies of the City of San Clemente Certified LUP, specifically Sections IX.14 and IX.15.

**C. Local Coastal Program**

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City has recently submitted the revised IP for Commission review. The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

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

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

The proposed project has been found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which 1) require conformance with project plans submitted May 24, 2000, which show only landscaping within the coastal access easement and 2) notify the applicant of coastal development permit requirements for any improvements (i.e. construction of walls or fencing) or change in intensity of use of the site. No further alternatives, or mitigation measures, beyond those imposed by this permit amendment, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.



PAGE 1 OF 1

CAMP PENDLETON  
SAN MATEO POINT

SAN DIEGO

COUNTY

LIN

30

TRACT

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4

311

COASTAL COMMISSION  
A.P. MAP  
5-00-45  
EXHIBIT # 2  
PAGE 1 OF 1

SUBJECT SITE

CALLE ISABELLA

CALLE

CALLE

ARIANA

11

12

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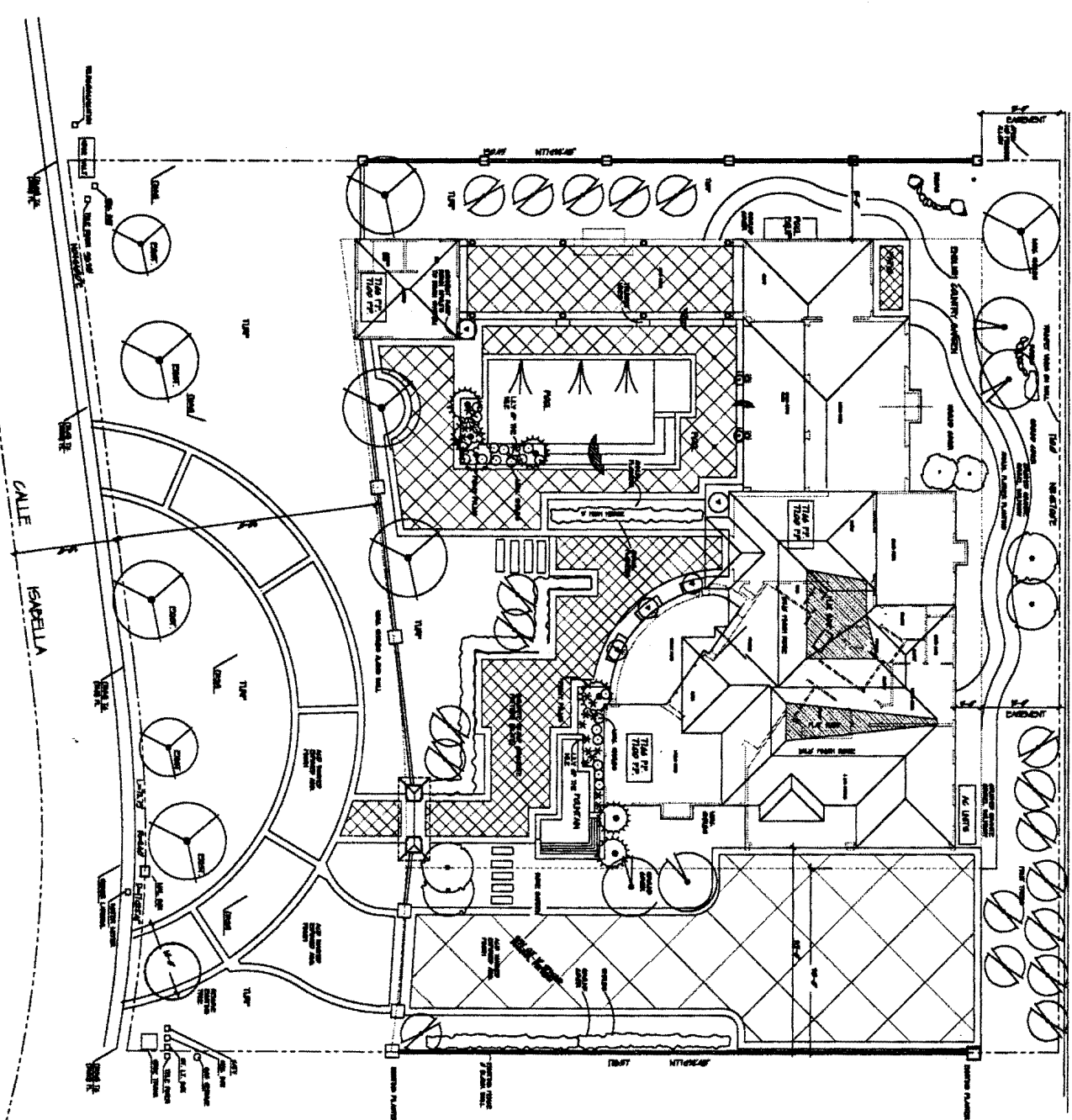
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ASSESSOR'S MAP  
BOOK 60 PAGE 31  
COUNTY OF ORANGE

