

**CALIFORNIA COASTAL COMMISSION**

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270th Day: January 13, 2002  
Staff: FSY-LB FSY  
Staff Report: November 20, 2001  
Hearing Date: December 11-14, 2001  
Commission Action:

**Tues 13g****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-01-182**APPLICANT:** Doug & Rene Corrigan**AGENT:** Scott Laidlaw**PROJECT LOCATION:** 218 Hazel Drive, Corona Del Mar (City of Newport Beach), County of Orange

**PROJECT DESCRIPTION:** Demolish an existing single family residence and construct a 25'-2" high, 4,138 square foot two-story with a basement single family residence with an attached two car and one car garage totaling 710 square feet. Also, construction of retaining walls, fence, deck/terraces and stairways will also take place. In addition, a drainage line from the site leading into Buck Gully is proposed. A total of 800 cubic yards of grading will take place. Grading will consist of 400 cubic yards of cut, 80 cubic yards of fill and 320 cubic yards of export. The proposed structure will be supported by shallow spread footings or continuous footings and/or moderately deep caissons.

**RECORD PACKET COPY****LOCAL APPROVALS RECEIVED:** City of Newport Beach approval-in-concept dated April 10, 2001.**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending **APPROVAL** of the proposed project with eight (8) special conditions. The subject site is a coastal canyon hillside lot located between the first public road and the sea in Newport Beach. The rear of the project site is adjacent to Buck Gully, which the City of Newport Beach has categorized as an environmentally sensitive habitat area (ESHA). The proposed development conforms to the City's setback requirements, but the project encroaches more streamward than the footprint of the existing single family residence. Use of a 25 foot coastal canyon top-of-slope setback or existing footprint setback for the rear of the property would not be appropriate. The Commission staff recommends that a stringline setback would be the appropriate setback to limit streamward construction. Primary issues include assurance that the proposed development is consistent with the geologic hazard policies of the Coastal Act, as well as assuring that the development is consistent with protection of environmentally sensitive habitat areas (ESHA). The applicants' assert that a Coastal Development Permit is unnecessary because it is their belief that the project is categorically excluded.

Special Condition No. 1 requires the applicant to submit revised plans showing adherence to the imposed rear yard setbacks. Special Condition No. 2 requires the applicant to submit final plans that show evidence of conformance with geotechnical recommendations, including those regarding site preparation, foundation design, and drainage and also prohibits the use of a caisson foundation system. Special Condition No. 3 requires the recordation of an assumption of risk deed restriction. Special Condition No. 4 requires the recordation of a no future coastal canyon hillside protective device deed restriction. Condition No. 5 requires the applicant to record a deed restriction, which ensures that the applicant and future landowners are aware that future development requires a new coastal development permit or an amendment to this permit. Special Condition No. 6 requires the submittal of a final drainage and run-off control plan, which demonstrates that site drainage will be taken to the street and that the proposed drainline to Buck Gully has been removed from the project. Special Condition No. 7 requires submission of a final landscaping plan which shows that only drought-tolerant natives will be planted in the rear yard area and restricts any in-ground irrigation. Special Condition No. 8 requires location of debris and export disposal site.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permits 5-82-388 (Zatlin), 5-86-383 (Medley), 5-89-353 (Hoshaw), 5-01-097 (Moe), 5-00-424 (Spriggs), 5-98-010-G (City of Newport Beach), 5-98-010 (City of Newport Beach), 5-98-084 (Justice); City of Newport Beach Land Use Plan; "Geotechnical Engineering Report" (Project G-1736-06) Rene Corrigan Property Located at 218 Hazel Drive, Corona Del Mar, California dated November 6, 2000 prepared by Geotechnical Solutions, Inc.; "Supplemental Report Rene Corrigan Property" (Project G-1736-06) Rene Corrigan Property Located at 218 Hazel Drive, Corona Del Mar, California dated July 20, 2001 prepared by Geotechnical Solutions, Inc.; Mapping determination by Coastal Commission GIS/Mapping Unit dated October 22, 2001; Letter from Gregory N. Weiler dated September 26, 2001; and letter from Commission staff dated October 1, 2001.

**STAFF NOTE:**

The subject application was scheduled for the October 2001 hearing. On October 5, 2001, staff received a letter dated October 3, 2001 from the agent, Scott Laidlaw, requesting that the project be postponed until the December 2001 hearing in San Francisco. This postponement was requested in order for the applicant and agent to have time to respond in detail to the issues in the Staff Report prepared for the October 2001 hearing. Staff postponed the project and removed it from the October 2001 hearing agenda. In connection with its postponement request, the applicant requested a 90 day extension, which was approved when staff signed it on October 15, 2001. The "270<sup>th</sup> day" under the Permit Streamlining Act is therefore January 13, 2002.

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**LIST OF EXHIBITS**

1. Location Map
2. Assessor's Parcel Map
3. Categorical Exclusion Map
4. Letter from Gregory N. Weiler dated September 26, 2001
5. Letter from Commission staff dated October 1, 2001
6. Site Plan
7. Floor Plans
8. Elevation Plans
9. Topographic Map
10. Grading/Drainage Plan
11. Structural Stringline Plan
12. Deck Stringline Plan

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**I. STAFF RECOMMENDATION, MOTION AND RESOLUTION:**

Staff recommends that the Commission **APPROVE** the permit application with special conditions by making the following motion and adopting the following resolution.

**MOTION:**

*I move that the Commission approve CDP No. 5-01-182 pursuant to the staff recommendation.*

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

**RESOLUTION TO APPROVE PERMIT APPLICATION WITH CONDITIONS:**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## 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 Plans

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, two (2) full size sets of revised project plans. The revised plans shall show a structural stringline and deck stringline based on Commission standards. The revised project plans shall include grading plans that demonstrate conformance with the stringline setbacks:
  - 1) No portion of the habitable living area shall be constructed further streamward than the structural stringline setback and
  - 2) No portion of the deck/patio shall be constructed further streamward than the deck stringline setback existing deck/patio.
- B. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final 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. Conformance of Design and Construction Plans to Geotechnical Report

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the "Geotechnical Engineering Report" (Project G-1736-06) Rene Corrigan Property Located at 218 Hazel Drive, Corona Del

Mar, California dated November 6, 2000 prepared by Geotechnical Solutions, Inc. and "Supplemental Report Rene Corrigan Property" (Project G-1736-06) Rene Corrigan Property Located at 218 Hazel Drive, Corona Del Mar, California dated July 20, 2001 prepared by Geotechnical Solutions, Inc.. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

- B. The final foundation plans shall not include the use of caissons.
- C. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final 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.

3. **Assumption of Risk, Waiver of Liability and Indemnity**

- A. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards such as coastal canyon hillside erosion and landslides; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. **No Future Coastal Canyon Hillside Protective Device**

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no coastal canyon hillside protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-01-182, including patios and any future improvements, in the event that the property is threatened with damage or destruction from coastal canyon hillside failure in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall

include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

**5. Future Development Deed Restriction**

- A. This permit is only for the development described in Coastal Development Permit No. 5-01-182. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the entire parcel. Accordingly, any future improvements to the permitted structure, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No.5-01-182 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development within the parcel. The deed restriction shall include legal descriptions of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

**6. Drainage and Runoff Control Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, a drainage and runoff control plan. The drainage and runoff control plan shall show that all roof drainage, including roof gutters, collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be collected on site for discharge to the street through piping without allowing water to percolate into the ground. The applicants shall maintain the functionality of the approved drainage and runoff control system to assure that water is collected and discharged to the street without percolating into the ground. The proposed drainline to Buck gully will be removed from the project plans.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

**7. Submittal of Final Landscaping Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a final landscaping plan which demonstrates the following:
  - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;

- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (c) Landscaped areas in the rear yard area not occupied by hardscape shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas all landscaping shall consist of native, drought resistant plants. Invasive, non-indigenous plant species that tend to supplant native species shall not be used;
- (d) Landscaped areas in the front yard area can include ornamental or native, drought-tolerant plants. Vegetation installed in the ground shall consist of native, drought tolerant plants. Other vegetation which is placed in above-ground pots or planters or boxes may be non-invasive, non-native ornamental plants; and
- (e) No permanent in-ground irrigation systems shall be installed on site. Temporary above ground irrigation is allowed to establish plantings.

