

CALIFORNIA COASTAL COMMISSION

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



Filed: December 11, 2000
49th Day: January 29, 2001
180th Day: June 9, 2001
Staff: ALK-LB *ALK*
Staff Report: December 21, 2000
Hearing Date: January 9-12, 2001
Commission Action:

RECORD PACKET COPY**Item Th 8j****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-00-457

APPLICANT: Barbara Ahlers Lystne

PROJECT LOCATION: 4115 Calle Isabella, San Clemente, (Orange County)

PROJECT DESCRIPTION: Construction of a new two-story, 24' high, 8247 square foot single-family residence with swimming pool, tennis court, various hardscape improvements, landscaping and a subterranean 2604 square foot six-car garage/basement on a vacant lot. Approximately 1400 cubic yards of cut will be required for excavation of the pool and subterranean garage/basement. Excess material will be disposed of outside the coastal zone. The applicant is also proposing to gain "after-the-fact" approval of an existing concrete block wall located within a 15' wide vertical access easement along the southern property boundary.

PROJECT SPECIFICS:

Lot Area:	31,875 sq. ft.
Building Area:	10,851 sq. ft.
Building Coverage:	5,028 sq. ft.
Pavement Coverage:	11,080 sq. ft.
Landscape Coverage:	8,999 sq. ft.
Parking Spaces:	12 (6 covered, 6 uncovered)
Land Use Designation:	RL-1
Ht. above grade:	24 ft.

LOCAL APPROVALS RECEIVED: Approval-in-Concept from City of San Clemente Community Development Department dated November 9, 2000.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to construct a new single-family residence and improvements 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 improvements other than landscaping within the easement. The applicant is proposing to retain an existing concrete block wall that currently obstructs the 15' wide easement.

Staff recommends that the Commission take one vote adopting a two-part resolution which would approve the new development and deny the "after-the-fact" development. Staff recommends the Commission **APPROVE** the proposed residence and associated improvements subject to two (2) special conditions and **DENY** the existing concrete block wall. Special Condition No. 1 requires the submittal of revised project plans showing no permanent improvements other than landscaping within the 15' wide access 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), 5-00-145 (Parrish) 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

I. Staff Recommendation of Approval in Part and Denial in Part

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. Motion:

"I move that the Commission adopt the staff recommendation by adopting the two-part resolution set forth in the staff report."

B. Resolution:

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **APPROVES**, as conditioned, a coastal development permit for the portion of the proposed project consisting of construction of a new two-story, 24' high, 8247 square foot single-family residence with swimming pool, tennis court, various hardscape improvements, landscaping and a subterranean 2604 square foot six-car garage/basement on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreational policies of Chapter 3 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.

Part 2: Denial of the Remainder of the Development

The Commission Hereby **DENIES** a coastal development permit for the portion of the proposed development consisting of after-the-fact construction of a 6' high concrete block wall on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is not in conformance with the

Chapter 3 policies of the Coastal Act and would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in 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. Submittal of Revised Project Plans
 - A. The applicant shall submit two (2) full size sets of revised project plans which demonstrate that no improvements other than landscaping are allowed within the 15' wide vertical access easement.
 - 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. 5-00-457 is only for the development located at 4115 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. Approval Findings and Declarations

The Commission hereby finds and declares:

A. Project Location, Background, and Project Description

The proposed development is located on an inland lot between the first public road and the sea at 4115 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 six 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 two lots within the subdivision, the OCTA railway and the 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 and one is currently under construction.

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 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&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 and one is currently under construction. Two of the residences are located on lots across the street (Calle Isabella) 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 owners have 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. A fourth residence was approved in August 2000 with the same condition. 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 six lots north of the subject lot. Although the project description did 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 at this site.

e. **4125 Calle Isabella**

There is no evidence of a coastal development permit for development at 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 (2) approximately 6' high concrete block walls crossing the vertical access easement perpendicularly. The 4125 Calle Isabella site is located one lot south of the subject site at 4115 Calle Isabella. The applicant for the subject permit (5-00-457) intends to share the wall that currently exists along the boundary of these two properties. However, after reviewing the topographic survey provided by the applicant, Commission staff has discovered that the portion of the wall which encroaches into the easement is constructed entirely on the applicant's property.

City of San Clemente Building Department records indicate that the residence was constructed in 1992. Commission enforcement 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 (Langley), 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 (nine 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. In granting this permit as conditioned, the Commission upheld the requirements of P-81-7789, which prohibit any improvement other than landscaping within the easement.

g. **5-00-145 (Parrish)**

Permit No. 5-00-145 allowed the 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 on a vacant lot at 4075 Calle Isabella (seven lots north of the subject lot). The Commission approved the project with two special conditions, one that prohibits the placement of any permanent improvement other than landscaping within the easement and another that is a notification of coastal development permit requirements for any future development within, or affecting, the underlying coastal access easement.

3. Proposed Project Description

The applicant is proposing to construct a new two-story, 24' high, 8949 square foot single-family residence with swimming pool, tennis court, various hardscape improvements, landscaping and a subterranean 2604 square foot six-car garage/basement on a vacant lot. (See Exhibit 3, Project Plans). Approximately 1400 cubic yards of cut will be required for excavation of the pool and basement. The excess material will be disposed of at an appropriate location outside the coastal zone as identified by the applicant. The applicant is also proposing to gain "after-the-fact" approval of a concrete block wall located along the southern perimeter of the property.

The applicant initially proposed to construct a new 6' high solid wall across the easement along the northern 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 revised the plans to show the omission of the wall along the northern perimeter of the property and does not intend to obstruct the 15' wide easement with new development. The project plans clearly demonstrate that only landscaping and a crushed granite gravel walkway are now proposed within the easement. However, the applicant wishes to gain "after-the-fact" approval of an existing concrete block wall located along the southern perimeter of the property. Therefore, the proposed project is inconsistent with the underlying subdivision permit, as will be addressed in the subsequent section of the staff report.

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 *new* 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. However, an *existing* 6' high concrete block wall currently exists within the easement area, just inside the applicant's southern property line. The applicant wishes to retain the existing wall.

Based on information gathered through City of San Clemente Building Department records, the wall was constructed in 1992 in conjunction with the construction of the single-family residence at 4125 Calle Isabella. The existing wall straddles the southern property line along much of the subject site, but crosses over onto the applicant's property in the coastal access easement area. As stated previously, a coastal development permit was never issued for the development located at 4125 Calle Isabella. Commission enforcement staff is currently conducting an investigation into the presence of the residence, improvements and wall.

To ensure compliance with the underlying access requirements of the subdivision for this easement, the Commission imposes Special Condition 1. This condition requires the applicant to submit revised project plans, which show only landscaping within the easement area. The project plans submitted show the retention of the existing concrete block wall located along the southern property boundary. However, the portion of the wall which currently encroaches into the 15' wide access easement is hereby denied by the current Commission action, as discussed

in Section V of the findings. Removal of the wall will be addressed under a subsequent Commission action.

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 (5-00-457) 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 public access and recreation policies of Chapter 3 of the Coastal Act, including 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 policies of the City of San Clemente Certified LUP, specifically Sections IX.14 and IX.15.

C. Unpermitted Development

Without benefit of a coastal development permit, a 6' high concrete block wall has been constructed along the southern property line of the applicant's property. The applicant states that the wall was present prior to her acquisition of the property. However, the wall constitutes development without a permit. Additionally, the wall obstructs an existing 15' wide coastal access easement.

City of San Clemente staff has indicated that the single-family residence and associated improvements (including the wall) located at 4125 Calle Isabella, south of the subject site, may have been issued a Categorical Exclusion approval. Upon becoming aware of the existing development, Commission enforcement staff began an investigation. The owner of the property is being contacted and asked to submit a coastal development permit for the existing development, including the residence, improvements and concrete block wall. However, because a portion of the wall encroaches onto the applicant's property, the applicant (Lystne) must assume responsibility for the portion of the development extending onto her property. As such, the applicant has revised the project description to include retention of the wall.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision.

Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdraw the submittal on October 5, 2000.

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).

E. 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 submittal of revised project plans, which show only landscaping within the coastal access easement; 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, and 3) establish timing requirements for submittal of revised plans and removal of the wall. 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.