23



**COASTAL COMMISSION**  
 5-00-745

EXHIBIT # 3  
 PAGE 1 OF 6

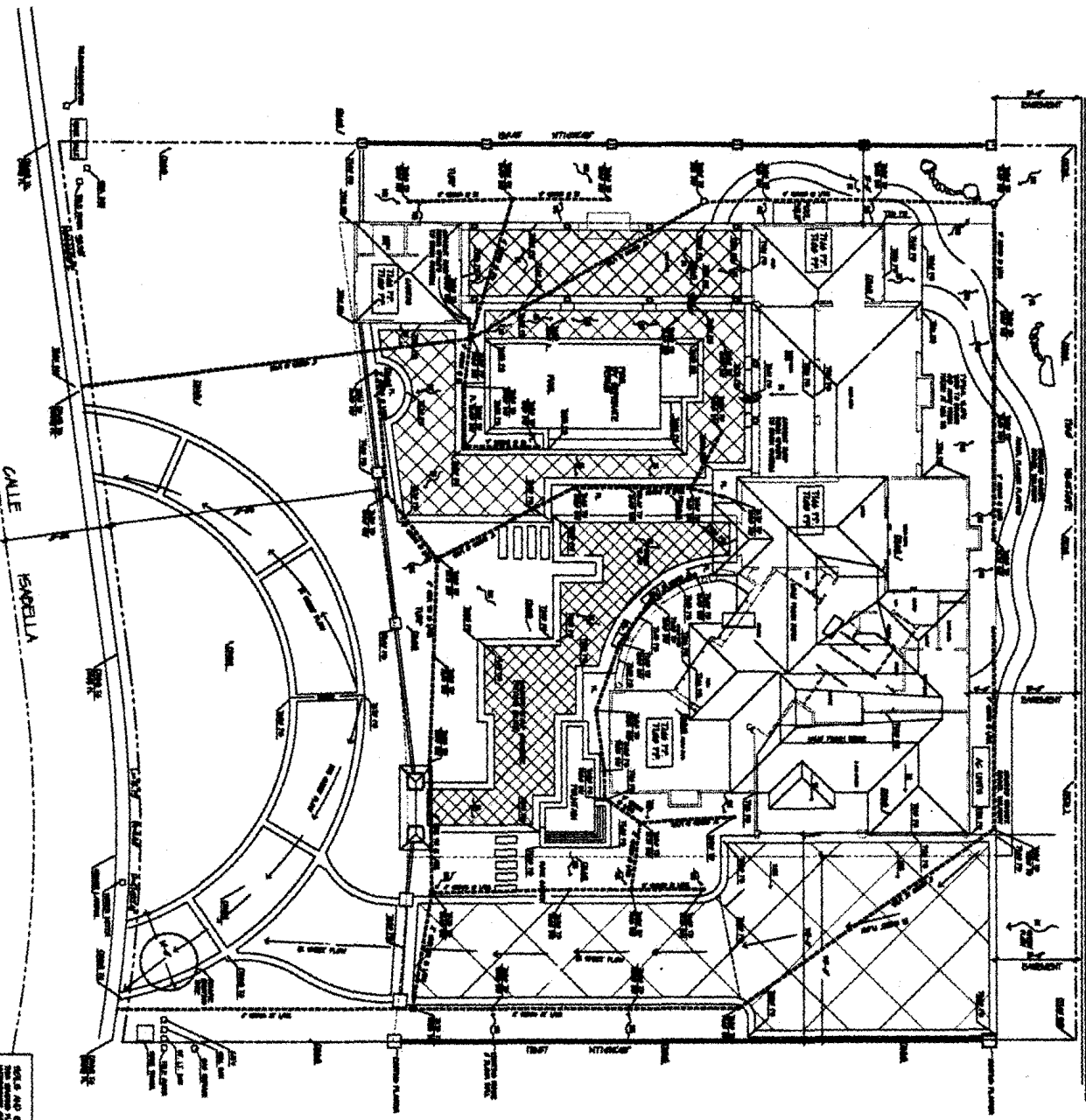
**SHEET INDEX**

S-1	SITE PLAN CONCEPT, I.B.
G-1	GRADING PLAN
1	FIRST FLOOR PLAN
2	SECOND FLOOR PLAN
3	ELEVATIONS
4	ELEVATIONS
5	ROOF PLAN

**CONCEPT, LANDSCAPE**  
**SITE PLAN**

DESIGNED BY: YORK CUSTOM HOME DESIGNS  
 1825 1/2 W. BALBOA, NEWPORT BEACH, CA 92663  
 (949) 723-5160

**S1**



**GRADING PLAN**

NO. 1

DATE: 10/1/71

BY: [Signature]

FOR: [Signature]

SCALE: 1" = 40'

NOTES: [Text regarding grading and construction]

1. ALL GRADING SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA GRADING MANUAL.

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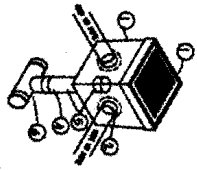
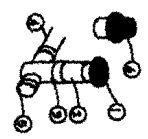
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**COASTAL COMMISSION**

5-001-145

EXHIBIT # 3

PAGE 2 OF 6



NOTES: [Text regarding construction and grading]

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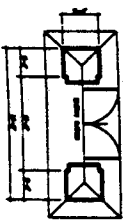
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9. ALL GRADING SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA GRADING MANUAL.

10. ALL GRADING SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA GRADING MANUAL.

CALIFORNIA  
COASTAL COMMISSION



AREA DATA	244 SF.
FIRST FLOOR LINED	100 SF.
SECOND FLOOR LINED	144 SF.
CEILING	400 SF.
50-75 PARTS	400 SF.
STY. RECORD	400 SF.
TOTAL LINED AREA	944 SF.
DATE:	24-87

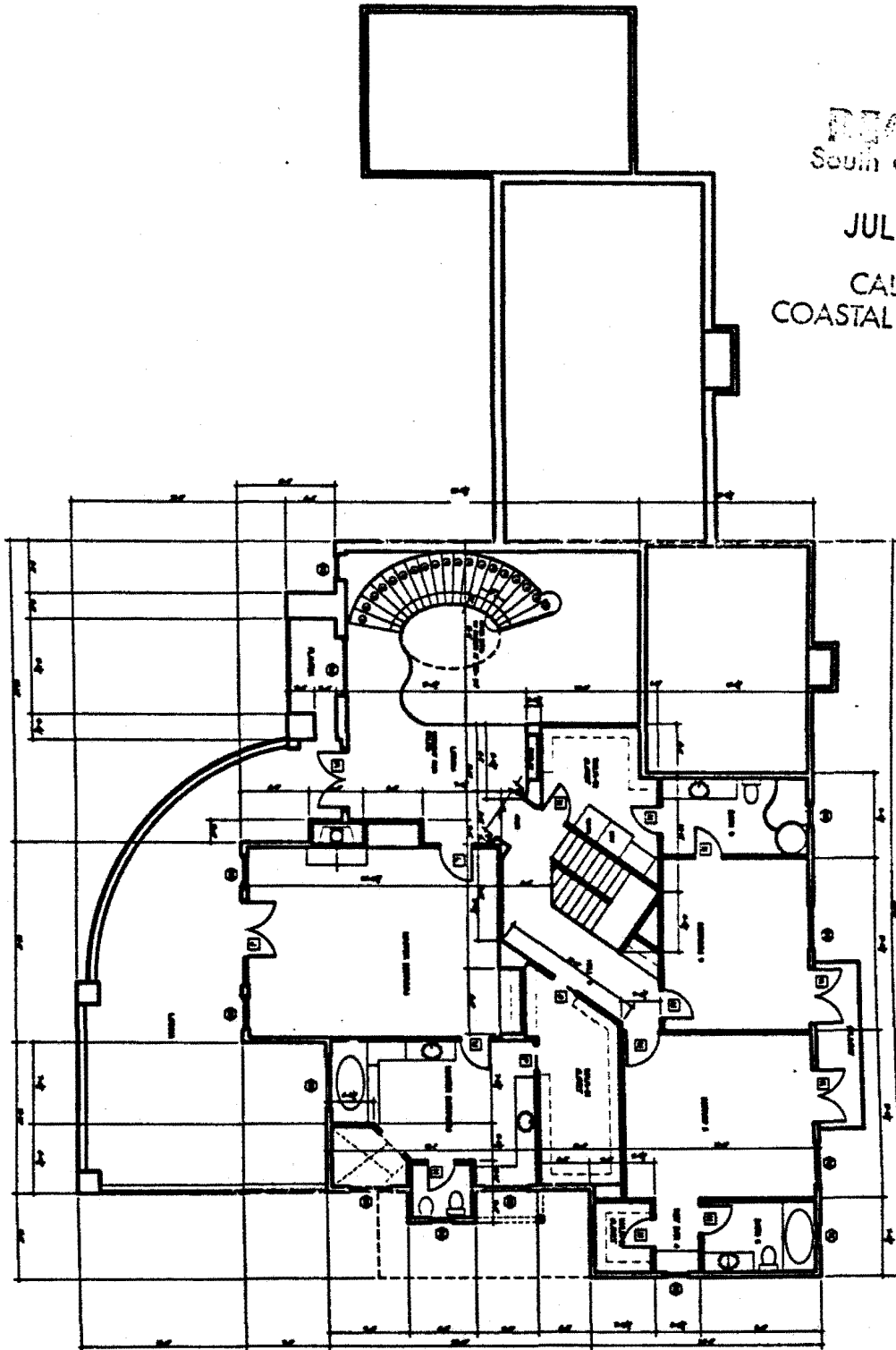
- ## FIRST FLOOR

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South Coast Region

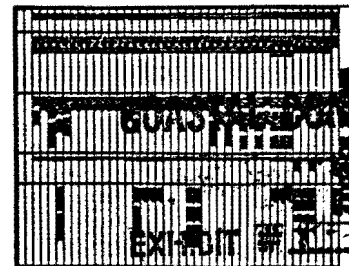
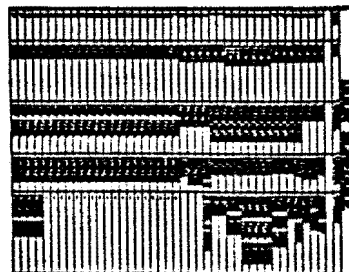
JUL 20 2000

CALIFORNIA  
COASTAL COMMISSION



NOTES:  
1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
2. ALL WALLS ARE 1/2\"/>

- 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
- 2. ALL WALLS ARE 1/2\"/>