B. The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

#### **8. LOCATION OF DEBRIS AND EXPORT DISPOSAL SITE**

**PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT**, the applicants shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site for the demolition and construction debris and export earth material resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. PROJECT DESCRIPTION AND LOCATION**

###### **1. Project Location**

The subject site is located on the southwest side of Hazel Drive in the Corona Del Mar area, City of Newport Beach, County of Orange (Exhibits #1-2). The site is surrounded to the south by a City sewer pump facility, public restroom and Little Corona Beach; southwest by existing residences; to the northwest by Hazel Drive, Poppy Avenue and Ocean Boulevard; the northeast by existing residences and on the southeast by a non-existent paper street (Glen Drive) and Buck Gully. The intersection of Poppy Drive and Ocean Boulevard is near the subject site located on Hazel Drive. Ocean Boulevard terminates at the intersection of Poppy Drive. The assessor's parcel map shows that there is a public park and public walkway at the terminus of Ocean Boulevard. The public walkway descends to Little Corona Beach. The elevation of the project site ranges from 50 to 80 feet above Mean Sea Level (MSL).

The residence is located on a southeast facing coastal canyon hillside (slope) overlooking Buck Gully (Exhibit #2). The existing and proposed development is located on a coastal canyon hillside and is

situated between the sea and the first public road but is approximately 200 feet inland of the beach. The City of Newport Beach Land Use Plan considers Buck Gully an environmentally sensitive habitat area (ESHA). At the base of Buck Gully is a small stream and dense riparian vegetation. Between Pacific Coast Highway and Little Corona Beach, the sides of Buck Gully are covered in a mixture of native coastal sage scrub vegetation and introduced horticultural species. Introduced species dominate the upper areas of the slopes near the homes at the top of the slopes. This segment of Buck Gully provides an area of good quality habitat capable of supporting a variety of wildlife. CDP 5-82-388 (Zatlin) for a home located at 214 Hazel, which is located to the adjacent southwest of the project lot, also noted that the rear of 214 Hazel is adjacent to an ESHA area.

The subject site is a sloping lot. From Hazel Drive, a slight slope descends to a split-level, single-family residence. An attached garage is located on the upper level. A level pad is present on the main level of the residence. From this pad area, the property descends (30 to 35 degree slope), below an approximate 14 foot high retaining wall to another smaller level area above a small retaining wall adjacent to the property line. From this pad area, at approximately 15 feet from the rear property line, is a descending 60 foot high 4 to 1 bedrock slope coastal canyon hillside that gently slopes south to the drainage bottom along Buck Gully (Exhibits #1, 2 & 10). Buck Gully provides drainage to the Pacific Ocean. The distance from the front property line (along Hazel Drive) to the base of Buck Gully is approximately 225 feet. The approximate distance from the rear property line to the base of Buck Gully is 125 feet and the approximate distance from the top of the 60 foot high canyon hillside on the subject property to the base of Buck Gully is 140 feet.

## **2. Categorical Exclusion Area E-77-5**

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. However, there are areas in Newport Beach where certain types of development are excluded from coastal development permit requirements.

The project site is adjacent to an area in Newport Beach where certain types of development are excluded from coastal development permit (CDP) requirements under Categorical Exclusion E-77-5, adopted by the Commission on June 14, 1977, pursuant to Coastal Act section 30610.1. However, the project site is not located within Categorical Exclusion Area E-77-5. The Coastal Commission GIS/ Mapping Unit has determined that the project site was not located in the Categorical Exclusion area (Exhibit #3). The City of Newport Beach has also stated that the project site is not located in the Categorical Exclusion area. Since the project site is not located in Categorical Exclusion area E-77-5, the project must obtain a Coastal Development Permit.

On September 26, 2001, staff received a letter (Exhibit #4) from Gregory N. Weiler, Lawyer for Douglas and Renee Corrigan, stating the following: *"This office has determined that our client's proposed development is **EXEMPT** from the requirements of a Coastal Development Permit under Public Resources Code § 30610.1. Specifically, the subject property is within the specific areas of the Coastal zone where construction of a single family residence on a vacant lot met the criteria set forth in subdivision (c) of the referenced Code § 30610.1, and the property."*

Coastal Commission staff informed Mr. Weiler, in a letter (Exhibit #5) dated October 1, 2001, that his and the applicants' assertion that the project site is categorically excluded was incorrect. That letter explained the specific flaws in the reasoning of Mr. Weiler's letter. See Exhibit 5. Moreover, as previously stated, staff of the Technical Services Department (Exhibit #3) confirmed that the proposed development is *not* within any of the areas designated by the commission as "Categorical-Exclusion" areas.

### 3. Project Description

The applicant is proposing to demolish an existing single family residence and construct a 25'-2" high, 4,138 square foot two-story with a basement single family residence with an attached two car and one car garage totaling 710 square feet (Exhibits #6-8). Construction of retaining walls, fences, deck/terraces and stairways will also take place. In addition, a drainage line from the site leading into Buck Gully is proposed. A total of 800 cubic yards of grading will take place. Grading will consist of 400 cubic yards of cut, 80 cubic yards of fill and 320 cubic yards of export. The proposed structure will be supported by a shallow spread footings or continuous footings and/or moderately deep caissons.

### 4. Prior Commission Action in Subject Area

The Commission has previously approved five projects that are in the immediate project vicinity. CDP 5-82-388 (Zatlin) was for an addition to an existing single family residence. CDP 5-86-838 (Medley) was for an addition to an existing single family residence. CDP 5-89-353 (Hoshaw) was for the remodel and addition to an existing single family residence. CDP 5-98-084 (Justice) was an approval for a demolition and construction of a one story single family residence located at 210 Hazel Drive. CDP 5-98-010-G (City of Newport Beach) and CDP 5-98-010 (City of Newport Beach) were for the repair of Buck Gully and structures located on Little Corona Beach due to the 1997 and 1998 winter storms.

On July 16, 1982, the Commission approved Coastal Development Permit 5-82-388 (Zatlin). CDP 5-82-388 allowed the addition of 1,133 square feet of floor area and 172 square feet of deck with a spa to a 1,622 square foot existing single family residence located at 214 Hazel Drive. No Special Conditions were imposed. The staff report stated that the lot abuts Buck Gully, which the City of Newport Beach considers an environmentally sensitive habitat area (ESHA).

On November 4, 1986, the Commission approved Waiver 5-86-838-W (Medley). CDP 5-86-838-W was a waiver that allowed an addition of a 970 square foot second story to an existing 2,017 square foot single family residence located at 222 Hazel Drive.

On June 15, 1989, the Commission approved Administrative Permit 5-89-353 (Hoshaw). CDP 5-89-353 allowed the remodel and addition of 562 square feet to a 2,788 square foot single family residence located at 212 Hazel Drive. Special Conditions imposed were: 1) conformance with geotechnical recommendations, 2) submittal of a drainage plan which demonstrates that drainage on site will be directed to the street or on-site detention/desilting basins and 3) submittal of an irrigation plan, which minimizes watering of landscaping. The staff report stated that the proposed addition would not extend seaward of any existing structure on site and that there would be no alteration of natural landforms on site. A geology report reported by G. A. Nicoll and Associates for this project site noted the following: "...a 1+/- foot deep recent surficial slope failure at the toe of the rear slope, probably caused by overwatering and drainage at the fill slope." The geology report also stated that it anticipates further ravelling or other minor failures unless the condition is corrected. The geology report concluded that the site was suitable for the proposed project, if the recommendations of the report were implemented.

On July 7, 1998, the Commission approved Coastal Development Permit 5-98-084 (Justice). CDP 5-98-084 allowed the demolition of a 3,200 square foot, one story residence with detached garage and construction of a 24 foot high, three story (including basement), 6,739 square foot single family residence with a 527 square foot garage at 210 Hazel Drive. Grading consisted of 650 cubic yards of cut and 50 cubic yards of fill. Special Conditions imposed were: 1) conformance with geotechnical recommendations, 2) disposal location and 3) submittal of a landscaping plan. The residence is located on a southwest facing slope (coastal bluff) overlooking Buck gully and Little Corona Beach. The property alignment is towards the coast and not Buck Gully. The site is situated on a coastal bluff but is separated from the beach and coastal bluff edge by a 10 foot wide public walkway to Little Corona Beach from the terminus of Ocean Boulevard and open space. Therefore, the subject site is not exposed to wave attack. The approved residence is a minimum 40 feet from the 10 foot wide



public walkway. At a minimum, therefore, the approved residence is at least 50 feet from the bluff edge.