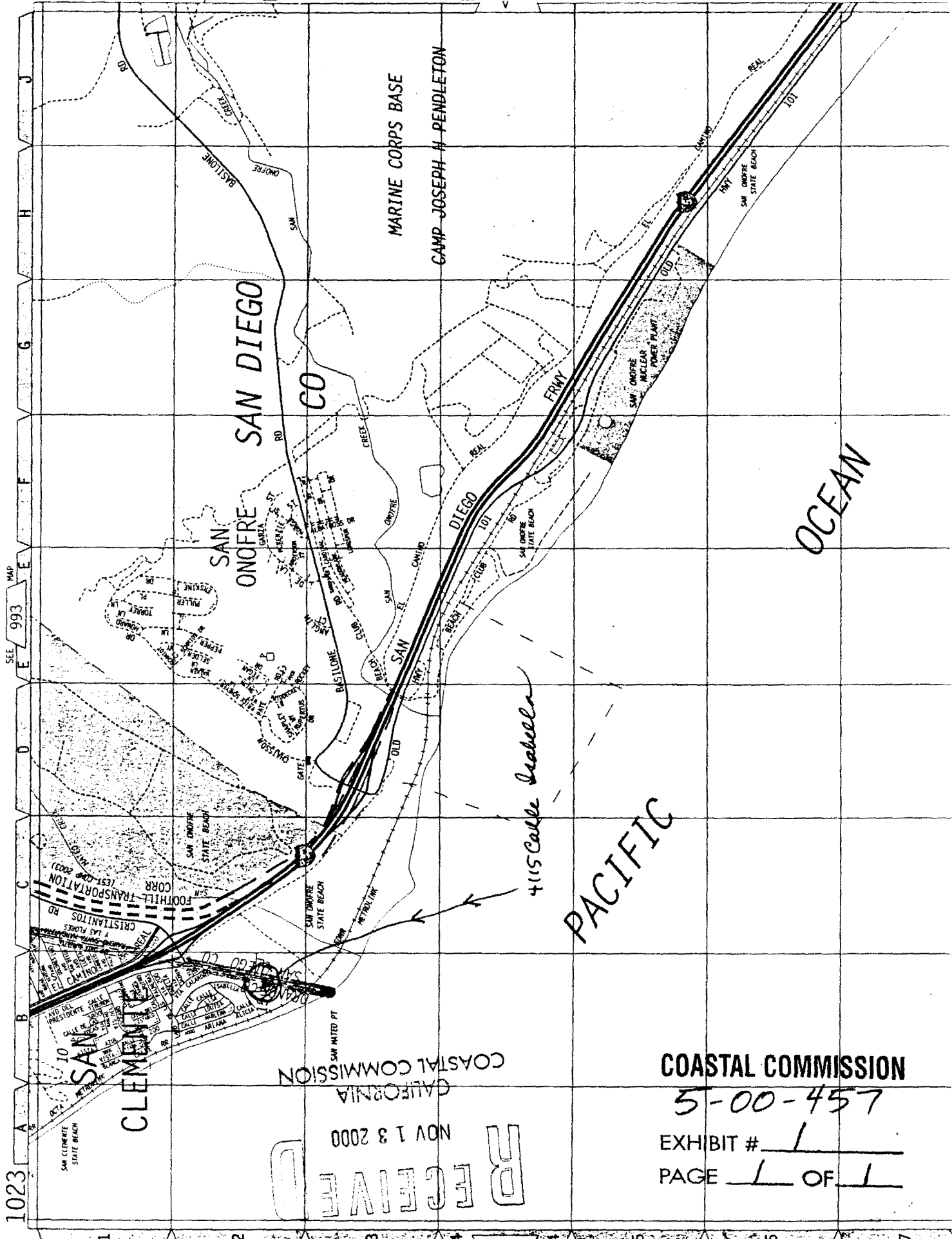
V. Denial Findings and Declarations

The Commission hereby finds and declares as follows:

A. Public Access

As discussed previously in Section IV (B) of the current staff report, Sections 30211 and 30212 (a) of the Coastal Act contain policies regarding public access to the shoreline. Sections IX.14 and IX.15 of the City of San Clemente Certified Land Use Plan (LUP) also 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.

In its approval of Coastal Development Permit P-81-7789, the Commission approved a 17-lot subdivision at the subject site. As a condition of approval, the Commission required an irrevocable offer of a 15' wide vertical easement across the eastern boundary of the tract. The coastal access easement extends across the rear portion of the subject property. The applicant is proposing to retain an existing 6' high concrete block wall that was constructed without benefit of a coastal development permit. The wall obstructs a potential public accessway and therefore interferes with the public's right of access to the sea, inconsistent with Section 30211 of the Coastal Act. The discussion on pages 8-11 of the current staff report provides further explanation as to why the wall is inconsistent with the public access policies of the Coastal Act. For the reasons stated above, retention of the portion of the existing concrete block wall that encroaches into the coastal access easement must be denied.