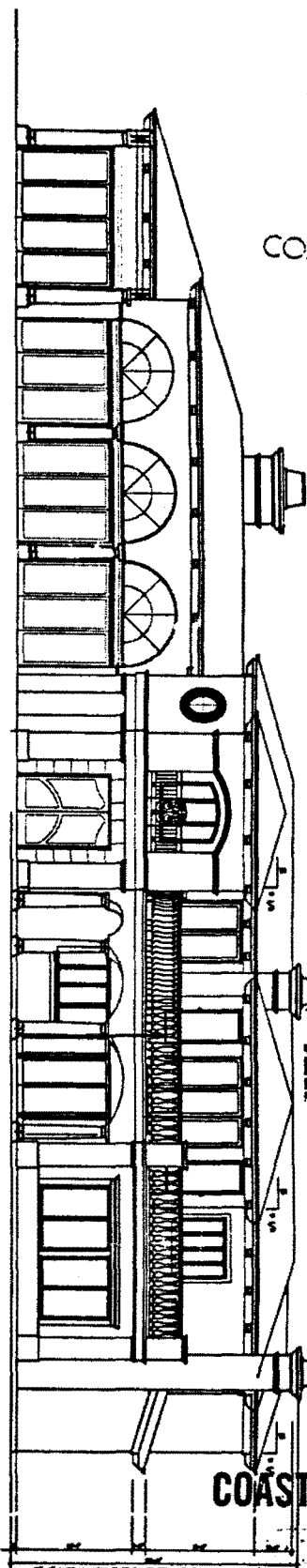


PAGE 4 OF 16

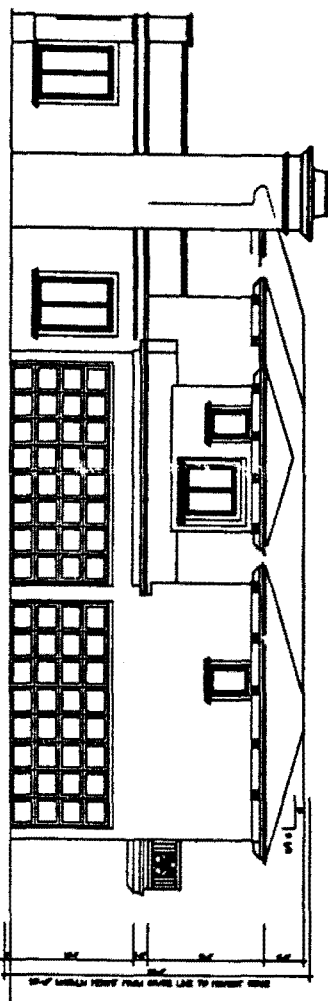
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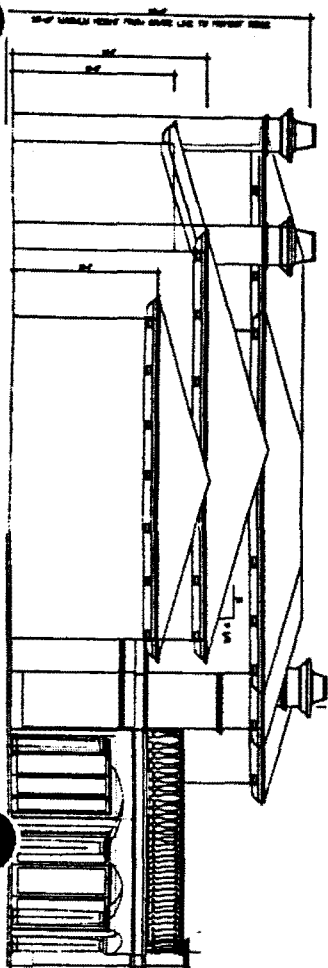
CALIFORNIA  
COASTAL COMMISSION



FRONT ELEVATION



RIGHT SIDE ELEVATION



REAR ELEVATION

- GENERAL NOTES:
1. SEE PLAN FOR LOC. OF THIS ELEVATION ON 1/4-1/2 AC. LOT.
  2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
  3. ALL MATERIALS AND FINISHES TO BE AS SHOWN ON THE PLAN.
  4. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CITY OF NEWPORT BEACH, CALIFORNIA, ORDINANCES AND SPECIFICATIONS.
  5. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.
  6. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CALIFORNIA ELECTRICAL CODE AND ALL APPLICABLE ORDINANCES.
  7. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CALIFORNIA MECHANICAL CODE AND ALL APPLICABLE ORDINANCES.
  8. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CALIFORNIA PLUMBING CODE AND ALL APPLICABLE ORDINANCES.
  9. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CALIFORNIA FIRE CODE AND ALL APPLICABLE ORDINANCES.
  10. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CALIFORNIA LAND USE ACT AND ALL APPLICABLE ORDINANCES.

APPROVED FOR THE CITY OF NEWPORT BEACH, CALIFORNIA, BY THE CITY ENGINEER, JULY 20, 2000.

ELEVATION

DATE: 7/20/2000

YORK CUSTOM HOME DESIGNS  
1825 1/2 W. BALBOA, NEWPORT BEACH, CA 92663  
(949) 723-5160

COASTAL COMMISSION

EXHIBIT # 3

PAGE 5 OF 6

CAUTION  
COASTAL COMMISSION



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ELEVATION	
PERSON	S/n/Date
BILLING AND CASH, PREPARED P/O BOX 612 ONE ELEVATION, CA 95041 PRODUCT: GARDEN SCENIC 400 CALIF. HIGHLAND TRAIL, WOODBURY, CA ONE ELEVATION, CA TEL: 408-94-49	