During the winter storms of 1997 and 1998, Buck Gully experienced severe erosion, downcutting and widening of the drainage channel. In addition, a concrete outlet structure at the beach was destroyed along with the lower section of the public walkway to Little Corona Beach at the beach level.

On January 29, 1998, Emergency Permit No. 5-98-010-G (City of Newport Beach) was issued by the Executive Director. The Emergency Permit was for the removal of broken concrete on the landing, flattening of winwall debris, the placement of filter fabric, approximately 120 cubic yards of rip-rap around storm damaged landing and repair of the public access ramp.

On August 13, 1998, a follow-up Coastal Development Permit 5-98-010 (City of Newport Beach) for the Emergency Permit CDP 5-98-010-G was approved by the Commission. The permit approved: reconstruction of a damaged concrete structure, reconstructing an existing 8" sewer line which crosses Buck Gully, removal of approximately 30' of a 24" storm drain, restoration of the stream bed, repair of the public access ramp to Little Corona State Beach and revegetation of the project site with native vegetation. Special Conditions imposed were: 1) the development be in conformance with the condition of approval for the Department of Fish and Game's (Agreement Regarding Proposed Stream or Lake Alteration" (5-141-98); 2) prior to issuance of permit, submittal of a "Conceptual Revegetation Plan and Monitoring Program" for review and approval by the Executive Director and 3) development shall not occur on the access ramp from Ocean Boulevard leading to the beach between the beginning of the Memorial Day weekend to the end of the Labor Day weekend.

## **B. COASTAL CANYON HILLSIDE STABILITY**

Development on hillsides is inherently risky due to the potential for slope failure. Hillside development poses potential adverse impacts to the geologic stability of hillsides and the stability of residential structures. To meet the requirements of the Coastal Act, canyon developments must be sited and designed to assure geologic stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms. The Commission has several options for determining the appropriate setback for coastal canyon hillside developments. The 25 foot setback from the top of the hillside, limitation of development to the existing footprint and stringline policies of the Commission were instituted as a means of limiting the encroachment of development seaward to the canyon edges preventing the need for construction of revetments and other engineered structures to protect development on coastal canyon hillsides.

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

*New development shall:*

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

### **1. Rear Setback**

The three setback options consist of 1) the 25-foot setback from top of hillside policy 2) limiting development to the footprint of the existing development policy and 3) the stringline policy which could be applied in this situation because the applicant is proposing in-fill development between existing single-family residences on a coastal canyon hillside lot. The plans submitted by the applicant show that the project conforms to the City zoning setback requirement of 10 feet. Conformance to the City required setbacks, however, does not address the potential impacts that the encroaching development will have on the coastal canyon hillside. The project plans show that the proposed structure does not conform to any of the three possible canyon hillside setback policies

established by the Commission for minimizing the adverse impacts of development on a hillside. The lot currently contains an existing single-family residence, which is partially built on the face of the hillside. The proposed structure would pull back the deck located on the northern portion of the rear property to conform with the zoning setbacks, but the proposed structure would substantially encroach seaward on the southern portion of the rear property. This encroachment would consist of habitable area, terrace, stairs and a retaining wall, which would extend seaward approximately 45 feet from the existing structure (Exhibit #6 & 9-10). The three setback options consisting of 1) the 25-foot canyon hillside setback policy, 2) limiting development to the footprint of the existing development policy and 3) the stringline policy have been analyzed below in reference to the proposed project.

a. **25-Foot Coastal Canyon Hillside Setback**

The Commission typically requires that structures be setback at least 25 feet from the top of slope and hardscape features be setback at least 10 feet from the canyon hillside edge to minimize the potential that the development will contribute to slope instability. The coastal canyon edge along the rear of the property is located on the project plans at a 70 foot contour line (Exhibit #10). Proposed habitable areas, a terrace, stairs and a retaining wall are located past this 70 foot contour line. The lot is approximately 100 feet long. If a 25 foot canyon setback from top of slope was imposed, only approximately 45 percent of the lot could be developed (Exhibits #9-10). In addition, the existing development currently encroaches partially down the canyon hillside. Thus, the Commission finds that use of this 25 foot setback from top of hillside would not be appropriate in this particular case.

b. **Existing Structural Footprint Setback**

Another option for determining the appropriate setback is the footprint of the existing development. As stated previously, the proposed structure would pull back the deck located on the northern portion of the rear property but the proposed structure itself would substantially encroach streamward down the southern portion of the rear property. This southern area would significantly encroach seaward by approximately 45 feet from the existing development (Exhibit #9). The use of this setback policy would: 1) allow development to continue to exist downslope, 2) would significantly limit development on portions of the lot not on the hillside and 3) would perpetuate visual impacts. Limiting this proposed development to the existing footprint would not be appropriate. In addition, as previously stated, the existing development currently encroaches down the canyon hillside. Therefore, the Commission finds that the application of the existing footprint would not be appropriate, in this particular case, for determining the setback.

c. **Stringline Setback**

The final option is the use of the stringline. A structural stringline plan for the structure was submitted to the Commission for analysis. A structural stringline refers to the line drawn from the nearest adjacent corners of adjacent structures. Similarly, a deck stringline refers to the line drawn from the nearest adjacent corners of adjacent decks. The applicant has submitted a structural stringline plan with two different structural stringlines shown on this plan (Exhibit #11). However, the applicant's application of the structural stringline is not correctly based on the Commission's methodology. The nearest adjacent corners of adjacent structures were not used. A deck stringline plan was also conducted by the applicant and submitted to the Commission for evaluation (Exhibit #12). This deck stringline plan was also not correct. The nearest adjacent corners of adjacent decks were not used as well.

The first structural stringline drawn on the submitted structural stringline plan was not drawn according to the Commission's methodology (Exhibit #11). A point was not correctly located on the nearest adjacent corner of one of the adjacent structures. The point on the nearest adjacent corner of the southwest structure was correctly identified, but the point to where the

line was drawn, to the nearest adjacent corner of the northeast structure was incorrect. Stringline needs to be drawn from the nearest adjacent corners of adjacent structures. Using this submitted structural stringline would approximately limit development of portions of the basement, first floor terrace, first floor, second floor terrace and second floor. A revised structural stringline analysis based on the Commissions standards needs to be submitted and reviewed by the Executive Director to confirm that the stringline was done according to the Commissions methodology.

The second structural stringline drawn on the submitted structural stringline plan was also not drawn according to the Commission's methodology (Exhibit #11). A point was not correctly located on the nearest adjacent corner of one of the adjacent structures. The point on the nearest adjacent corner of the southwest structure was correctly identified, but the point to where the line was drawn, to the nearest adjacent corner of the northeast structure was incorrect. The line was drawn to a corner, which the applicant stated as the extent of future development within the Categorically Exempt zone (Exhibit #11). Stringlines need to be drawn from locations of existing structures or decks and not from areas where future development could be constructed. Using this submitted structural stringline would approximately limit development of portions of the basement and first floor. A revised structural stringline analysis based on the Commissions standards needs to be submitted and reviewed by the Executive Director to confirm that the stringline was done according to the Commissions methodology.

The submitted deck stringline was, as well, not correctly drawn based on the Commission's methodology (Exhibit #12). A point was not correctly located on the nearest adjacent corner of one of adjacent decks. The point of the nearest adjacent corner of the deck from the southwest was correctly identified, but the point to where the deck stringline was drawn to the nearest adjacent corner of the deck on the northeast property was incorrect. The line was drawn to a corner, which the applicant stated as the extent of future development within the Categorically Exempt zone (Exhibit #12). Stringlines need to be drawn from locations of existing structures or decks and not from areas where future development could be constructed. Using the submitted deck stringline analysis would approximately limit development of portions of the basement and first floor terrace. A revised structural deck analysis based on the Commissions standards needs to be submitted and reviewed by the Executive Director to confirm that the stringline was done according to the Commissions methodology.

Even though the submitted structural and deck stringline depictions supplied by the applicant were incorrect, the Commission has sufficient site data and plans to determine that the most appropriate rear setback would be adherence to a stringline based on Commission standards. A structural and deck stringline setback would: 1) limit significant development down the canyon, 2) pull back existing north development, thus partially removing encroaching development down the canyon face, 3) allow development that would otherwise be limited if the previous two setback policies discussed were applied and 4) would pull back development that would cause visual impacts. The Commission requires that the applicant submit revised plans that adhere to the Commission's methodology for applying correct structural and deck stringlines. Therefore, the Commission finds the use of the structural and deck stringlines as the appropriate rear yard setback for the proposed project and application of this setback would adhere to Section 30253 of the Coastal Act.