SEE 993 MAP

1023

CLEMENTE

CALIFORNIA COASTAL COMMISSION

NOV 13 2000

RECEIVED

ORANGE CO

SEE V MAP

OCEAN

PACIFIC

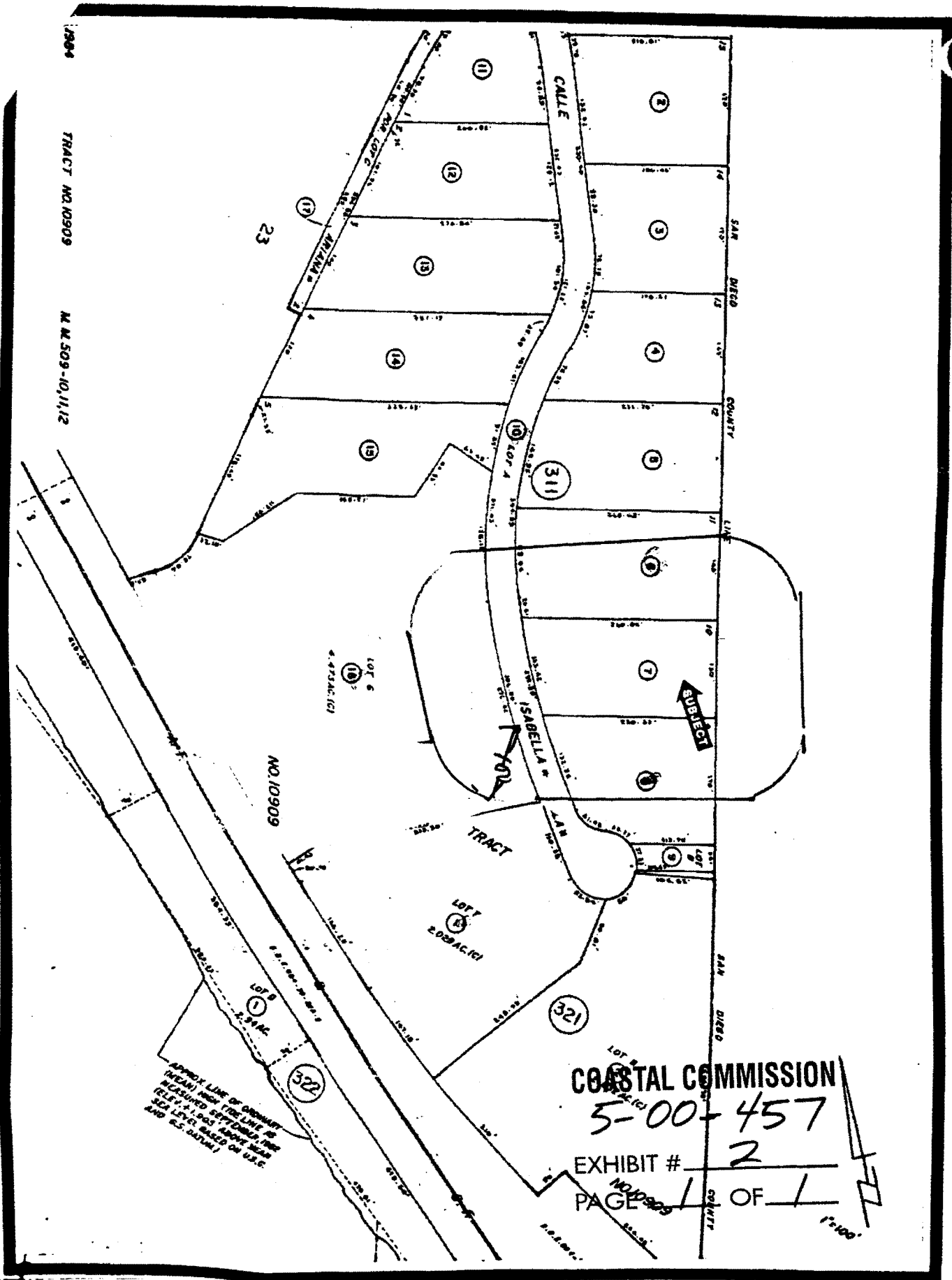
4115 Calle Isabel

COASTAL COMMISSION

5-00-457

EXHIBIT # 1

PAGE 1 OF 1

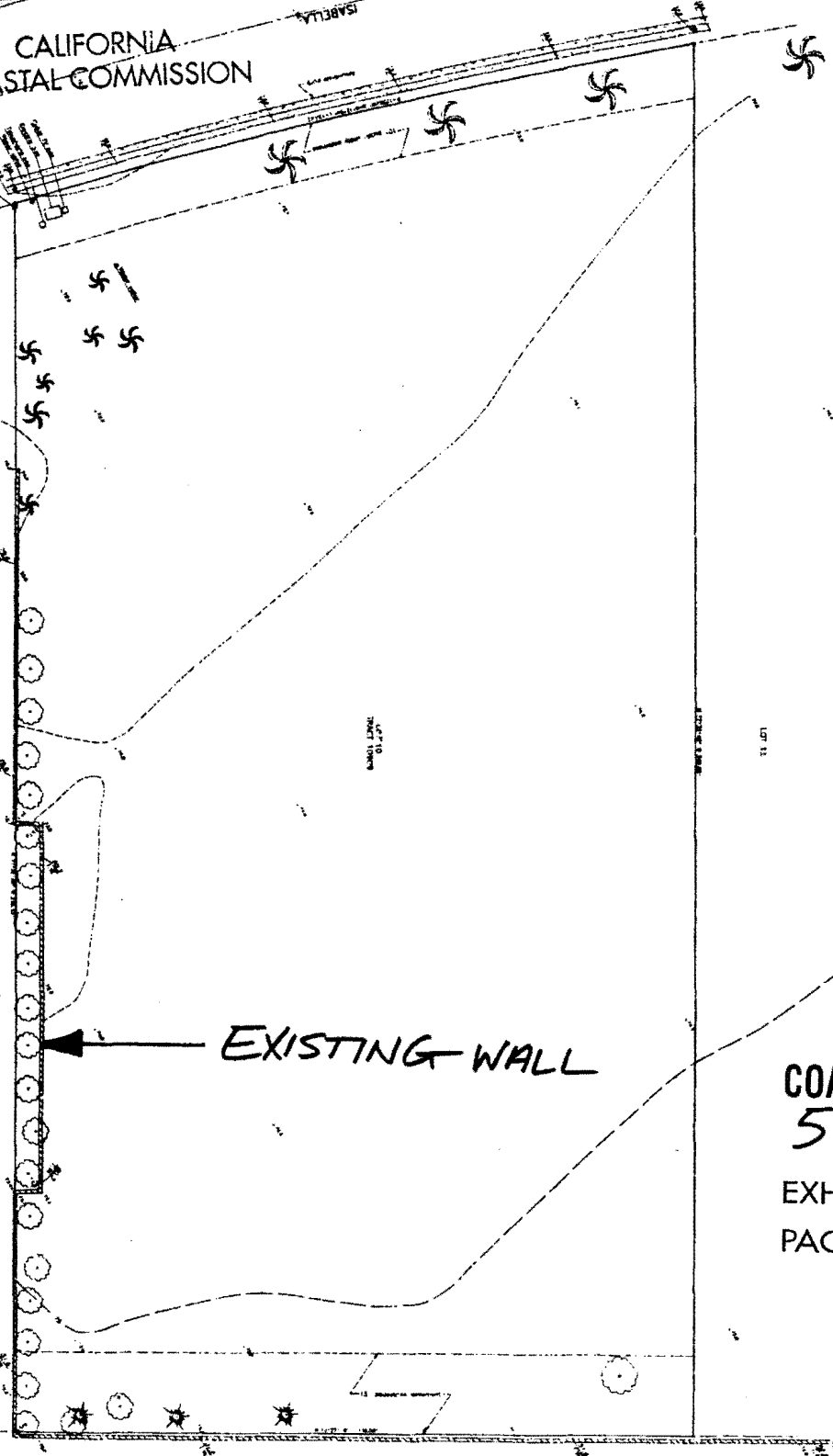


Ownership Map

RECEIVED
South Coast Region

DEC 18 2000

CALIFORNIA
COASTAL COMMISSION



EXISTING WALL

COASTAL COMMISSION
5-00-457

EXHIBIT # 3

PAGE 1 OF 9



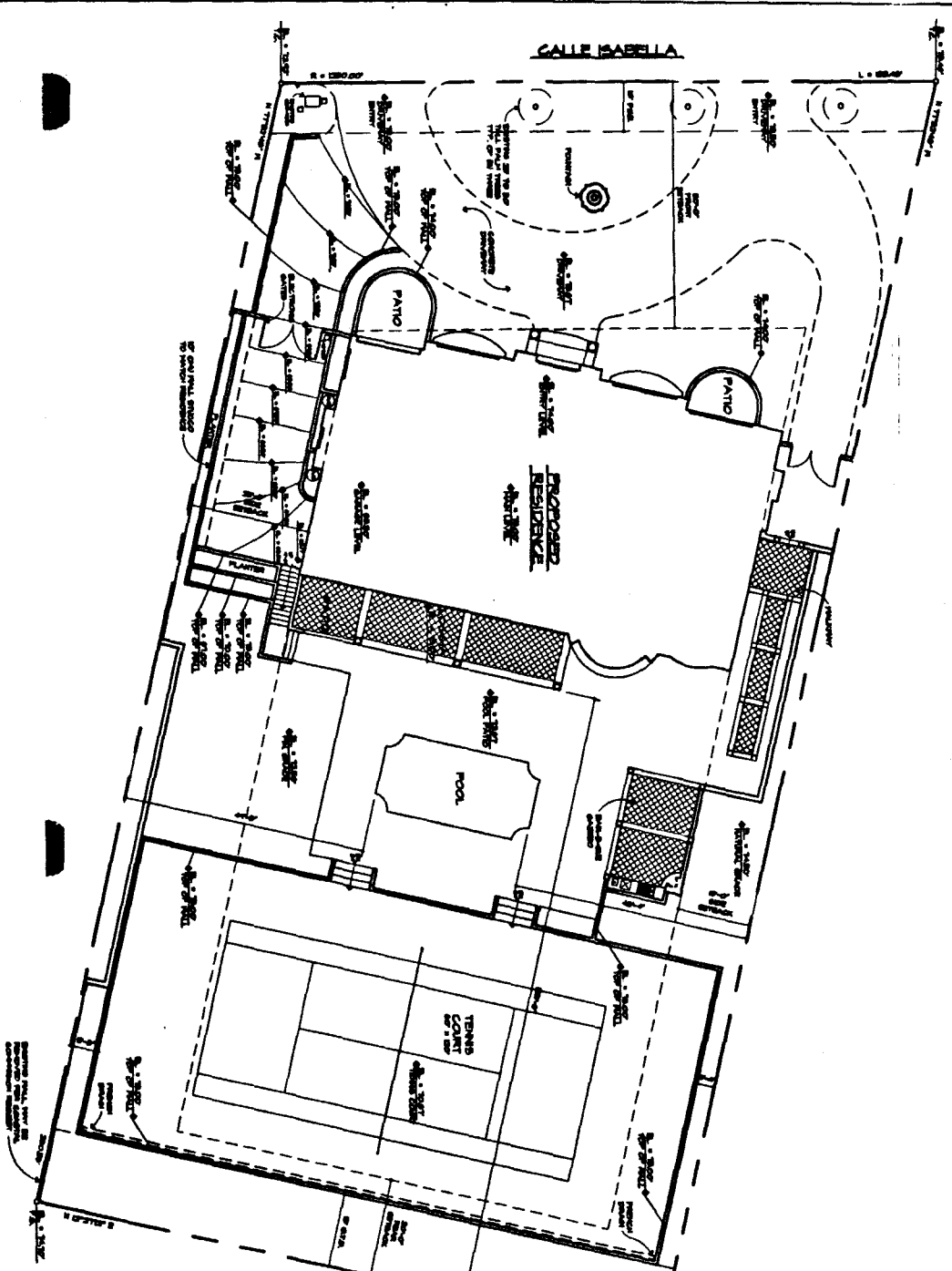
L. ENGINEERING, INC.
Civil Engineers, Land Planners, Land Surveyors
138 Avenida Serrano
San Clemente, CA 92672
Tel: (949) 482-5686 Fax: (949) 482-5622 E-mail: betty@lengineering.com

NO.	DATE	DESCRIPTION	BY	CHKD.

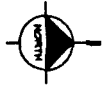
TOPOGRAPHIC SURVEY
LOT 10, TRACT 10806
SAN CLEMENTE, CALIFORNIA

Surveyed by: BETTY LYTNE

LYSTNE RESIDENCE



COASTAL COMMISSION
 5-00-457
 EXHIBIT # 3
 PAGE 2 OF 9



LEGAL DESCRIPTION:
 LOT 10, TRACT 1000
 418 CALLE ISABELLA
 CHANNE COUNTY
 CITY OF SAN CLEMENTE, CALIFORNIA

Copyright © 2000 DBI ASSOCIATES INTERNATIONAL, INC.