PAGE 6 OF 6

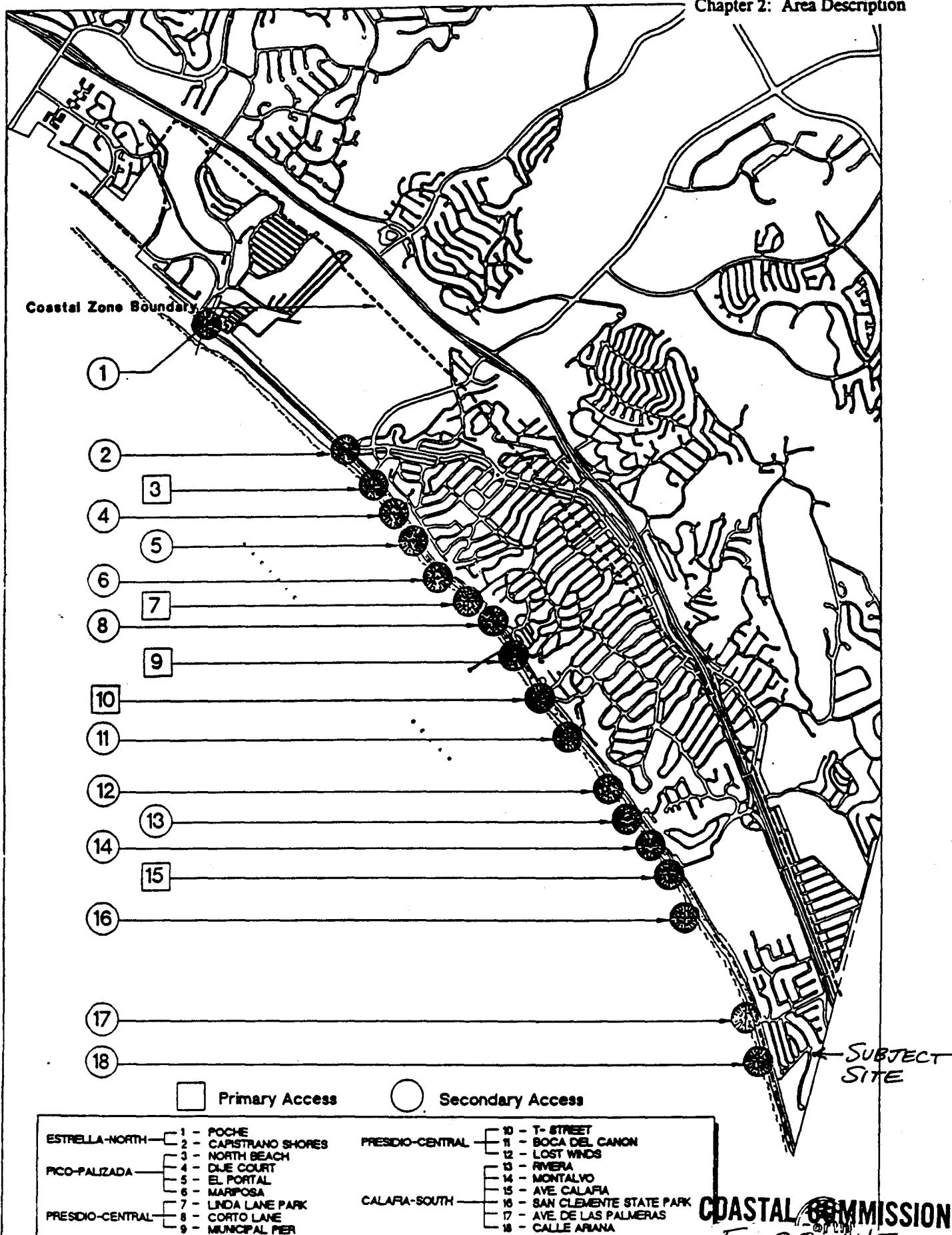


FIGURE 2-5



CALIFORNIA COASTAL COMMISSION  
SOUTH COAST REGIONAL COMMISSION  
644 E OCEAN BOULEVARD, SUITE 3107  
P.O. BOX 1430  
LONG BEACH, CALIFORNIA 90801  
(213) 890-3071 (714) 844-0644

5/11/81  
per staff  
YMH  
approved

JS

js



April 27, 1981

To: Commissioners  
From: Executive Director  
Subject: Summary and Recommendation  
Application No.: P-81-7789

- Attachments:
1. Location Map
  2. Tentative Tract Map
  - 3.
  - 4.
  - 5.
  - 6.
  - 7.
  - 8.

1. Administrative Action: 19 Notified

The application has been reviewed and is complete. The 49-day hearing period expires 5-11-81. Public Hearing is scheduled for 5-11-81. Continuations, (if any) were granted as follows:

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

2. Applicant:

Title Insurance and Trust Company (714) 547-3333  
Applicant's full name Telephone number  
800 N. Main Street  
Address  
Santa Ana, Ca. 92701

Or Lee Riley (714) 498-4904  
Representative's name Telephone number  
129 Avenida Victoria  
Address  
San Clemente, Ca. 92672

3. Project Location:

- a) City or District San Clemente  
b) County Orange  
c) Street Address Southwest of Del Presidente and Las Alamos at southerly boundary of San Clemente  
d) Area is Zoned R-1 (B-1)

EXHIBIT # 5

PAGE 1 OF 10

COASTAL COMMISSION  
5-00-145

PROJECT DESCRIPTION:

Subdivision of 19.2 acres of blufftop property to 17 single-family residential lots. Project includes construction of road, utility lines and demolition of five accessory structures.

One home (formerly the Nixon estate) and accessory structures (i.e., guesthouses, gazebos) exist on the site.

LOCATION DESCRIPTION & STREET ADDRESS: Southwest of Del Presidente and Las Palmeras at southerly boundary of the City of San Clemente.

DISTANCE FROM MEAN HIGH TIDE LINE:

PRESENT USE OF PROPERTY: Except for one residence and accessory structures, the site is vacant.

SITE SIZE: 19.2 acres = sq. ft.

DENSITY: Gross: Net:

UNIT MIX:

ON-SITE PARKING: Primary = Size =

Tandem = Size = Total =

PROJECT HEIGHT: Above AFG = Above CFR =

PROJECT COST: \$ 350,000 EIR: Draft EIR February 1981

AGENCY APPROVAL: Approval in Concept = City of San Clemente, 5-00-145

EXHIBIT # 5

I. RECOMMENDATION: The Executive Director recommends that the Commission adopt the following resolution:

A. Approval With Conditions

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

B. Conditions

This permit is subject to the following conditions:

1. Prior to issuance of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The document shall also restrict the applicant from interfering with present use by the public of the areas subject to the easement prior to acceptance of the offer. Such easement shall include all lands seaward of the A.T.S.F. Railroad right of way to the MHT line. Such easement shall be recorded free of prior lines except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

2. Prior to the issuance of a permit, the applicant shall make an irrevocable offer of dedication for an easement 15' wide along the eastern boundary of the tract be made to the City of San Clemente with the following stipulations:

(a) The offer shall be valid until the year 2021 at which time it may be cancelled on three years prior written notice to City by Developer or its successors or assigns.

(b) Developer, through Title Insurance and Trust Co. or such other entity approved by the City Attorney, shall provide notice to the City of the existence of the offer on or about 1-1-2021 or upon termination of the access described in (c) below.

COASTAL COMMISSION

5-00-145

EXHIBIT # 5

PAGE 3 OF 10

- (c) The City agrees not to accept the offer until the existing public access to the beach across the San Mateo Point Coast Guard property immediately adjacent and south of the subject property or other adequate public access in the immediate area is no longer available to the public or unreasonably restricted for public use.
- (d) Upon acceptance of the offer, the improvement of the easement shall be at City's expense.
- (e) No permanent improvements other than landscaping shall be placed within the easement area unless and until the offer is cancelled pursuant to (a) above.
- (f) The existence of the offer shall be noted in the deeds and initial CC&R's for the property subject to the offer.
- (g) The easement shall be used exclusively for beach access.

3. Low and Moderate Income Housing. Prior to the issuance of a permit, the applicant shall enter into an agreement with the California Coastal Commission to ensure that two (2) units will be rented or offered for sale at a price which is affordable to a low or moderate income person. The agreement shall bind the applicant and any successors in interest to the real property being developed, and shall be recorded as a covenant to run with the land, with no prior liens other than tax liens. The agreement shall be for a period extending 30 years from the date the agreement is recorded. The agreement shall provide either that:

a. Two units shall be rented at the Fair Market rent for existing housing as established by HUD either to persons who meet the standards established by the Department of Housing and Urban Development or as it may subsequently be amended, and applicable regulations; or persons who meet the requirements of any other rent subsidy or funding program that provides rental housing for low income households. The applicant shall make best efforts to accomplish the intent of the provision; those efforts shall include, but are not limited to, entering into any contracts offered by the Department of Housing and Urban Development, the County Housing Authority, or such other agency administering a rent subsidy program for low income households, and refraining from taking any action to terminate any such rent subsidy program thereby entered.

In the event that at any time within 30 years after the last certificate of occupancy is issued housing subsidies are not available, the applicant or his/her successor shall maintain the rental levels for the unit at amounts no higher than those that would otherwise be the maximum for Section 8 housing units. In the event that Section 8 or comparable maximum rental levels are no longer published by the Federal government or by local governmental agencies, maximum rental levels shall be a base rent established by the last rental ceiling published for the Section 8 program adjusted by a percentage to reflect the percentage increase or decrease in the median income; or

**COASTAL COMMISSION**

b. Two units shall be sold as moderate-income units at 5 price 145

EXHIBIT # 5  
PAGE 4 OF 10

which does not exceed  $2\frac{1}{2}$  times the median income for the SMSA in which San Clemente is located. The agreement shall include the following conditions:

- 1) The applicant, their successors, and any subsequent purchasers shall give to a governmental or non-profit agency, subject to the approval of the Executive Director of the Commission, an option to purchase the unit. The agency or its designee may assign these options to individual private purchasers who qualify as low- and moderate-income persons in substantially the same income range as the persons for whom the initial sales price was intended to provide a housing opportunity.
- 2) Whenever the applicants or any subsequent owners of the unit wish to sell that unit, they shall notify the agency holding the option on the unit or that agency's designee of their intent to sell. The agency, its designee or its assignee shall then have the right to exercise the option within 180 days, in the event of the initial sale of the unit by the applicants or within 90 days for subsequent sales. Following the exercise of the option, escrow shall be opened and closed within 90 days after delivery of the notice of exercise of the option.
- 3) Following the notice of intent to sell the unit, the agency or its designee shall have the right to inspect the premises to determine whether repair or rehabilitation beyond the requirements of normal maintenance ("deferred maintenance") is necessary. If such repair or rehabilitation is necessary, the agency or its designee shall determine the cost of repair and such cost shall be deducted from the purchase price and paid to the agency, its designee, or such contractors as the agency shall choose to carry out the deferred maintenance and shall be expended in making such repairs.
- 4) The agency or its designee may charge a fee, to be deducted from the purchase price paid by the assignee, for its reasonable costs of qualifying and counseling purchasers, exercising the option and administering this resale control program.
- 5) The option price to be paid by the agency, its designee or its assignee shall be the original sales price of the unit plus an amount to reflect the percentage of any increase in the median income since the time of the original sale.
- 6) The purchaser shall not sell, lease, rent, assign, or otherwise transfer the premises without the express written consent of the agency or its designee. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or sale by deed of trust or other involuntary transfer, title of the property shall be taken subject to this agreement.
- 7) Such other conditions as the Executive Director determines are necessary to carry out the purposes of this agreement; or

c. Two units, within the coastal zone in the City of San Clemente be provided off-site for low- and moderate-income housing, subject to the approval of the Executive Director.