## **2. Canyon Stability and Erosion**

In general, canyon hillside erosion is caused by environmental factors and impacts caused by man. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to man include canyon oversteepening from cutting roads and railroad tracks, irrigation, over-watering, building too close to the canyon edge, improper site drainage, use of impermeable surfaces to increase runoff, use of water-dependent vegetation,

pedestrian or vehicular movement across the canyon top and base, and breaks in water or sewage lines. In addition to runoff percolating at a canyon top site, increased residential development inland also leads to increased water percolation through the canyon.

**a. Project Site Geotechnical Reports**

To address the feasibility of constructing the project at the project site, the applicant has submitted a *Geotechnical Report* prepared by *Geotechnical Solutions Inc.* dated November 6, 2000 and a *Supplemental Report* dated July 20, 2001 as well prepared by *Geotechnical Solutions, Inc.*

The *Geotechnical Report* presents the result of the field investigation and laboratory testing and provides geotechnical recommendations. Proposed construction plans were not available during the time the report was written, so this investigation qualifies as a preliminary study. The primary objectives of the *Geotechnical Report* were: "...to explore the subsurface conditions beneath the project site and evaluate the existing earth materials relative to foundation support, lateral pressure design factors and earthwork consideration. Also, presented in this report are geologic evaluations and seismic considerations." The scope of the investigation included: review of literature, maps, exploratory test pit excavations, sampling of earth materials, lab testing and engineering analysis.

The *Geotechnical Report* describes the project site as an area of low relief, elevated marine-cut terraces between the coast and the northwestern San Joaquin Hills. There are various levels of marine terraces present within this area and marine and non-marine terrace deposits typify the site vicinity. Diatomaceous siltstone was found on site to be overlain with terrace deposits and artificial fill.

The *Geotechnical Report* states that the construction of the proposed residence is feasible provided the applicant complies with the recommendations contained in the report. Recommendations include all foundation systems should be founded in competent terrace or bedrock material and that all retaining walls should be constructed with appropriate drainage systems. Additional recommendation include those related to, site preparation, site drainage, structural design of foundations and slabs. Site grading was unknown during the preparation of the report, but stated that it was assumed that it would be limited to removal of existing structures, excavations of the footings and backfilling of the retaining walls.

The *Supplemental Report* presents the results of the investigation regarding slope stability and bluff [canyon hillside] retreat and concludes that the slope is safe and stable for construction. The *Supplemental Report* states that the slope has a safety factor of 3 and that proposed improvements on the property will have no negative impacts that might cause bluff retreat.

**b. Project Analysis and Special Conditions**

**1. Slope Stability and Canyon Retreat**

A slope stability analysis and bluff [canyon hillside] retreat erosion rate analysis were requested by the Commission staff for the proposed project in order to evaluate the feasibility of the project to occur on a coastal canyon hillside. The *Geotechnical Report* states: "No sign of deep seated or surficial instability was observed at the site, nor within the immediate site vicinity. In addition, the *Supplemental Report* determined that the property was safe: "A slope stability analysis has been preformed for the southeast facing descending slope on the property. Slope stability calculations indicates that southeast-facing slope at the property is safe with a safety factor of 3."

The Commission staff requested that a bluff [canyon hillside] retreat analysis be done. On this issue, the *Supplemental Report* states: "From a geologic point of view, as regional uplift

*continues along the coast, the sea cliff is created along with a wave cut bedrock platform. Bedrock is continuously exposed in the surf area along the coast opposite the site. As structural uplift continues, stream erosion in Buck Gully continues to incise deeper. The bedrock exposed in the surf zone tends to help limit wave action that cause bluff retreat."* Furthermore, the Supplemental Report states: "...it is the opinion of the undersigned that the subject property lies far enough (250-feet) from the 60-foot high coastal wave cut bluff to preclude any hazards (cliff retreat) to the property within a reasonable amount of time (1.e., many hundreds of years or more). The proposed improvements on the property will have no negative effects that might cause bluff retreat. To perform a Bluff Retreat Analysis or Quantitative Bluff Slope Stability Analysis for this project is considered unnecessary." Thus, the Geotechnical Report asserts that the bluff [canyon hillside] can be developed on.

## **2. Landslide/Creep/Liquefaction**

The Geotechnical Report also evaluated landslide, creep and liquefaction issues. The Geotechnical Report states that a landslide area was mapped approximately 500 feet west of the site within the cliff face above the coastline, but there were no signs of deep seated or surficial instability on site. Localized mass wasting was also observed along the incised channel of Buck gully, with erosion extending northward along the base of the site toward property northeast of the site. Creep as well was observed on site in the Geotechnical Report: "Creep, which is the nearly imperceptible movement of surficial soils downslope due to the force of gravity, was observed on the slope and is believed to extend to the depth of any fill, soil and/or weathered terrace and bedrock." No known active faults were observed, but the subject site is subject to ground shaking typical of Southern California. Liquefaction of the site was also evaluated in the report and determined that the potential for of it to occur on site was unlikely.

## **3. Foundation**

The geotechnical report includes recommendations focusing on foundation design. The report recommends that conventional shallow spread or continuous footings and/or moderately deep caissons foundation system are used to support the proposed structure and discusses allowable bearing capacity to be used in determining caisson depth. These statements regarding the proposed foundation have been made, but no foundation plans have yet been submitted. In addition, review of these foundation plans by the geotechnical engineer has not taken place.

## **Conclusions for Items 1, 2 & 3**

The Geotechnical Report states that the construction of the proposed residence is feasible provided the applicant complies with the recommendations contained in the report. In addition, in order to verify that the proposed project will not adversely impact the slope, the Commission imposes special conditions. These special conditions are listed below. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30253 of the Coastal Act.

Special Condition No. 1 requires the applicants to submit revised project plans that demonstrate conformance with the established rear yard setback using the Commission's stringline methodology. The rear yard setback has been determined to be the structural and deck stringline. The submitted project plans do not currently adhere to this established rear yard setback. Further encroachment streamward would impact the canyon hillside. In addition further encroachment would impact the adjacent ESHA area. Also, additional encroachment seaward would cause additional visual impacts. Erosion in Buck Gully has taken place, as evident in the analysis for CDP 5-98-010. During the winter of 1997-1998, severe storms damaged Buck Gully and did cause erosion. In addition, CDP 5-89-353 (Hoshaw) for a residence located at 212 Hazel, two lots southwest of the proposed project,

stated that erosion has occurred at the toe of the rear fill slope. To ensure that the proposed project is not subject to hazards resulting from site instability and/or canyon hillside failure over the life of the development and also to protect the ESHA area and to reduce visual impacts, the project must be sited consistent with the stringline.

Special Condition No. 2 requires submittal of final construction plans including foundation, grading and drainage plans, which have been reviewed, signed and stamped by a geotechnical consultant as conforming to recommendations. Also, Special Condition No. 2 prohibits the use of a caisson foundation system. A similar Special Condition was implemented on both CDP 5-98-084 (Justice) and CDP 5-89-353 (Hoshaw). The report for the proposed project recommends that conventional shallow spread or continuous footings and/or moderately deep caissons foundation system be used to support the proposed structure and discusses allowable bearing capacity to be used in determining caisson depth, but no plans showing the foundation have been submitted. As well, review of these foundation plans by the geotechnical engineer has not taken place. In addition, caissons may cause adverse impacts to the canyon. If a canyon hillside failure were to occur, the caissons may be exposed, posing a threat to the safety of the residence as well as the entire site. Additionally, these caissons may adversely impact the adjacent ESHA area (Buck Gully). Also, these exposed caissons would also cause visual impacts. Therefore, submittal of a foundation plan and prohibiting use of caissons for the project is necessary.

Special Condition No. 3 requires the recordation of an assumption of risk deed restriction. Although adherence to the required coastal canyon hillside setback will minimize the risk of damage from erosion, the risk is not eliminated entirely. Erosion in Buck Gully has taken place, as evident in CDP 5-98-010. During the winter of 1997-1998, severe storms damaged Buck Gully and did cause erosion. Such erosion would cause adverse impacts to geologic stability. Also, the *Geotechnical Report* for the proposed project has stated that even though no deep seated surficial instability was observed on site, there was evidence of localized mass wasting along the incised channel of Buck Gully, with erosion extending northward along the base of the site toward property located to the northeast of the site. In addition, CDP 5-89-353 (Hoshaw) for a residence located at 212 Hazel, two lots northwest of the proposed project, stated that erosion has occurred at the toe of the rear fill slope. Therefore, the standard waiver of liability condition has been attached through Special Condition No. 3. By this means, the applicants are notified that the residence is being built in an area that is potentially subject to canyon erosion that can damage the applicant's property. The applicants are also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, recordation of the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity for liability.