SITE PLAN

RECEIVED
 South Coast Region

DEC 18 2000

CALIFORNIA
 COASTAL COMMISSION

LYSTNE
RESIDENCE

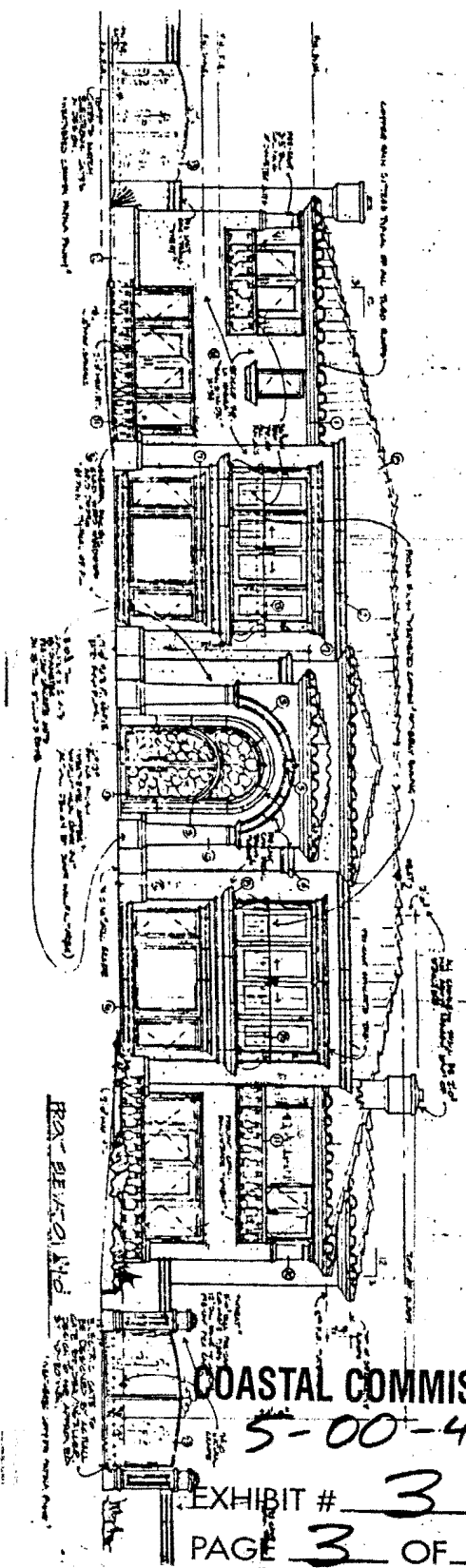
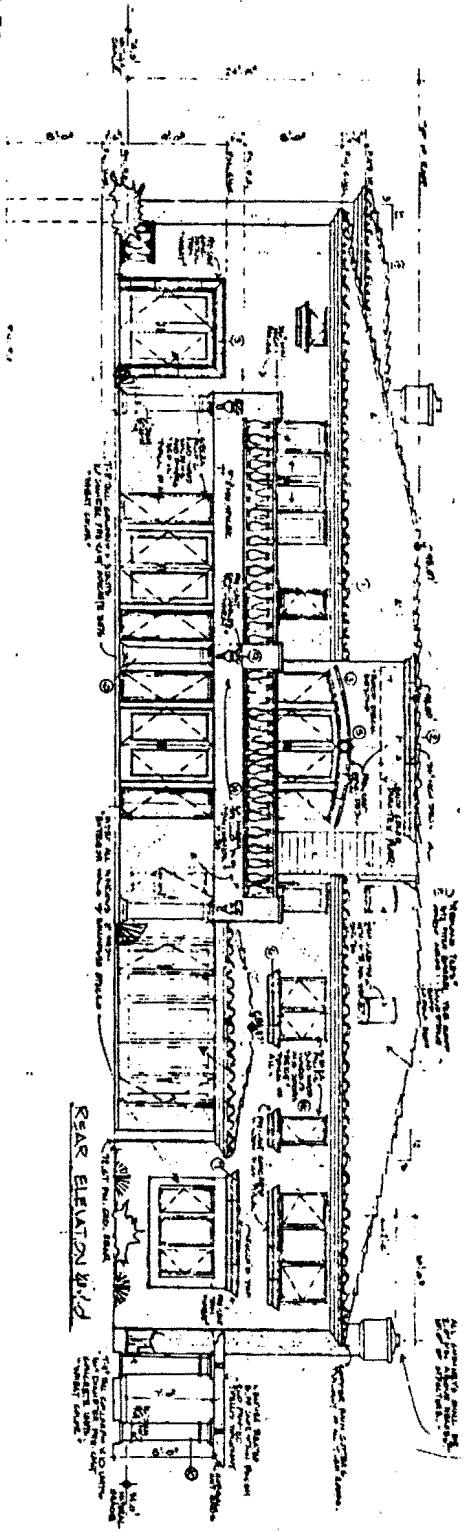
DBI ASSOCIATES, INC.
 CUSTOM RESIDENTIAL DESIGN INTERNATIONAL
 1000 STARBUCK ST. / ALBANY, N.Y. 12211 / (518) 832-5444

A I
B D

CALIFORNIA
COASTAL COMMISSION

DEC 1 8 2000

RECEIVED
South Coast Region



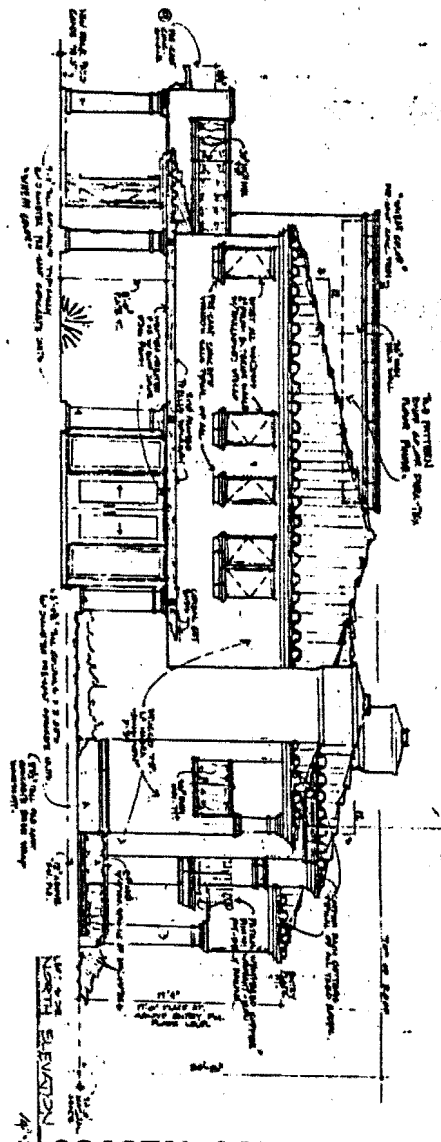
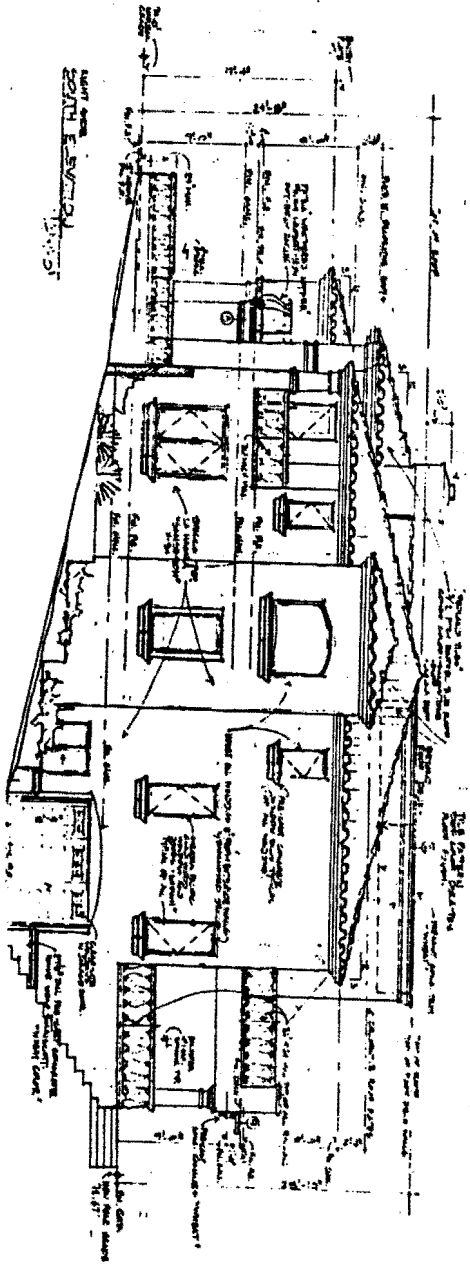
COASTAL COMMISSION