**COASTAL COMMISSION**

5-00-145

EXHIBIT # 5

PAGE 5 OF 10

4. Prior to issuance of permit, applicant shall submit a deed restriction for recording prohibiting the construction of private stairways, structures, or alterations on or down the bluff or beach or within 25 feet of the bluff face except for possible public beach access facilities constructed by the City of San Clemente, its agents or assigns, within the beach access easement (addressed in Condition 2 above). *Any such accessway per Condition Two will require a permit, properly noted, Findings and Declarations from the California Coastal Commission or its successor agency.*

The Commission finds and declares as follows:

## II. Description and Background

### A. Project Description:

The proposed project is the subdivision of 19.2 acres of land located southwest of Del Presidente and Las Palmeras at the southerly border of San Clemente (formerly the Nixon estate) into 17 single-family residential lots. The property is zoned R-1 (B-1). The project includes road construction, installation of utility lines and demolition of five buildings accessory to the one residential structure that exists on the site. All lots are vacant excluding the former Nixon estate where the main residence, guest house, gazebos, pools and other accessory structures exist. The applicant proposes that these structures remain on the property.

The western portion of the property is bounded by a blufftop, the toe of which is traversed by the A.T.S.F. Railroad right of way. Immediately seaward of the railroad right of way is the beach, which is owned to the mean high tide line by the applicant. Public vertical access is located just to the south of the property at the "Trestles" accessway (located in San Diego County) through an access easement granted by the Federal government over Coast Guard property until the year 2021. Lateral access from the "Trestles" accessway to the beach fronting the subject property is physically possible. The beach at this location is a popular surfing area.

## III. Issues

- A. Access
- B. Housing
- C. Visual and Scenic Protection

### A. Access:

Sections 30210, 30211 and 30212 of the Coastal Act state:

COASTAL COMMISSION

5-00-145

EXHIBIT # 5

PAGE 6 OF 10



Section 30210.

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

(Amended by Ch. 1075, Stats. 1978.)

Section 30211.

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

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the regional commission or the commission determines that such activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

(Amended by Ch. 1075, Stats. 1978.)  
(Amended by Ch. 919, Stats. 1979.)

COASTAL COMMISSION

5-00-145

EXHIBIT # 5

PAGE 7 OF 10

The beach fronting the subject property is approximately 600 yards long and 11 yards wide (approximately 1.3 acres) and is currently owned in fee by the applicant. Public vertical access to the beach is located almost immediately adjacent to the subject property at the improved Trestles accessway. The Trestles accessway is located on Federal property and is available to the public through an easement granted by the Department of the Navy to the State of California until the year 2021. A recent coastal development permit (#P-80-7164, Cyprus West) was conditioned to provide a 100 space parking lot to serve this accessway. Vertical access to the north exists at San Clemente State Beach approximately 1600 yards upcoast from the beach at the subject property.

The City of San Clemente required, as a condition of approval of the Tentative Tract Map, an irrevocable offer of a 15 foot wide vertical easement across the eastern boundary of the tract. The rationale for this requirement was that, in the event that the public easement located at "Trestles" accessway is revoked or restricted, public access through the applicant's property to the beach, could be obtained. This condition has been repeated as a condition of this coastal development permit (Condition #2).

The development as conditioned for the provision of lateral, and if necessary, vertical public access to the beach will ensure continued public access to the beach portion of the applicant's property and is, therefore, consistent with the access provisions of the Coastal Act, specifically Sections 30210, 30211 and 30212.

**B. Housing:**

Section 30213 of the Coastal Act states:

Section 30213.

Lower cost visitor and recreational facilities and housing opportunities for persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of the Government Code.

The Planning Commission of the City of San Clemente recently approved the Draft "City of San Clemente Coastal Element" (March 17, 1981). The Coastal Element will serve as the LCP for the City. They expect to submit the Coastal Element to the Commission for certification in July of this year.

The housing policies contained within the Element are based on the City's recently adopted Housing Element which requires that developers

COASTAL COMMISSION

5-00-145

EXHIBIT # 5

PAGE 8 OF 10

provide 15% inclusion of affordable units. The applicant proposes to meet the housing requirement by the off-site construction of two (2) units within the coastal zone in San Clemente.

The Draft City of San Clemente Coastal Element makes mention of the "Palo Alto Plan" for resale control and prevention of speculation on affordable units. The details of the plan, though, are not set forth in either the Coastal Element or the Housing Element. City staff indicates that the mechanism for resale control has not yet been established. Therefore, in order to protect the low and/or moderate income units which will be provided by the applicant, the resale controls as provided for in the Commission's Statewide Housing Guidelines should be applied to the project.

The subject project, through the provision and protection of affordable housing, is consistent with Section 30213 of the Coastal Act.

C. Visual and Scenic Protection:

Section 30251 of the Coastal Act states:

Section 30251.

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 Commission, in order to implement the above section of the Coastal Act adopted the following guideline:

BLUFF TOP DEVELOPMENT:

Proposed development should be set back at least 25 feet from the edge of any coastal bluff. (30251, 30253)

COASTAL COMMISSION

5-00-745-81-7787

EXHIBIT # 5

PAGE 9 OF 10

Natural land forms, such as the coastal bluffs found on the applicant's property, are a resource of public importance as enjoyed by visitors to the beach. Restricting development along the bluff edge and down the face of the bluff will protect the scenic visual qualities of the area and ensure consistency of the project with Section 30251 of the Coastal Act.

  
M. J. Carpenter  
Executive Director

JoAnn Sullivan  
Information Contact

bp

**CALIFORNIA COASTAL COMMISSION**  
631 Howard Street, San Francisco 94105 — (415) 543-8555

STAFF REPORT ON APPEAL

REGULAR CALENDAR

Appeal No. 148-81  
(Title Insurance and Trust)  
49th Day: 7/8/81

DECISION OF  
REGIONAL  
COMMISSION:

Permit granted with conditions by South Coast Regional Commission

PERMIT  
APPLICANT:

Title Insurance and Trust Co.

DEVELOPMENT  
LOCATION:

Southwest of Del Presidente and Las Palmeras at the southern boundary of the City of San Clemente, Orange County (Exhibit 1)

DEVELOPMENT  
DESCRIPTION:

Division of 19.2 acre parcel into 17 lots including roads and utilities and demolition of 5 structures; the home of former President Nixon would be retained

APPELLANT:

Gene Atherton

APPELLANT CONTENDS THAT:

1. "I am opposed to the project because it delegates the lowest priority use-SFD-to one of few undeveloped coastal parcels in Orange County prior to approval of San Clemente's LCP, total lack of public access to the coastal parcel and to the no. 1 desired visitor destination point-the Nixon home and grounds or viewpoint thereof, and the lack of a substantial public benefit for the approval of the low priority use of this valuable coastal resource."