Special Condition No. 4 of the permit requires the applicants to record a deed restriction on the property placing the applicant and their successors in interest on notice that no canyon protective devices shall be permitted to protect the structure, patios or future improvements if threatened by canyon failure. Section 30253 requires that proposed development be sited and designed in such a manner that the use of protective devices that would substantially alter natural landforms along bluffs and cliffs would not be required. The development could not be approved if it included provision for a canyon protective device. Instead, the Commission would require the applicant to set the development further upslope. The condition states that in the event any canyon protective work is proposed in the future, the applicant acknowledges that as a condition of filing an application for a coastal development permit, the applicants must provide the Commission or its successor agency with sufficient evidence enabling it to consider all alternatives to canyon hillside protective works, including consideration of relocation of portions of the residence that are threatened, structural underpinning, or other remedial measures identified to stabilize the residence that do not include canyon hillside or shoreline stabilization devices.

Whereas Special Condition No. 4 applies to canyon hillside protective measures, Special Condition No. 5 is a future development deed restriction which states that any future improvements or additions on the property, including hardscape improvements, grading, landscaping, vegetation removal and structural improvements, require a coastal development permit from the Commission or its successor agency. This condition ensures that development on coastal canyon hillsides, which would affect the stability of the canyon hillsides and residential structures or would require future canyon hillside protective structures, require a coastal development permit.

**4. Drainage**

The applicant has stated that all site drainage currently drains to Buck Gully. Runoff from the project site will be directed to a discharge point on the lower canyon slope via an 8" drainline to outlet onto a 4' x 8' (h) rip rap pad (Exhibit #10). The placement of rip-rap will prevent erosion and potential damage to the slope from uncontrolled runoff. The *Geotechnical Report* provides recommendations regarding drainage of the site: "All roof and pad drainage shall be conducted to appropriate drainage systems via non-erosive devices. Drainage should be directed away from the slope. Slope drainage should be kept to a minimum to avoid excessive erosion. All drainage systems should be maintained in good working condition...The site should be sloped to direct water away from all structures. Water shall be diverted through non-erodible devices to a positive drainage system or to the adjacent street. Water shall not be allowed to flow freely over the slope. The building shall be provided with gutters and downspouts."

**5. Landscaping/Irrigation**

Developments on coastal canyon lots are typically required to submit landscaping and irrigation plans, consisting primarily of native, drought-tolerant plants, in order to be found in conformance with Section 30253 of the Coastal Act. In addition, the project site is located adjacent to Buck Gully, which the City of Newport Beach considers an environmentally sensitive habitat area (ESHA). Thus, the adjacent ESHA area needs to be protected. The applicant has stated that the only remaining landscape areas will be located in the lower section of the property where existing mature landscape will remain, but has not yet submitted any landscaping plans for the project site.

**Conclusions for Items 4 & 5**

The *Geotechnical Report* states that the construction of the proposed residence is feasible provided the applicant complies with the recommendations contained in the report. In addition, in order to verify that the proposed project will not adversely impact the slope, the Commission imposes special conditions. These special conditions are listed below. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30253 of the Coastal Act.

Special Condition No. 6 requires the applicants to submit a revised drainage and run-off control plan for the review and approval of the Executive Director. Inadequate drainage on site would lead to canyon hillside impacts. For example, percolation of water into the canyon hillside would cause the hillside to destabilize. CDP-5-89-353 (Hoshaw) for a residence located at 212 Hazel, two lots northwest of the proposed project, stated that erosion has occurred at the toe of the rear fill slope, probably from overwatering and drainage directed at the fill slope. Thus, this shows that inappropriate drainage would adversely affect the stability of the canyon hillside. The applicants have stated that runoff from the project site will be directed to a discharge point on the lower canyon slope (Buck Gully) via an 8" drainline to outlet onto a 4' x 8' (h) rip rap pad. This would cause adverse impacts to Buck Gully, which



is considered by the City of Newport Beach as an ESHA area, such as removal of natural vegetation. In addition, no appropriate local approval for the construction of the drainline on city property has been obtained. The applicant has stated that no approval by the City is necessary for construction of the drainline. The issue of local approval is moot as the Commission is requiring that the drainline be removed from the project, and site drainage be directed to Hazel drive. Therefore, revised project plans deleting this drainline and a revised drainage and run-off control plan showing all drainage directed to the street are necessary. In keeping with the geotechnical recommendations, this condition requires that the drainage system reduces water infiltration into the subgrade soils and directs surface waters away from the building foundations, walls and sloping areas.

Special Condition No. 7 requires that the applicants submit a final landscaping plan, which consists primarily of native, drought-tolerant plants and prohibits in-ground irrigation throughout the entire lot. No landscaping plans have been submitted. The applicant has stated that the only remaining landscape areas will be located in the lower section of the property where existing mature landscape will remain. This special condition requires that areas not occupied by hardscape be planted primarily with native, drought tolerant plants indigenous to the area. The condition distinguishes between the types of plants allowed in the rear, side and front yards. Non-native ornamental plants are allowed in the front and side yards only if they are kept in containers. Rear yard, canyon hillside plantings consist entirely of native, drought-tolerant plants. Native, drought-tolerant plants common to coastal canyon hillsides serve the following functions: require watering initially (1-3 years) but not after they become established, drought-tolerant plants have deep root systems which tend to stabilize soils, are spreading plants and tend to minimize the erosive impact of rain, and provide habitat for native animals. The condition allows for the placement of non-drought-tolerant, water-dependent plants in containers, i.e., boxes and planters, along the side and front yards.

Lastly, in order to insure that debris and export is removed and not placed elsewhere in the coastal zone where it may have adverse impacts on coastal resources, the Commission imposes Special Condition No. 8, which requires location of the debris and export disposal site. The applicant has not yet identified a disposal site.

### **3. Project Consistency with Coastal Act**

Development on a canyon hillside is inherently hazardous. Consequently, the Commission requires applicants on canyon hillside lots to comply with certain special conditions to bring the project into compliance with the resource protection policies of the Coastal Act. In this case, the special conditions include submission of revised plans showing adherence to rear yard setback established as the seaward limits of existing structures, conformance with geotechnical recommendations and that the use of a caisson foundation system be prohibited, recordation of assumption of risk, no future coastal canyon hillside protective device, and future development deed restrictions; submittal of a revised drainage, irrigation and landscaping plan and removal from the project plans of the proposed drainline to Buck Gully, and location of a debris and export disposal site. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30253 of the Coastal Act.

### **C. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)**

Section 30240 of the Coastal Act states:

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



*degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

**1. Site Analysis**

The proposed development is located adjacent to Buck Gully, which the City of Newport Beach Land Use Plan considers an environmentally sensitive habitat area (ESHA) (Exhibits #1-2). Located at the base of Buck Gully is a small stream and dense riparian vegetation. Between Pacific Coast Highway and Little Corona Beach, the sides of Buck Gully are covered in a mixture of native coastal sage scrub vegetation and introduced horticultural species. Introduced species dominate the upper areas of the slopes near the homes at the top of the slopes. This segment of Buck Gully provides an area of good quality habitat capable of supporting a variety of wildlife. The City of Newport Beach's LUP states: *"The siting of new buildings and structures must be controlled and regulated to insure, to the extent practical, the preservation of unique natural resources, and to minimize the alteration of natural land forms along bluffs and cliffs."*

**2. Special Conditions**

The previous section on geologic hazards includes findings to support the special conditions requiring submission of revised plans showing adherence to rear yard setback established as the seaward limits of existing structures, recordation of future development deed restrictions; submittal of a revised drainage, irrigation and landscaping plan and removal from the project of the proposed drainline to Buck Gully. These conditions are necessary to ensure compliance with Section 30253 of the Coastal Act concerning prevention of erosion and promotion of geologic stability. They also serve to ensure conformance with the certified LUP and Section 30240 of the Coastal Act with regard to protection of environmentally sensitive habitat area (ESHA).