5-00-457

EXHIBIT # 3

PAGE 3 OF 9

RECEIVED
South Coast Region
DEC 18 2000
CALIFORNIA
COASTAL COMMISSION

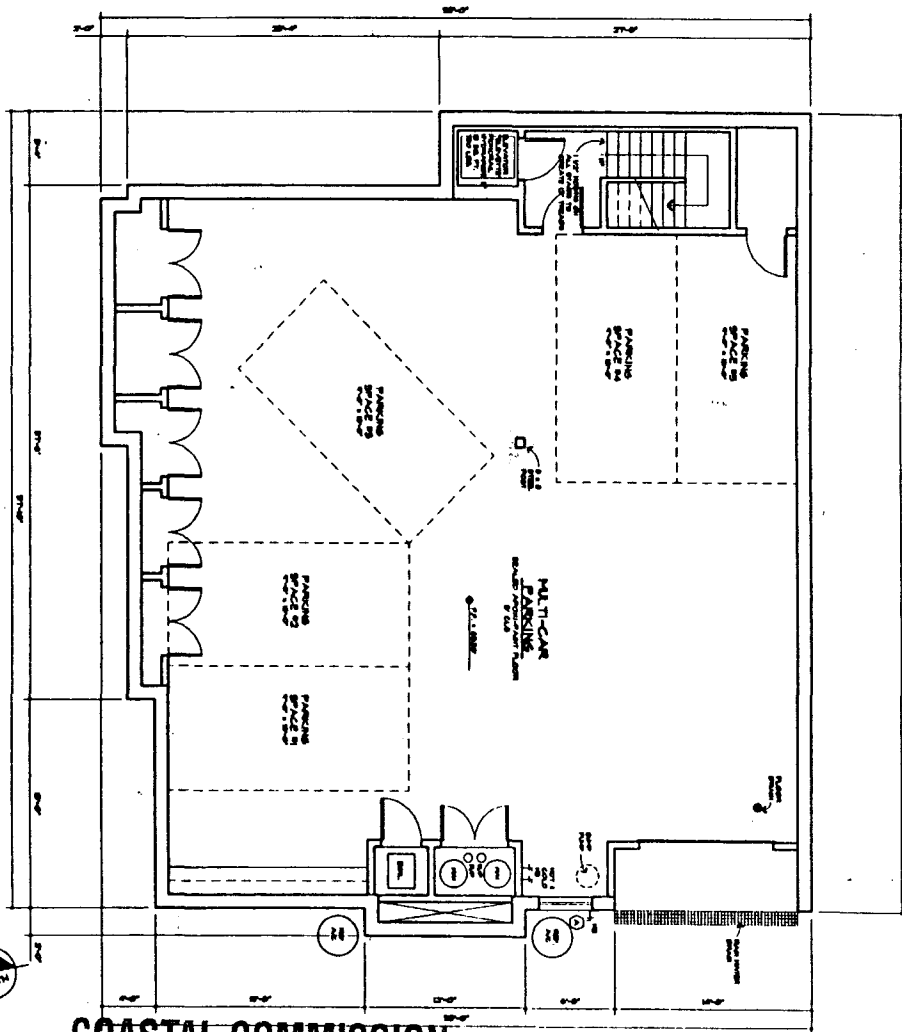


COASTAL COMMISSION
5-00-457
EXHIBIT # 3
PAGE 4 OF 9

CALIFORNIA
COASTAL COMMISSION

DEC 18 2000

RECEIVED
South Coast Region



FLOOR PLAN - LOWER

Copyright © 2000 DBE ASSOCIATES INTERNATIONAL, INC.

CONSTR. CALC.
 FINISHED: 4883 SQ. FT.
 MAIN: 5118 SQ. FT.
 TOTAL: 10001 SQ. FT.
 GARAGE: 2804 SQ. FT.
 LOBBY: 148 SQ. FT.
 CONV. DECK: 209 SQ. FT.

COASTAL COMMISSION
5-00-457
 EXHIBIT # 3
 PAGE 5 OF 9

ROOM SCHEDULE	
NO.	DESCRIPTION
1	CL. 10' x 10' x 10'
2	CL. 10' x 10' x 10'
3	CL. 10' x 10' x 10'
4	CL. 10' x 10' x 10'
5	CL. 10' x 10' x 10'
6	CL. 10' x 10' x 10'
7	CL. 10' x 10' x 10'
8	CL. 10' x 10' x 10'
9	CL. 10' x 10' x 10'
10	CL. 10' x 10' x 10'
11	CL. 10' x 10' x 10'
12	CL. 10' x 10' x 10'
13	CL. 10' x 10' x 10'
14	CL. 10' x 10' x 10'
15	CL. 10' x 10' x 10'
16	CL. 10' x 10' x 10'
17	CL. 10' x 10' x 10'
18	CL. 10' x 10' x 10'
19	CL. 10' x 10' x 10'
20	CL. 10' x 10' x 10'
21	CL. 10' x 10' x 10'
22	CL. 10' x 10' x 10'
23	CL. 10' x 10' x 10'
24	CL. 10' x 10' x 10'
25	CL. 10' x 10' x 10'
26	CL. 10' x 10' x 10'
27	CL. 10' x 10' x 10'
28	CL. 10' x 10' x 10'
29	CL. 10' x 10' x 10'
30	CL. 10' x 10' x 10'
31	CL. 10' x 10' x 10'
32	CL. 10' x 10' x 10'
33	CL. 10' x 10' x 10'
34	CL. 10' x 10' x 10'
35	CL. 10' x 10' x 10'
36	CL. 10' x 10' x 10'
37	CL. 10' x 10' x 10'
38	CL. 10' x 10' x 10'
39	CL. 10' x 10' x 10'
40	CL. 10' x 10' x 10'
41	CL. 10' x 10' x 10'
42	CL. 10' x 10' x 10'
43	CL. 10' x 10' x 10'
44	CL. 10' x 10' x 10'
45	CL. 10' x 10' x 10'
46	CL. 10' x 10' x 10'
47	CL. 10' x 10' x 10'
48	CL. 10' x 10' x 10'
49	CL. 10' x 10' x 10'
50	CL. 10' x 10' x 10'
51	CL. 10' x 10' x 10'
52	CL. 10' x 10' x 10'
53	CL. 10' x 10' x 10'
54	CL. 10' x 10' x 10'
55	CL. 10' x 10' x 10'
56	CL. 10' x 10' x 10'
57	CL. 10' x 10' x 10'
58	CL. 10' x 10' x 10'
59	CL. 10' x 10' x 10'
60	CL. 10' x 10' x 10'
61	CL. 10' x 10' x 10'
62	CL. 10' x 10' x 10'
63	CL. 10' x 10' x 10'
64	CL. 10' x 10' x 10'
65	CL. 10' x 10' x 10'
66	CL. 10' x 10' x 10'
67	CL. 10' x 10' x 10'
68	CL. 10' x 10' x 10'
69	CL. 10' x 10' x 10'
70	CL. 10' x 10' x 10'
71	CL. 10' x 10' x 10'
72	CL. 10' x 10' x 10'
73	CL. 10' x 10' x 10'
74	CL. 10' x 10' x 10'
75	CL. 10' x 10' x 10'
76	CL. 10' x 10' x 10'
77	CL. 10' x 10' x 10'
78	CL. 10' x 10' x 10'
79	CL. 10' x 10' x 10'
80	CL. 10' x 10' x 10'
81	CL. 10' x 10' x 10'
82	CL. 10' x 10' x 10'
83	CL. 10' x 10' x 10'
84	CL. 10' x 10' x 10'
85	CL. 10' x 10' x 10'
86	CL. 10' x 10' x 10'
87	CL. 10' x 10' x 10'
88	CL. 10' x 10' x 10'
89	CL. 10' x 10' x 10'
90	CL. 10' x 10' x 10'
91	CL. 10' x 10' x 10'
92	CL. 10' x 10' x 10'
93	CL. 10' x 10' x 10'
94	CL. 10' x 10' x 10'
95	CL. 10' x 10' x 10'
96	CL. 10' x 10' x 10'
97	CL. 10' x 10' x 10'
98	CL. 10' x 10' x 10'
99	CL. 10' x 10' x 10'
100	CL. 10' x 10' x 10'