2. "Recommendations: should the Commission approve this project, I strongly recommend that a limited easement on the edge of the bluff next to the former coast guard property be required, and that the restrictions on 15 ft. easement along the eastern boundary of the property be removed."

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Appeal
2. Regional Commission File
3. Appeal No. 491-78 (Cyprus West)

STAFF NOTES:

1. Project Description. The applicant proposes to subdivide a 19.2 acre parcel, the former Nixon estate, into 17 parcels for single-family residential development including roads and utilities and demolition of 5 accessory structures. The former

**COASTAL COMMISSION**

6/16-18/81 5-00-145

EXHIBIT # 6

PAGE 1 OF 5

Nixon residence and accessory structures would be retained. The project location is southwest of Del Presidente and Las Palmeras at the southern boundary of the City of San Clemente. The western portion of the property is bounded by a blufftop, the toe of which is traversed by the A.T.S.F. Railroad right of way. Immediately seaward of the railroad right of way is the beach, which is owned to the mean high tide line by the applicant. Public vertical access is located just to the south of the property at the "Trestles" accessway (located in San Diego County) through an access easement granted by the Federal government over Coast Guard property until the year 2021. Lateral access from the "Trestles" accessway to the beach fronting the subject property is physically possible. The beach at this location is a popular surfing area. To the west of the site is the Cyprus Shores locked gate subdivision; access to the proposed subdivision would be through Cyprus Shores. Approximately 1/4 mile to the north is Interstate 5.

2. Regional Commission Action. The Regional Commission approved the project as recommended by its staff, with conditions requiring 2 units of low and moderate income housing, lateral access along the shoreline from the railroad right of way to the mean high tide line, and vertical access subject to certain stipulations.

3. Vertical Access. Section 30212 of the Coastal Act requires that public access to the shoreline be provided in new development projects except where, among other things, adequate access exists nearby. Vertical access to the shoreline presently exists just across the property line to the south, through the Coast Guard property. This "Trestles" accessway is available through a public easement granted by the Navy to the State of California until the year 2021. Both the City and the Regional Commission imposed a condition on the subject permit requiring on offer to dedicate a vertical access easement 15 ft. wide along the eastern boundary of the site, with the understanding that the offer only be accepted and access opened up in the event that at some future date the "Trestles" accessway is revoked or restricted. The Regional Commission's vertical access condition states:

2. Prior to the issuance of a permit, the applicant shall make an irrevocable offer of dedication for an easement 15' wide along the eastern boundary of the tract be made to the City of San Clemente with the following stipulations:

- (a) The offer shall be valid until the year 2021 at which time it may be cancelled on three years prior written notice to City by Developer or its successors or assigns
- (b) Developer, through Title Insurance and Trust Co. or such other entity approved by the City Attorney, shall provide notice to the City of the existence of the offer on or about 1-1-2021 or upon termination of the access described in (c) below.
- (c) The City agrees not to accept the offer until the existing public access to the beach across the San Mateo Point Coast Guard property immediately adjacent and south of the subject property or other adequate public access in the immediate area is no longer available to the public or unreasonably restricted for public use.

COASTAL COMMISSION

5-00-145

EXHIBIT # 6

PAGE 2 OF 5

- (d) Upon acceptance of the offer, the improvement of the easement shall be at City's expense.
- (e) No permanent improvements other than landscaping shall be placed within the easement area unless and until the offer is cancelled pursuant to (a) above.
- (f) The existence of the offer shall be noted in the deeds and initial CC&R's for the property subject to the offer.
- (g) The easement shall be used exclusively for beach access.

The appellant contends that a limited easement on the edge of the bluff next to the former coast guard property should be required, and that the restrictions on the 15 ft. vertical access easement should be removed. The Regional Commission found that with provisions for lateral and vertical access the project was consistent with the public access policies of the Coastal Act.

The draft Land Use Plan discusses in detail present and future access needs in the Trestles area (Exhibit 5), and notes that the City has required an offer to dedicate an accessway along the eastern boundary of the site, which the City will not accept until and unless the existing Trestles accessway is no longer available to the public or is unreasonably restricted for public use. The draft Land Use Plan states:

These two actions together will help guarantee future public access to the area south of San Clemente State Park. If the access across the Coast Guard Loran station becomes unavailable in the future, the City of San Clemente will be responsible for making improvements necessary to open the Cotton Point easement to public use.

On page II-47 the draft Land Use Plan states: "A new access way be constructed at Cotton Point / the subject site / if access across the Coast Guard property is lost in the future." The draft Land Use Plan also recommends requiring bluff top access where no beach area exists, which is not the case in this appeal. Regarding access through locked gate subdivisions, the draft Land Use Plan states:

The City of San Clemente contains five access points which are available only by the use of private right-of-way. The Coastal Act requires that maximum access and recreational opportunities be provided (Section 30210). These private access routes, to the extent that they discourage use of the beach on which they front, are inconsistent with the Coastal Act. However, the City is not required to deal with the question of access through private developments lying between the first public roadway and the shoreline, unless and until additional development is proposed in these areas. Since most of these areas are already fully developed, there is likely to be a considerable length of time between the adoption of the Coastal Element and City action with regard to access in these areas.

4. Visitor-serving Potential. Section 3022 of the Coastal Act provides:

The use of private lands suitable for visitor-serving ~~complex~~ recreational facilities designed to enhance public opportunities for

COASTAL COMMISSION  
5-00-145  
EXHIBIT # 6

coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

- The appellant objects to committing the site to the lowest priority use prior to certification of the LCP. The appellant contends that "The public is denied a viewing point to the coast and to the No. 1 desired visitor destination in San Clemente-former President Nixon's home," and that "A balance between the private and public use of one of the few remaining coastal parcels is feasible and the only justifiable basis for the approval of residences on prime recreational land so scarce in dense southern California." The appellant contends that the home of the former president is of historic significance, and states that:

The preservation of the Nixon home and grounds appears to be the prime justification for the residential use of the parcel. Controlled and limited access to a viewing point of the home should be provided. Section 30212 and 30221 calling for access along the coast and protection of oceanfront land for recreational use respectively, could provide a limited easement along the blufftop for the public to view the preserved Nixon home and enjoy the scenic and visual qualities of the coast. Both the easement suggested above and that granted along the east boundary of the property would require a similar easement on the adjoining coast guard property from a future permit in order to have access to a public road.

The appellant also contends:

There is a gross deficiency of hotel/motel rooms in San Clemente. This is the only good hotel site left in San Clemente, since residents oppose hotels in...other good sites. LCP vaguely refers to possible hotel/motel next to I-5 or El Camino Real. I believe approval of this subdivision is premature and should be considered at time former coast guard site is up for permit or at least after full Commission approval of ultimate LCP. This need not be a locked gate subdivision.

The Regional Commission did not adopt specific findings regarding the suitability of the site for visitor-serving uses. The Regional Commission staff states that it relied on the draft Land Use Plan which does not propose a visitor-serving destination for the site. The draft Land Use Plan provides:

Although the City of San Clemente does not have an absolute shortage of recreation and visitor-serving facilities, these amenities are not well distributed geographically within the coastal zone.

The problem is most severe in the northern and southern ends of the beach. With the exception of facilities at San Clemente State Beach, there are no public beach amenities between "T" St. and the Orange County...line.

With the conversion of the San Clemente Inn to a timeshare condominium, the City has lost more than 50% of its hotel room inventory. This loss adversely affects the visitor-serving potential of San Clemente. However, any new site for a proposed motel would probably

COASTAL COMMISSION

5-00-145  
EXHIBIT # 6  
PAGE 4 OF 5

require freeway exposure. The number of such sites in the City is relatively small. It is not known whether a major chain would be interested in developing such a facility in the City.