Buck Gully acts as an open space and wildlife habitat area, as well as a corridor for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation has resulted in cumulative adverse impacts upon the habitat value of the canyon. The canyon adjacent to the subject site is considered a degraded ESHA due to the presence of both native and non-native plant species. In addition, development adjacent to this degraded ESHA area could adversely impact it.

The proposed development could significantly impact the adjacent ESHA area, by extending further streamward of the existing residence. To ensure that development does not further encroach down the slope toward Buck Gully, Special Condition No. 1 is imposed. Special Condition No. 1 requires the applicant to submit revised project plans that demonstrate conformance with the established rear yard setback recommended by the Commission. The rear yard setback has been determined to be the structural and deck stringline.

Special Condition 5, the future development special condition, ensures that no development, including landscaping, takes place that would adversely impact the existing designation of the adjacent Buck Gully as an environmentally sensitive habitat area.

The applicant has proposed that runoff from the project site will be directed to a discharge point on the lower canyon slope (Buck Gully) via an 8" drainline to outlet onto a 4' x 8' (h) rip rap pad. This would cause adverse impacts to Buck Gully, which is considered by the City of Newport Beach as an ESHA area. Runoff down the canyon slope may destabilize the slope. Also, installation of the drainline would cause removal of natural vegetation. Additionally, the installation of the drainline within the ESHA would violate Section 30240(a) prohibition limitation that *only uses dependent on [ESHA] resources shall be allowed within those areas*. In addition, no appropriate local approval for the construction of the drainline on city property has been obtained. The applicant has stated that no approval by the City is necessary for construction of the drainline. Even though appropriate local approval is still necessary for the construction of the drainline, the Commission is recommending that

the drainline be removed from the project, thus necessitating any further appropriate local approval. Therefore, removal of this drainline and submittal of a revised drainage and run-off control plan showing all drainage directed to the street is required. Special Condition No. 6 requires removal of this drainline and submittal of a revised drainage and run-off control plan showing all drainage directed to the street is required.

To ensure that the proposed development does not have any significant adverse effects on the canyon as an environmentally sensitive habitat area, the Commission imposes Special Condition No. 7. Special Condition No. 7 requires that the applicants submit a final landscaping plan demonstrating that all in-ground landscaping be of native, drought tolerant species and prohibits in-ground irrigation throughout the entire lot. As such, the ability of non-native species to encroach into the adjacent canyon will be minimized.

Therefore, as conditioned requiring submission of revised plans showing adherence to rear yard setback established as the seaward limits of existing structures, recordation of future development deed restrictions; submittal of a revised drainage, irrigation and landscaping plan and removal of the proposed drainline to Buck Gully from the project, the proposed project is consistent with Section 30240 of the Coastal Act with regard to protection and enhancement of environmentally sensitive habitat areas (ESHA).

#### **D. VISUAL IMPACTS**

Section 30251 of the Coastal Act states, in relevant part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting*

The proposed development is located on a coastal canyon hillside approximately 200 feet inland of Little Corona Beach (Exhibits #1-2). Views of the coastal canyon hillside from the beach are already partially obstructed by adjacent development on the coastal and coastal canyon hillside. Also, existing vegetation obstruct views of the project site from the beach. The proposed development would be similar in nature to the pattern of existing development in the area and thus would not result in additional, significant obstruction of views of the coastal canyon hillside. Adherence to the structural and deck stringline setback imposed in Special Condition No. 1 for the rear of the property would also pull some of existing development north of the property back and thus reduce some visual impacts of the proposed development. Therefore, as conditioned, the Commission finds the proposed project is consistent with Section 30251 regarding protection of scenic and visual qualities of coastal areas.

#### **E. PUBLIC ACCESS AND RECREATION**

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

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

*(2) adequate access exists nearby...*

Section 30604( c ) of the Coastal Act requires that a specific finding regarding public access and recreation shall be made for all development between the nearest public roadway and the shoreline. The proposed project is located approximately 200 feet from Little Corona Beach and approximately 150 feet from a public walkway from Ocean Boulevard to the beach. Access is to Little Corona Beach and is provided by a trail at

the terminus of Ocean Boulevard (Exhibit #2). To the west is Corona Del Mar Park State Beach, which also provides beach access and recreation.

The proposed development is located approximately 150 feet from the public walkway from Ocean Boulevard to Little Corona Beach. Development proposed in this permit application will not interfere in any way with the public's ability to use the walkway. Therefore, the Commission finds that adequate public access exists in proximity to the proposed development and that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

#### **F. LOCAL COASTAL PROGRAM**

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. The City's LUP states: *"The siting of new buildings and structures must be controlled and regulated to insure to the extent practical, the preservation of unique natural resources, and to minimize the alteration of natural landforms along bluffs and cliffs."* The proposed project consists of demolition and reconstruction of a residence on a coastal canyon hillside. The proposed project is conditioned to be moved further upslope in order to prevent any adverse impacts to the coastal canyon hillside and ESHA area (Buck Gully) located to the rear of the project. This would be accomplished by adhering to the structural and deck stringline for the rear of the property. Another condition requires recordation of a future development deed restriction. This ensures that development on coastal canyon hillsides, which would affect the stability of the canyon hillsides and residential structures or would require future canyon hillside protective structures, require a coastal development permit. Thus, the proposed project has been conditioned to minimize alteration of the natural landform.

As explained above, the proposed development is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

#### **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, 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 that the activity may have on the environment.

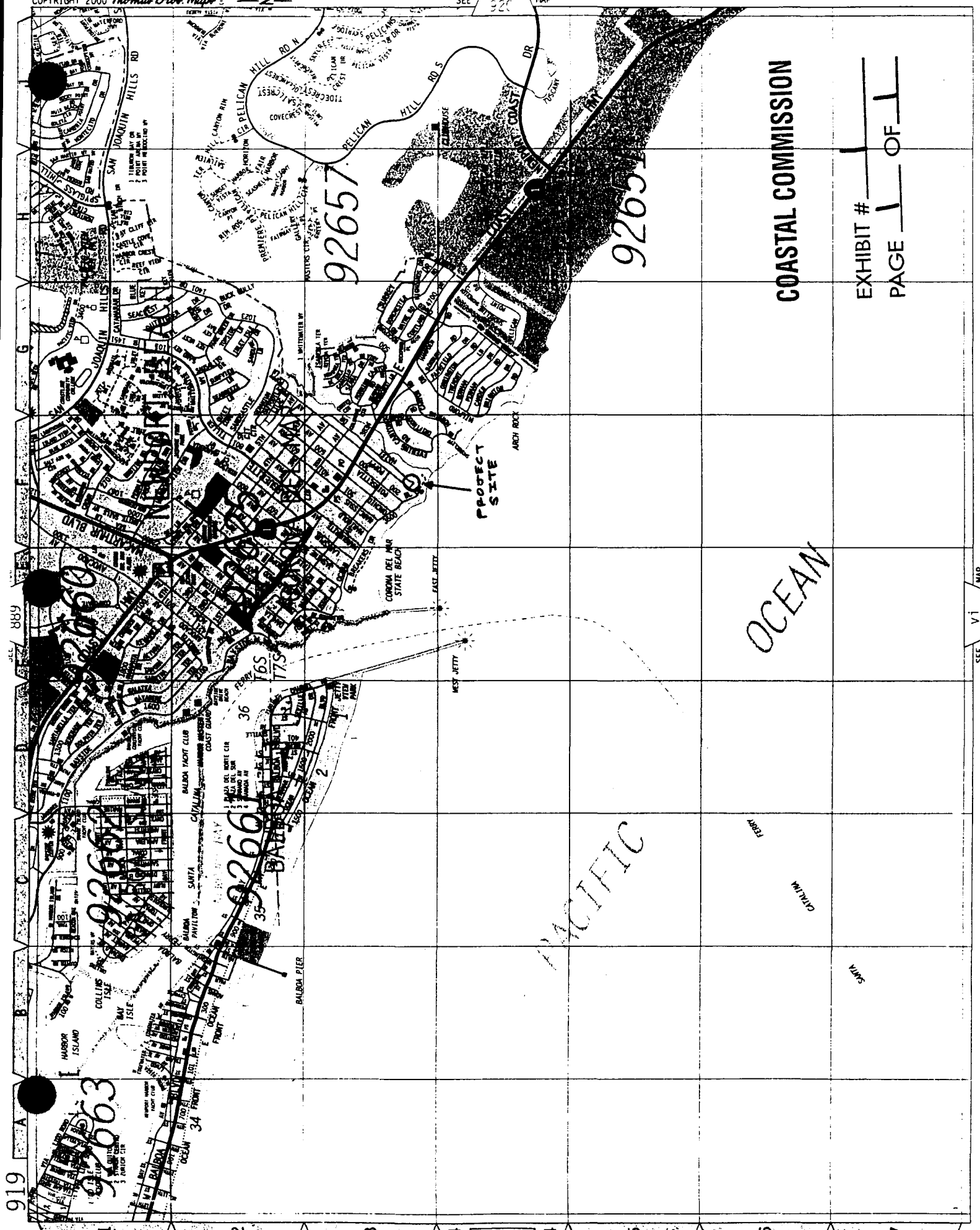
The proposed project is located in an urban area. All infrastructure necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the hazard policies of Chapter 3 of the Coastal Act. Mitigation measures include Special Conditions requiring 1) the applicant to submit revised plans showing adherence to the imposed structural and deck rear yard setbacks; 2) the applicant to submit final plans that show evidence of conformance with geotechnical recommendations, including those regarding site preparation, foundation design, and drainage and also prohibits use of a caisson foundation system; 3) the recordation of an assumption of risk deed restriction; 4) the recordation of a no future coastal canyon hillside protective device deed restriction; 5) the applicant to record a deed restriction, which ensures that the applicant and future landowners are aware that future development requires a new coastal development permit or an amendment to this permit; 6) the submittal of a final drainage and run-off control