LYSTNE
RESIDENCE

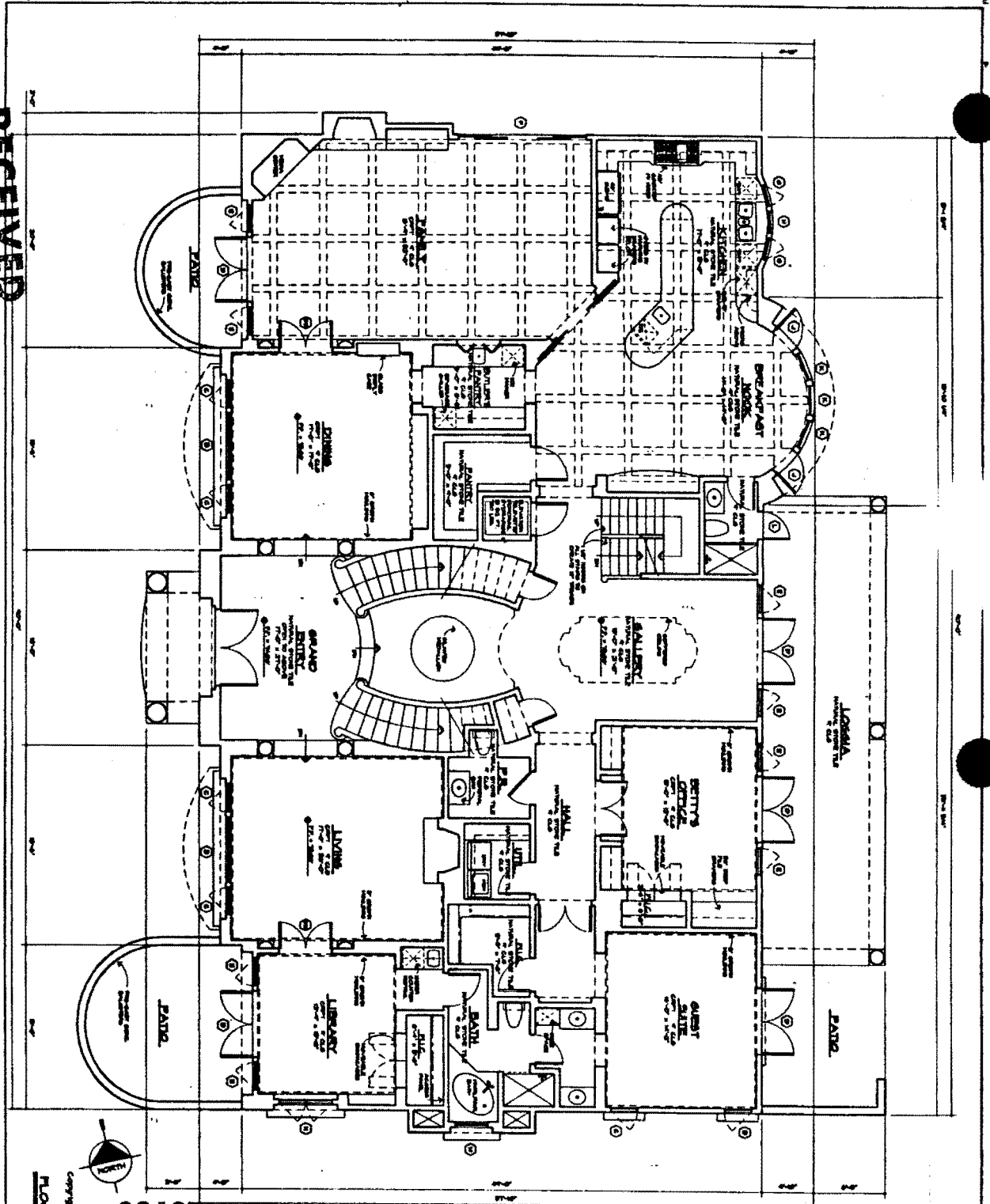
DBE ASSOCIATES, INC.
 CUSTOM RESIDENTIAL DESIGN INTERNATIONAL
 1008 STARBUCK ST NE / ALBUQUERQUE, NM 87109 / APO 932 - 3446

A I
B D

RECEIVED
 South Coast Region

DEC 18 2000

CALIFORNIA
 COASTAL COMMISSION



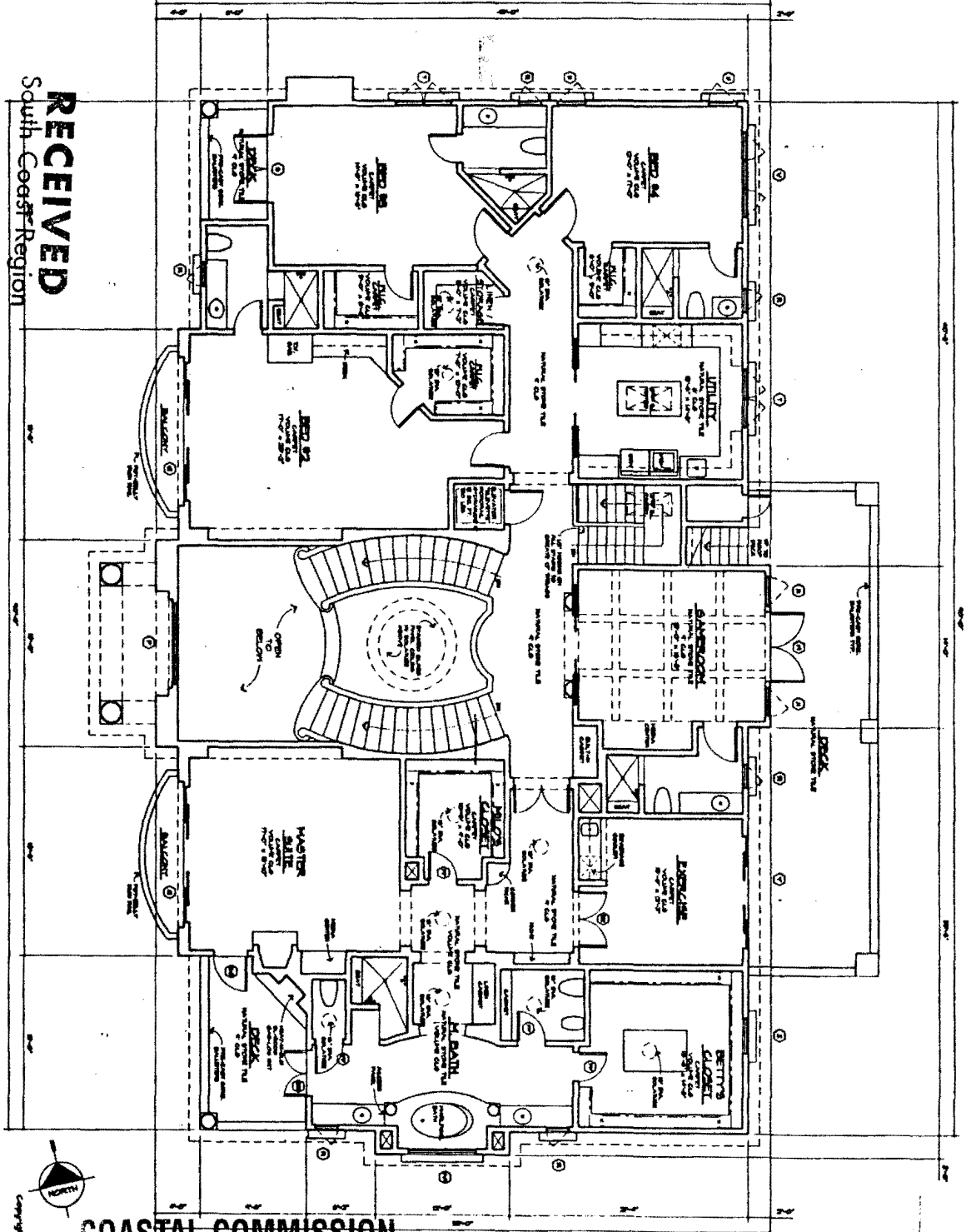
FLOOR PLAN - MAIN

Copyright © 2000 DRE ASSOCIATES INTERNATIONAL, INC.