The Regional Commission staff notes that one of the reasons it did not consider recommending use of the site for visitor-serving facilities is due to the fact that access to the site is through a locked gate subdivision (Cyprus Shores), and also because the Commission staff's comments on the draft Land Use Plan do not specifically object to proposed residential use of the site. Nevertheless, the Commission staff's comments do state:

The proposed LUP fails to incorporate provisions for visitor-serving facilities in conjunction with new development. While the LUP indicates a proposed Tourist Commercial designation it is not applied anywhere on the Land Use Plan.

5. Related Commission Action. In Appeal No. 491-78 (Cyprus West) the Commission approved with conditions a permit to divide 61 acres into 227 lots in the vicinity of the subject site. The conditions required dedication of 8 of the proposed lots plus a large parcel to the State Parks department for public recreational use, and dedication of land for 57 units of affordable housing. The Commission did not require access through the subdivision, finding that adequate vertical access existed in the adjacent State Park to the north, and since the parcel did not extend to the shoreline but only to the bluff edge. The Commission determined that the provision of the land for recreational facilities (a campground) plus the provision of affordable housing brought the project into conformance with Sections 30221 and 30222 of the Coastal Act

COASTAL COMMISSION

5-00-145

EXHIBIT # 6

PAGE 5 OF 5

WHEN RECORDED RETURN TO:

Meserve, Mumper & Hughes  
5190 Campus Drive  
Newport Beach, California 92660

Attn: Frank D. Stiefel, Esq.

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR COTTON POINT

TRACT NO. 10909  
CITY OF SAN CLEMENTE  
ORANGE COUNTY, CALIFORNIA

RECEIVED  
OCT 27 1999  
CALIFORNIA  
COASTAL COMMISSION

COASTAL COMMISSION  
5-00-145

EXHIBIT # 7  
PAGE 1 OF 4

Building and Landscaping Restrictions against a structure, improvement or landscaping which when completed exceeds the height established therefor in the plans and specifications submitted to the Architectural Committee or whose location differs from the location set forth in such plans and specifications, unless the actual height or location results in a lesser violation of the Building and Landscaping Restrictions than depicted on the plans and specifications.

Section 6.11. Right of Entry: Each Owner and his representatives shall have the right to enter upon a Lot over which such Owner is an Enforcing Owner for the purposes of verifying that the construction of improvements or installation of landscaping, or the growth of landscaping after installation, complies with the Building and Landscaping Restrictions set forth herein. Such entry may only be had during reasonable hours during the daytime, excluding legal holidays, and shall not unreasonably interfere with the construction of improvements or the installation of landscaping, or the use by an Owner of his Lot. If an Owner has followed the Warning Statement procedure set forth above, as to any landscaping or improvements covered by such Warning Statement, an Enforcing Owner shall lose the right of entry provided herein to verify installation of landscaping or construction of improvements if he shall not have given the notice or shall not have taken action within the time period provided in this Article for preserving such Enforcing Owner's right to commence an action or have another remedy as to the landscaping or improvements covered by such Warning Statement; provided, however, such Enforcing Owner shall retain his right of entry to verify that the growth of such landscaping does not violate the Building and Landscaping Restrictions provided herein.

## ARTICLE VII EASEMENTS

Section 7.1. Rights of Association: There is hereby granted to the Association such easements as are necessary to perform the duties of the Association.

Section 7.2. Rights of Declarant: The Declarant, for itself and its successors and assigns, reserves the following rights and easements:

(a) Easements over the Lots and Common Area for the installation and maintenance of electric, telephone, cable television, water, gas, and sanitary sewer lines and drainage facilities.

**COASTAL COMMISSION**

5-00-145

EXHIBIT # 7

PAGE 2/25/89 4

(b) The right of Declarant (and its agents, employees and representatives) to enter on the Common Area to construct improvements on the Property and to make repairs and remedy construction defects if such entry shall not interfere with the use of any occupied Lot unless authorized by the Owner thereof; provided, however, that the Declarant shall be responsible for the timely repair of any damage caused to the Common Area or any Lot by the Declarant (and its agents, employees and representatives) in exercising this right.

(c) So long as Declarant owns any Lots in the Project, this Declaration cannot be amended or modified to change or eliminate the easements reserved herein to Declarant without the prior written approval of Declarant, and any attempt to do so shall be null and void and shall have no effect whatsoever.

Section 7.3. Rights of Owners: The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer and water, electricity, gas and telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone and cable television lines or drainage facilities are installed within the Property, which connection lines or facilities or any portion thereof lie in or upon the Common Area, or lie in or upon Lots owned by others, then the Owner of a Lot served by said connections, lines or facilities, shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon these Lots or to have utility companies enter upon these Lots within the properties in or upon which said connections, lines or facilities, or any portion thereof, lie to repair, replace, and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer house connections and/or water house connections or electricity, gas or telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot.

→ Section 7.4. Rights of City: There is hereby granted to the City an irrevocable offer of dedication of an easement

COASTAL COMMISSION

5-00-145

EXHIBIT # 7  
2/25/83  
PAGE 3 OF 4

fifteen (15) feet wide along the eastern boundary of the Property, in accordance with the following:

(a) The offer shall be valid until the year 2021 at which time it may be cancelled on three (3) years prior written notice to City by Declarant or its successors or assigns; and

(b) Declarant, through Title Insurance and Trust Co. or such other entity approved by the City Attorney, shall provide notice to the City of the existence of the offer on or about January 1, 2021, or upon termination of the access described in (c) below; and

(c) The City agrees not to accept the offer until the existing public access to the beach across the San Mateo Point Coast Guard property immediately adjacent and south of the subject property or other adequate public access in the immediate area is no longer available to the public or unreasonably restricted for public use; and

(d) Upon acceptance of the offer, the improvement of the easement shall be at City's expense; and

(e) No permanent improvements other than landscaping shall be placed within the easement area unless and until the offer is cancelled pursuant to (a) above; and

(f) The easement shall be used exclusively for beach access.

#### ARTICLE VIII MANAGEMENT

Section 8.1. Powers of the Association: All powers relating to management, operation and maintenance of the Common Area, as well as certain rights, duties and powers relating to the Property, as set forth herein and in the Bylaws, shall be vested in the Association.

Section 8.2. Purposes of the Association: The specific and primary purposes of and powers of the Association are to manage and maintain the Common Area and all facilities, improvements, and landscaping thereon, and to provide recreational activities for the Members, foster and support community activities of the Members, and perform the functions set forth in this Declaration of Covenants, Conditions and Restrictions, and the Association's Articles of Incorporation, and Bylaws.

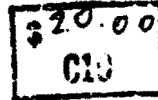
COASTAL COMMISSION

5-00-145

EXHIBIT # 7

PAGE 2 OF 4

83-151464



RECORDING REQUESTED BY  
TICOR TITLE INS. CO. OF CALIF.  
RECORDED IN OFFICIAL RECORDS  
OF ORANGE COUNTY, CALIFORNIA

Recording Requested by and  
When Recorded, Mail To:  
California Coastal Commission  
631 Howard Street, 4th Floor  
San Francisco, CA 94105  
Attention: Legal Department

20-116-57  
-400 PM APR 11 '83

*See A Branch* COUNTY  
RECORDER

IRREVOCABLE OFFER TO DEDICATE

I. WHEREAS, Title Insurance and Trust Company is the record owner, hereinafter referred to as "owner" of the real property located at 4100 Calle Isabella, in the City of San Clemente and County of Orange, California, legally described as particularly set forth in attached Exhibit A hereby incorporated by reference

and hereinafter referred to as the "subject property"; and

II. WHEREAS, the California Coastal Commission, hereinafter referred to as "the Commission", is acting on behalf of the People of the State of California; and

III. WHEREAS, the People of the State of California have a legal interest in the lands seaward of the mean high tide line; and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the owner applied to the Commission for a Coastal Development Permit for the subdivision of 19.2 acres of blufftop property to 16 single-family residential lots. Project includes the construction of road, utility lines and demolition of five accessory buildings on the subject property; and

V. WHEREAS, a Coastal Development Permit number 148-81 was granted on June 17, 1981, by the Commission in accordance with the provisions of the Staff Recommendation and Findings, Exhibit B, attached hereto and hereby incorporated **COASTAL COMMISSION** subject to the following condition:

EXHIBIT # 8

PAGE 1 OF 6

1           Vertical Access. Prior to issuance of permit the applicant  
2 shall submit evidence of recordation of an agreement, the form  
3 and content of which has been approved by the Executive Director,  
4 offering to dedicate to a public agency or private association  
5 acceptable to the Executive Director, as easement for public  
6 access allowing the public to pass and repass over a strip of  
7 the applicants property 15 feet in width and running along the  
8 entire eastern boundary of the project site, from the northern  
9 property line to the railroad right-of-way. The offer of  
10 dedication shall contain a clause restricting the agency  
11 accepting the offer from opening up the accessway to the public  
12 unless and until the "Trestles" accessway across the Coast Guard  
13 property to the south is no longer available to the public or  
14 is unreasonably restricted for public use. The offer shall be  
15 made free of prior liens and encumbrances except for tax liens.  
16 The offer shall be irrevocable for a period of 21 years, running  
17 from the date of recordation and shall run with the land in favor  
18 of the people of the State of California, binding successors and  
19 assigns of the applicant.