plan which demonstrates that rooftop run-off will be taken to the street and that the proposed drainline to Buck Gully is removed from the project; 7) the submission of a final landscaping plan which shows that only drought-tolerant natives will exist in the rear yard area and restricts any in-ground irrigation; and 8) location of debris and export disposal site.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.

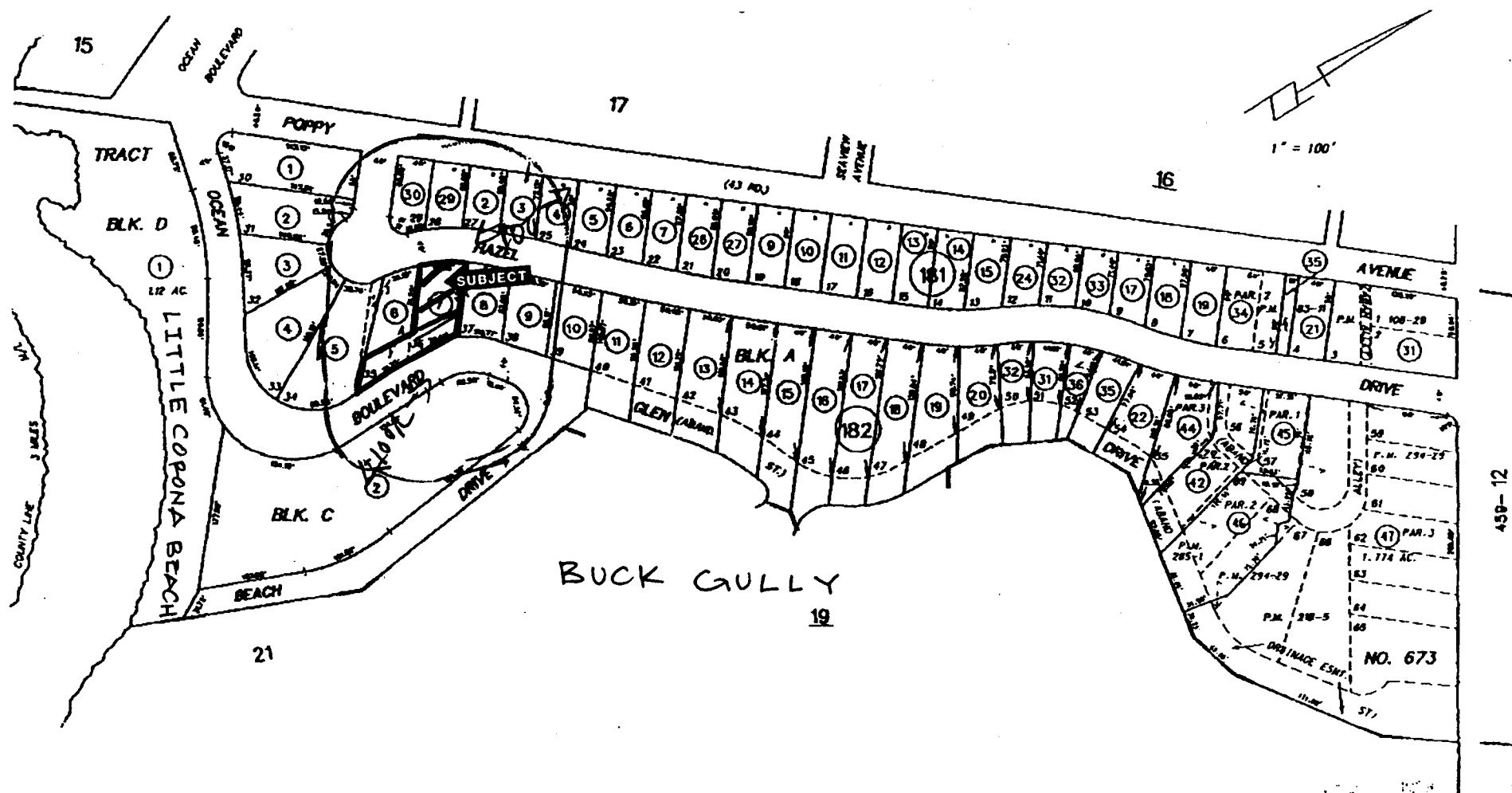
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COASTAL COMMISSION

EXHIBIT # 1  
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MARCH 1949

TRACT NO. 673  
PARCEL MAPM.M. 20-17, 18  
P.M. 83-11, 294-29NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLESASSESSOR'S MAP  
BOOK 052 PAGE 18  
COUNTY OF ORANGE

COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1

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VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400

RECEIVED

OCT 23 2001

MEMORANDUM

CALIFORNIA

October 22, 2001

✓ To: Fernie Sy, CCC-South Coast District

From: Darryl Rance, GIS/Mapping Unit *DR*

Cc: Teresa Henry, CCC-South Coast District

Subject: Coastal Zone Boundary Determination No. 41-2001, APN 052-182-07, City of Newport Beach, Orange County.

You have requested that we provide you with a determination of whether Orange County Assessor Parcel Number (APN) 052-182-07 is located within Categorical Exclusion Area E-77-5.

Enclosed is a copy of a portion of the Categorical Exclusion Areas Map No. E-77-5 for the City of Newport Beach, with the approximate location of APN 052-182-07 indicated. See Exhibit 1. Also included is an Assessors Parcel Map exhibit that depicts the subject property as NOT being located within Categorical Exclusion Area E-77-5. See Exhibit 2. Any development proposed on APN 052-182-07 would require coastal development permit authorization from the Coastal Commission.

Please contact me at (415) 904-5335 if you have any questions regarding this determination.