COASTAL COMMISSION
 5-00-457
 EXHIBIT # 3
 PAGE 6 OF 9

NO.	TYPE	SIZE	NO.	TYPE	SIZE
1	W	10'-0" x 10'-0"	1	W	10'-0" x 10'-0"
2	W	10'-0" x 10'-0"	2	W	10'-0" x 10'-0"
3	W	10'-0" x 10'-0"	3	W	10'-0" x 10'-0"
4	W	10'-0" x 10'-0"	4	W	10'-0" x 10'-0"
5	W	10'-0" x 10'-0"	5	W	10'-0" x 10'-0"
6	W	10'-0" x 10'-0"	6	W	10'-0" x 10'-0"
7	W	10'-0" x 10'-0"	7	W	10'-0" x 10'-0"
8	W	10'-0" x 10'-0"	8	W	10'-0" x 10'-0"
9	W	10'-0" x 10'-0"	9	W	10'-0" x 10'-0"
10	W	10'-0" x 10'-0"	10	W	10'-0" x 10'-0"
11	W	10'-0" x 10'-0"	11	W	10'-0" x 10'-0"
12	W	10'-0" x 10'-0"	12	W	10'-0" x 10'-0"
13	W	10'-0" x 10'-0"	13	W	10'-0" x 10'-0"
14	W	10'-0" x 10'-0"	14	W	10'-0" x 10'-0"
15	W	10'-0" x 10'-0"	15	W	10'-0" x 10'-0"
16	W	10'-0" x 10'-0"	16	W	10'-0" x 10'-0"
17	W	10'-0" x 10'-0"	17	W	10'-0" x 10'-0"
18	W	10'-0" x 10'-0"	18	W	10'-0" x 10'-0"
19	W	10'-0" x 10'-0"	19	W	10'-0" x 10'-0"
20	W	10'-0" x 10'-0"	20	W	10'-0" x 10'-0"
21	W	10'-0" x 10'-0"	21	W	10'-0" x 10'-0"
22	W	10'-0" x 10'-0"	22	W	10'-0" x 10'-0"
23	W	10'-0" x 10'-0"	23	W	10'-0" x 10'-0"
24	W	10'-0" x 10'-0"	24	W	10'-0" x 10'-0"
25	W	10'-0" x 10'-0"	25	W	10'-0" x 10'-0"
26	W	10'-0" x 10'-0"	26	W	10'-0" x 10'-0"
27	W	10'-0" x 10'-0"	27	W	10'-0" x 10'-0"
28	W	10'-0" x 10'-0"	28	W	10'-0" x 10'-0"
29	W	10'-0" x 10'-0"	29	W	10'-0" x 10'-0"
30	W	10'-0" x 10'-0"	30	W	10'-0" x 10'-0"
31	W	10'-0" x 10'-0"	31	W	10'-0" x 10'-0"
32	W	10'-0" x 10'-0"	32	W	10'-0" x 10'-0"
33	W	10'-0" x 10'-0"	33	W	10'-0" x 10'-0"
34	W	10'-0" x 10'-0"	34	W	10'-0" x 10'-0"
35	W	10'-0" x 10'-0"	35	W	10'-0" x 10'-0"
36	W	10'-0" x 10'-0"	36	W	10'-0" x 10'-0"
37	W	10'-0" x 10'-0"	37	W	10'-0" x 10'-0"
38	W	10'-0" x 10'-0"	38	W	10'-0" x 10'-0"
39	W	10'-0" x 10'-0"	39	W	10'-0" x 10'-0"
40	W	10'-0" x 10'-0"	40	W	10'-0" x 10'-0"
41	W	10'-0" x 10'-0"	41	W	10'-0" x 10'-0"
42	W	10'-0" x 10'-0"	42	W	10'-0" x 10'-0"
43	W	10'-0" x 10'-0"	43	W	10'-0" x 10'-0"
44	W	10'-0" x 10'-0"	44	W	10'-0" x 10'-0"
45	W	10'-0" x 10'-0"	45	W	10'-0" x 10'-0"
46	W	10'-0" x 10'-0"	46	W	10'-0" x 10'-0"
47	W	10'-0" x 10'-0"	47	W	10'-0" x 10'-0"
48	W	10'-0" x 10'-0"	48	W	10'-0" x 10'-0"
49	W	10'-0" x 10'-0"	49	W	10'-0" x 10'-0"
50	W	10'-0" x 10'-0"	50	W	10'-0" x 10'-0"

RECEIVED
 South Coast Region
 CALIFORNIA
 COASTAL COMMISSION
 DEC 1 8 2000



COASTAL COMMISSION
 5-00-457
 EXHIBIT # 3
 PAGE 7 OF 9

FLOOR PLAN - UPPER
 Copyright © 2000 DRE ASSOCIATES INTERNATIONAL, INC.

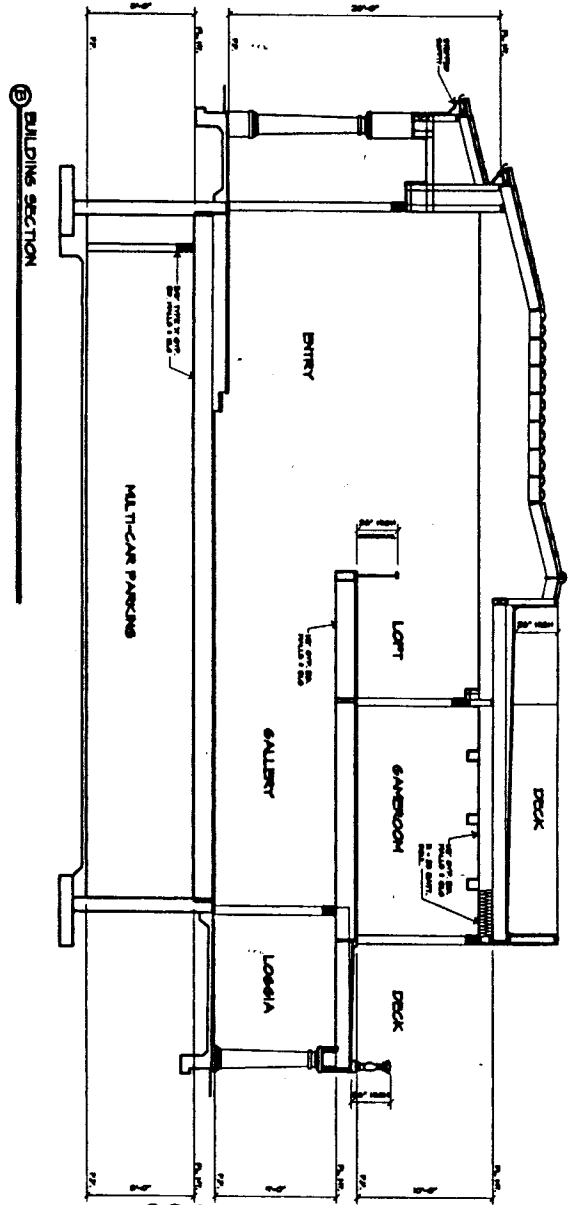
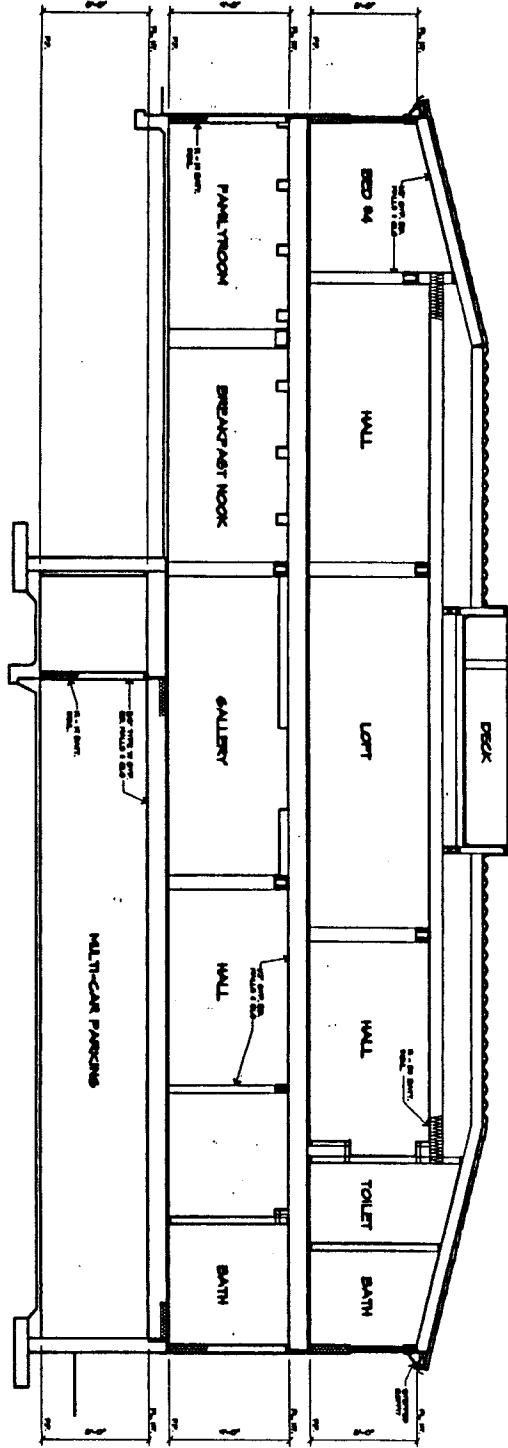
NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