20           In addition, prior to sale of any of the lots, the applicant  
21 shall submit evidence that the C. C. & R's of the subdivision  
22 note the existence of the accessway and prohibit any permanent  
23 improvements except landscaping within the accessway.

24 VI.       WHEREAS, the subject property is a parcel located  
25 between the first public road and the shoreline; and

26 VII.      WHEREAS, under policies of sections 30210 through 30212  
27 of the California Coastal Act of 1976, public access to the  
28 shoreline and along the coast is to be maximized, and in all

COASTAL COMMISSION

5-00-145

1 new development projects located between the first public road  
2 and the shoreline shall be provided; and

3 VIII. WHEREAS, the Commission found that but for the imposition  
4 of the above condition, the proposed development could not be  
5 found consistent with the public access policies of Section 30210  
6 through 30212 of the California Coastal Act of 1976 and that  
7 therefore in the absence of such a condition, a permit could  
8 not have been granted;

9 NOW THEREFORE, in consideration of the granting of permit  
10 number 148-81 to the owner by the Commission, the owner hereby  
11 offers to dedicate to the People of the State of California an  
12 easement in perpetuity for the purposes of public access allowing  
13 the public to pass and repass over said easement. The easement is  
14 located on the subject property and is described as being a strip  
15 of the applicants property 15 feet in width and running along the  
16 entire eastern boundary of the project site, from the northern  
17 property line to the railroad right-of-way, and as specifically  
18 set forth by attached Exhibit C hereby incorporated by reference.

19 This offer of dedication shall be irrevocable for a  
20 period of twenty-one (21) years, measured forward from the date  
21 of recordation, and shall be binding upon the owner, its' heirs,  
22 assigns, or successors in interest to the subject property  
23 described above. The People of the State of California shall  
24 accept this offer through the City of San Clemente, the local  
25 government in whose jurisdiction the subject property lies, or  
26 through a public agency or a private association acceptable to  
27 the Executive Director of the Commission or its successor in  
28 interest. The agency accepting this offer is prohibited from

COASTAL COMMISSION

5-00-145

1 opening up the accessway to the public unless and until the  
2 "Trestles" accessway across the Coast Guard property to the south  
3 is no longer available to the public or is unreasonably restricted  
4 for public use.

5 Acceptance of the offer is subject to a covenant which runs  
6 with the land, providing that the first offeree to accept the  
7 easement may not abandon it but must instead offer the easement  
8 to other public agencies or private associations acceptable to  
9 the Executive Director of the Commission for the duration of the  
10 term of the original offer to dedicate, The grant of easement  
11 once made shall run with the land and shall be binding on the  
12 owners, their heirs, and assigns.

13 //

14 //

15 //

16 //

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COASTAL COMMISSION

5-00-145

EXHIBIT # 8

PAGE 4 OF 6

Executed on this 22<sup>d</sup> day of December, 1982,  
at Los Angeles, California.

TITLE INSURANCE AND TRUST COMPANY

DATED:

Signed:

December 22, 1982

E.S. Holtz  
E.S. HOLTZ, VICE-PRES.

Matthew J. Suedecker  
MATTHEW J. SUEDEKER,  
ASST. SECT.

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES)

On this 22 day of DECEMBER, 1982, before  
me, the undersigned, a Notary Public in and for said County  
and State, personally appeared E.S. HOLTZ and  
MATTHEW J. SUEDEKER known to me to be the Vice-President and  
Assistant Secretary, respectively, of the corporation 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, pursuant to its laws, or a  
resolution of its Board of Directors.

Witness my hand and official seal the day and year in  
this certificate first above written.

Mary E. Feathers

Notary Public, in and for the  
County of Los Angeles,  
State of California



COASTAL COMMISSION

5-00-145

EXHIBIT # 8

PAGE 5 OF 6

This is to certify that the Offer to Dedicate set forth  
above dated December 22, 1982, and signed by  
E.S. HOLZ and MATTHEW J. SIKDERER owner(s), is  
hereby acknowledged by the undersigned officer on behalf of the  
California Coastal Commission pursuant to authority conferred by  
the California Coastal Commission when it granted Coastal  
Development Permit number 148-81 on June 17, 1981, and the  
California Coastal Commission consents to recordation thereof  
by its duly authorized officer.

DATED: JANUARY 5, 1983

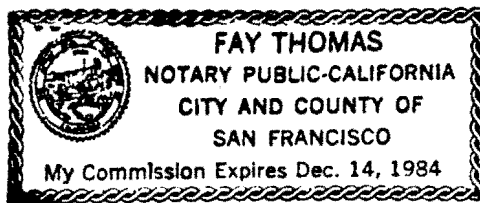
Steven D. Brown  
Legal Counsel  
California Coastal Commission

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO)

On January 5, 1983, before the undersigned, a  
Notary Public in and for said State personally appeared  
Steven D. Brown, known to me to be the Legal  
Counsel of the California Coastal Commission and  
known to me to be the person who executed the within  
instrument on behalf of said Commission, and acknowledged to  
me that such Commission executed the same.

Witness my hand and official seal.

Fay Thomas  
Notary Public, in and for said County and State



COASTAL COMMISSION  
5-00-145  
EXHIBIT # 8  
PAGE 6 OF 6

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 380

P.O. BOX 1450

LONG BEACH, CA 90802-4416

(310) 590-3071

Date: August 22, 1996

TO: William Maxwell & Patty Rich  
30411 Marbella Vista  
San Juan Capistrano, CA 92675

SUBJECT: Waiver of Coastal Development Permit Requirement/De Minimis  
Developments—Section 30624.7 of the Coastal Act

Based on your project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Administrative Code. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

WAIVER #5-96-155 APPLICANT: William Maxwell and Patty Rich

LOCATION: 4085 Calle Isabella, San Clemente, County of Orange

PROPOSED DEVELOPMENT: Construction of a two-level 6,703 square foot single-family detached residence with a 646 square foot 3-car garage, 278 square foot veranda and 180 square foot deck, landscaping, pool and spa. Grading consists of 230 cubic yards of cut and 359 cubic yards of fill.

RATIONALE: The proposed project is located in a private gated community situated between the sea and the first public road. However, the proposed development is located on a vacant, inland lot, not on a coastal bluff. There is a public access easement located on the property boundary of the site, however, the applicant is not proposing any development which could interfere with the future use of that easement. The proposed development will not adversely impact public access and recreation or coastal resources identified in Chapter 3 of the Coastal Act.

This waiver will not become effective until reported to the Commission at their September 10-13, 1996, meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the Administrative Code. The enclosed Notice Card shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

Charles Damm

CHARLES DAMM

South Coast District Director

by: Pete Wilson

cc: Commissioners/File

7568F

COASTAL COMMISSION

5-00-145

EXHIBIT # 9PAGE 1 OF 1