RECEIVED

South Coast Region

DEC 1 8 2000

CALIFORNIA
COASTAL COMMISSION



COASTAL COMMISSION
5-00-457

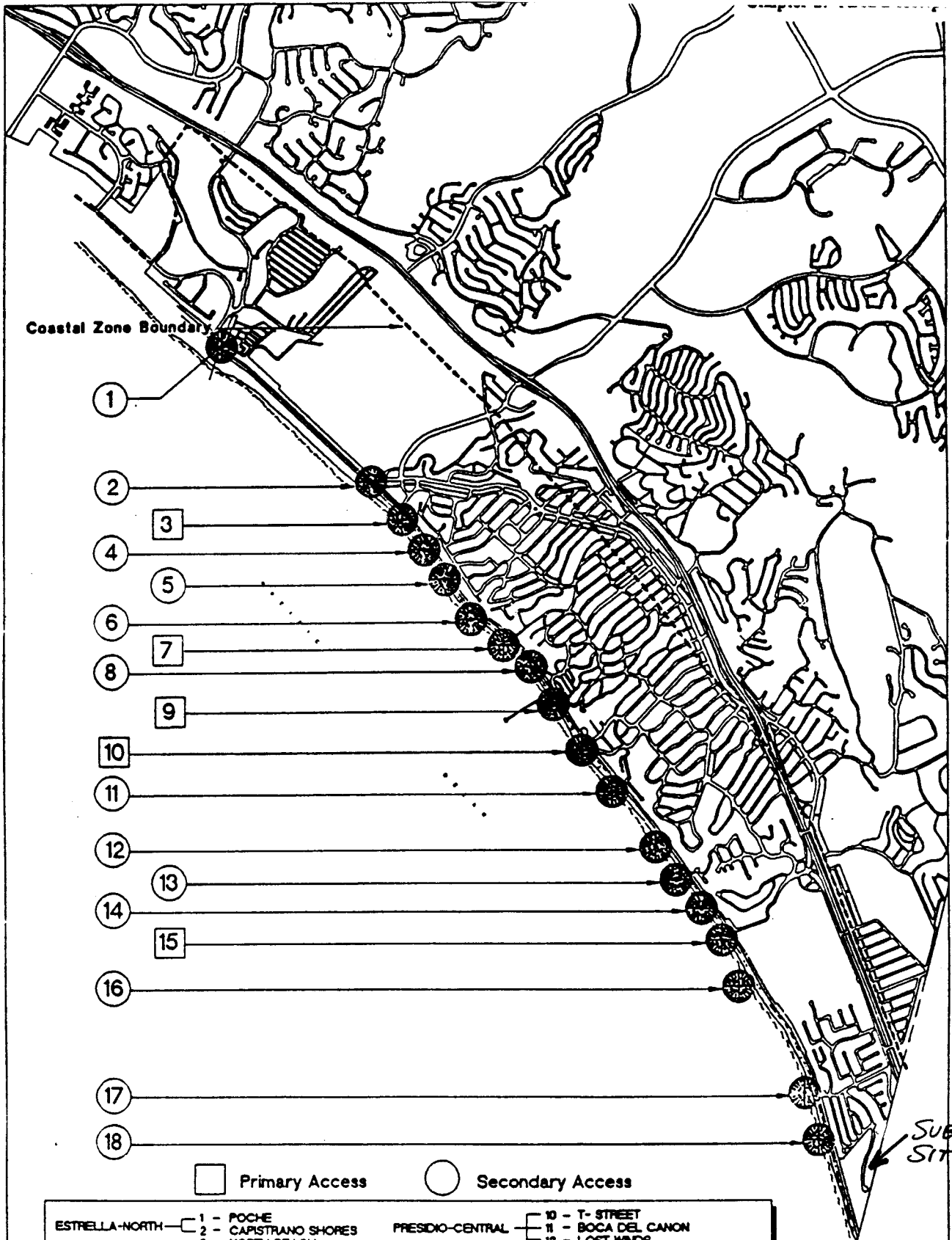
EXHIBIT # 3
PAGE 8 OF 9

Copyright © 2000 DRE ASSOCIATES INTERNATIONAL, INC.

LYSTNE
RESIDENCE

DRE ASSOCIATES, INC.
CUSTOM RESIDENTIAL DESIGN INTERNATIONAL
1000 STARBUCKE ST. # 12 / ALBUQUERQUE, NM 87104 / (505) 833-3444

A I
B D



Coastal Zone Boundary

- ①
- ②
- ③
- ④
- ⑤
- ⑥
- ⑦
- ⑧
- ⑨
- ⑩
- ⑪
- ⑫
- ⑬
- ⑭
- ⑮
- ⑯
- ⑰
- ⑱

□ Primary Access ○ Secondary Access

ESTRELLA-NORTH	1 - POCHE	PRESIDIO-CENTRAL	10 - T-STREET
	2 - CAPISTRANO SHORES		11 - BOCA DEL CANON
	3 - NORTH BEACH		12 - LOST WINDS
PICO-PALIZADA	4 - DUE COURT		13 - RIVERA
	5 - EL PORTAL		14 - MONTALVO
	6 - MARIPOSA		15 - AVE CALAFIA
	7 - LINDA LANE PARK	CALAFIA-SOUTH	16 - SAN CLEMENTE STATE PARK
PRESIDIO-CENTRAL	8 - CORTO LANE		17 - AVE DE LAS PALMERAS
	9 - MUNICIPAL PIER		18 - CALLE ARIANA

SUBJECT SITE

FIGURE 2-5

COASTAL COMMISSION

5-00-457



CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS

EXHIBIT # 4
PAGE 1 OF 1

5/11/81
per staff
YMH
approved

[Handwritten signature]

js



April 27, 1981

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 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 (E-1)

COASTAL COMMISSION
5-00-457
EXHIBIT # 5
PAGE 1 OF 10

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 Clem

COASTAL COMMISSION

5-00-457

EXHIBIT # 5

PAGE 2 OF 10

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
5-00-457
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

- b. Two units shall be sold as moderate-income

COASTAL COMMISSION

5-00-457

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

5-00-457

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 as its success 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

5-00-457

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

5-00-457

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 require-

COASTAL COMMISSION

5-00-457

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

5-00-457

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.

MJC
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

*6/17/81
SI to clarify Camb 2
per staff
YVIII
sub. mat: held over
to next mtg. material
YVIII
N 2/11
7789*

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 5-00-457
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

5-00-457

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 commercial recreational facilities designed to enhance public opportunity

COASTAL COMMISSION

5-00-457

EXHIBIT # 6

PAGE 3 OF 5

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

5-00-457

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

5-00-457

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.

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

5-00-457

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

5-00-457

EXHIBIT # 7

PAGE 2/25/89F 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

5-00-457

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

5-00-457

EXHIBIT # 7.....

PAGE 2 / 25 / B OF 4.....

83-151464

20.00
CIS

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

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

20-116-57

-400 PM APR 11 '83

See A Branch COUNTY RECORDER

IRREVOCABLE OFFER TO DEDICATE

6 I. WHEREAS, Title Insurance and Trust Company is the record
7 owner, hereinafter referred to as "owner" of the real property
8 located at 4100 Calle Isabella, in the City of San Clemente
9 and County of Orange, California, legally described as particularly
10 set forth in attached Exhibit A hereby incorporated by reference
11 and hereinafter referred to as the "subject property"; and
12 II. WHEREAS, the California Coastal Commission, hereinafter
13 referred to as "the Commission", is acting on behalf of the
14 People of the State of California; and
15 III. WHEREAS, the People of the State of California have a
16 legal interest in the lands seaward of the mean high tide line;
17 and
18 IV. WHEREAS, pursuant to the California Coastal Act of 1976,
19 the owner applied to the Commission for a Coastal Development
20 Permit for the subdivision of 19.2 acres of blufftop property
21 to 16 single-family residential lots. Project includes the
22 construction of road, utility lines and demolition of five
23 accessory buildings on the subject property; and
24 V. WHEREAS, a Coastal Development Permit number 148-81 was
25 granted on June 17, 1981, by the Commission in accordance with
26 the provisions of the Staff Recommendation and Findings,
27 Exhibit B, attached hereto and hereby incorporated
28 subject to the following condition:

COASTAL COMMISSION

5-00-457

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.

COASTAL COMMISSION

5-00-457

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 i

COASTAL COMMISSION
5-00-457
EXHIBIT # 8
PAGE 3 OF 6

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 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

COASTAL COMMISSION
5-00-457
EXHIBIT # 8
PAGE 4 OF 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Executed on this 27^d day of December, 1982,
at Los Angeles, California.

TITLE INSURANCE AND TRUST COMPANY

DATED: December 27, 1982

Signed: by E.S. Holtz
E.S. HOLTZ, VICE-PRES.

Matthew J. Suedecker
MATTHEW J. SWEDEKER,
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. SWEDEKER 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
5-00-457

This is to certify that the Offer to Dedicate set forth above dated December 22, 1982, and signed by E.S. HOLTZ and MATTHEW J. SIEDERER 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

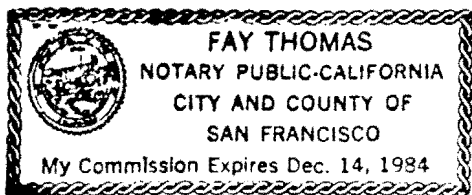
Steven D. Brown
Legal Counsel
California Coastal Commission

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
5-00-457

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

01 590-5071

Date: August 22, 1996TO: William Maxwell & Patty Rich30411 Marbella VistaSan Juan Capistrano, CA 92675SUBJECT: **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: Steve C. Ryan

cc: Commissioners/File

7568F

COASTAL COMMISSION

5-00-457

EXHIBIT # 9PAGE 1 OF 1