Enclosures

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 3

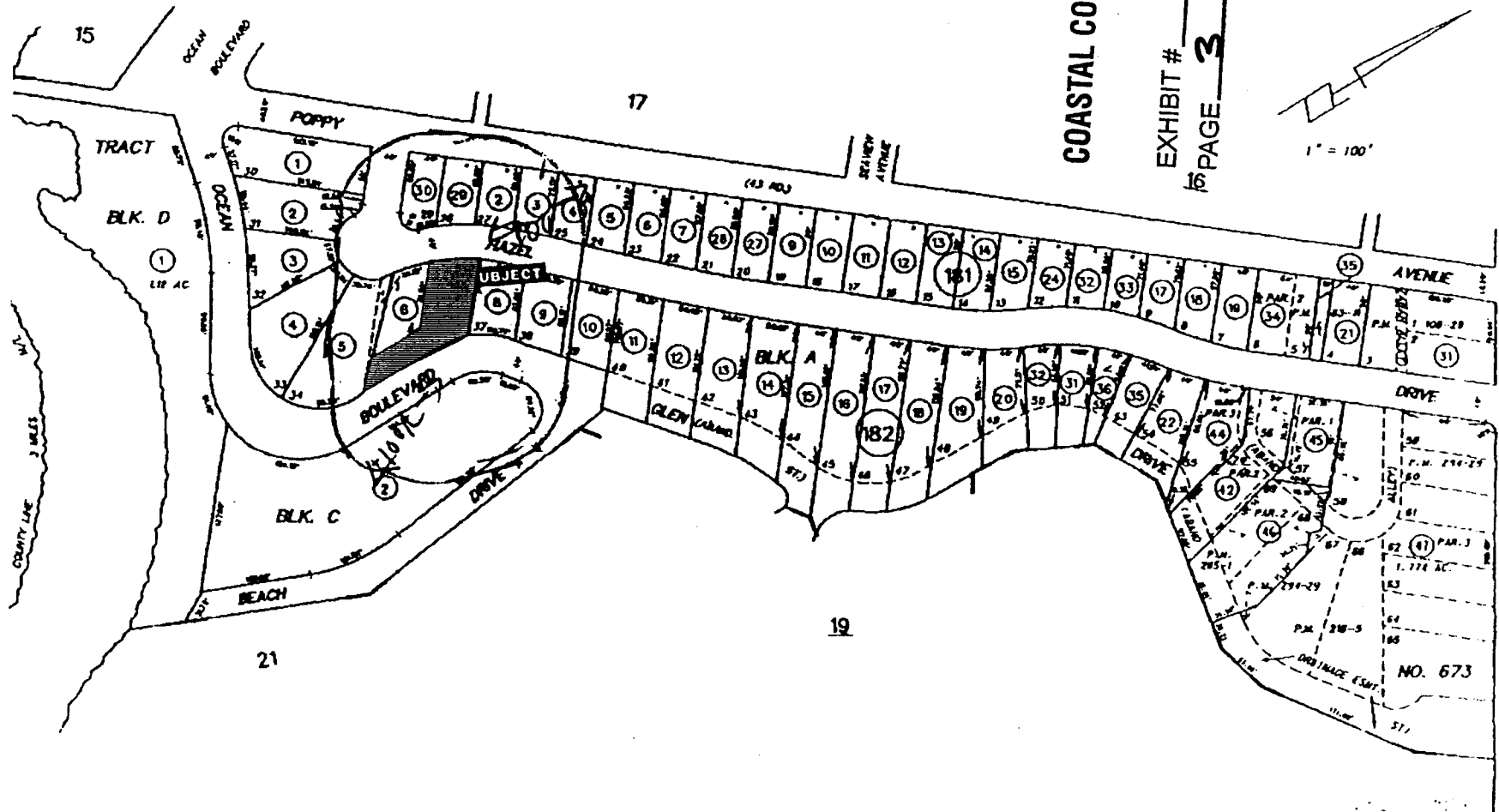
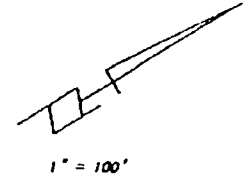




COASTAL COMMISSION

EXHIBIT # 3

PAGE 3 OF 3



MARCH 1949

TRACT NO. 673  
PARCEL MAP

M.M. 20-17, 18  
P.M. 83-11, 294-29

NOTE - ASSESSOR'S BLOCK &  
PARCEL NUMBERS  
SHOWN IN CIRCLES

ASSESSOR'S MAP  
BOOK 052 PAGE 18  
COUNTY OF ORANGE

BD No. 41-2001  
APN 052-182-07  
City of Newport Beach

NOT Within Exclusion Area E-77-5

Exhibit



LAW OFFICES  
**PALMIERI, TYLER, WIENER, WILHELM & WALDRON LLP**  
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2603 MAIN STREET  
EAST TOWER - SUITE 1300  
IRVINE, CALIFORNIA 92614-6228  
(949) 851-9400  
www.ptwww.com

P. O. BOX 18712  
IRVINE, CA 92623-8712

WRITER'S DIRECT  
DIAL NUMBER

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gweller@ptwww.com  
FACSIMILE (949) 851-1584  
(949) 851-3044  
(949) 757-1226  
(949) 851-2261

September 26, 2001

REFER TO FILE NO

ANGELO J. PALMIERI (1958-1998) ROBERT F. WALDRON (1927-1998)	GARY C. WEISBERG MICHAEL H. LEIFEN SCOTT R. CARPENTER RICHARD A. SALUS NORMAN J. RODICH O. SUSAN WIENS RONALD M. COLE LUCKE S. NIKRA PAUL B. LA SCALA MICHAEL L. D'ANGELO CHARLES S. KROLIKOWSKI DAROLYN Y. HAMADA STEPHEN A. SCHICKA HEATHER C. WHITMORE ELISE L. ENOMOTO RYAN M. EASTER GRACE LEE DAVID H. CULMER
ALAN H. WIENER* ROBERT C. HIRRE* JAMES E. WILHELM* DENNIS O. TYLER* MICHAEL J. GREENE* FRANK C. MOTHROCK* DENNIS W. SHAN* DAVID B. PARR* CHARLES H. KANTER* GEORGE J. WALL L. RICHARD RAYNE PATRICK A. HENNESSEY DON FISHER GREGORY H. WEILER WARREN A. WILLIAMS JOHN H. LISTER CYNTHIA N. WOLCOTT JOEL H. KEW MICHELLE M. FUJIMOTO	

OF COUNSEL  
MARTIN J. STEIN

A PROFESSIONAL CORPORATION

**FACSIMILE - 562-590-5084**

**Ms. Fernie Sy**  
Coastal Program Analyst  
California Coastal Commission  
South Coast Area Office  
200 Oceansgate, Suite 1000  
Long Beach, California 90802-4302

**Re: New Single Family Resident**  
218 Hazel Drive  
Newport Beach, California  
Coastal Development Permit Application 5-01-  
182/Notice of Exemption

Dear Ms. Sy:

This office has been retained by Douglas and Renee Corrigan, the owners of the above-captioned property ("Property"), to represent them with respect to the above-captioned matter. We have had occasion to review the subject Development Application through the City of Newport Beach and above-captioned Coastal Development Permit Application.

This office has determined that our client's proposed development is **EXEMPT** from the requirement of a Coastal Development Permit under Public Resources Code § 30610.1. Specifically, the subject property is within the specific areas of the Coastal zone where construction of a single family residence on a vacant lot met the criteria set forth in subdivision (c) of the referenced Code § 30610.1, and the property

1. Is not located within the first public road and the sea or immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach.

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 1 OF 2

Ms. Fernie Sy  
September 26, 2001  
Page 2

2. Is a legal lot.
3. Is not located in a geologic hazard area or a flood hazard area.
4. Is not more than 250 feet from an existing improved road.
5. Is serviced by an adequate water supply that is legally available for use.

(Public Resources Code § 30610.1(c)(1) through (5)).

In accordance with the Public Resources Code § 30610.2, our client has requested a Certificate of Exemption from the City of Newport Beach and will commence construction in accordance with plans approved by such City.

As the subject Application has been set for public hearing before the Coastal Commission for October 8, 2001, please advise this office immediately if the Commission Staff disagrees with the legal conclusions set forth in this letter, or the Commission otherwise asserts jurisdiction over the subject development. Our client reserves the right to proceed with the noticed hearing on October 8th if the Commission asserts jurisdiction, without waiving its position that the subject development is exempt from the need for a Coastal Development Permit.

Please call me if you have any questions.

Very truly yours,

  
Gregory N. Weller

GNW:nn

cc: Mr. Douglas Corrigan  
Laidlaw Schultz Architects

COASTAL COMMISSION

EXHIBIT # 4  
PAGE 2 OF 2

**CALIFORNIA COASTAL COMMISSION**

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



October 1, 2001

Law Offices  
Palmieri, Tyler, Wiener, Wilhelm & Waldron LLP  
Attn: Gregory N. Weiler  
2603 Main Street, Suite 1300  
Irvine, CA 92614

**FILE COPY**

**Re: Demolish and construct new single family residence**  
218 Hazel Drive  
Corona Del Mar (Newport Beach), CA  
**Coastal Development Permit Application 5-01-182**

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 2

Dear Mr. Weiler:

We have received your letter dated September 26, 2001. Per your request, we are responding to inform you that we disagree with the legal conclusions drawn therein. Most significantly, you state in the second paragraph that: *"This office has determined that our client's proposed development is EXEMPT from the requirements of a Coastal Development Permit under Public Resources Code § 30610.1. Specifically, the subject property is within the specific areas of the Coastal zone where construction of a single family residence on a vacant lot met the criteria set forth in subdivision (c) of the referenced Code § 30610.1, and the property."* Meeting the requirements under Section 30610.1 (c) alone does not automatically grant you an exemption from a Coastal Development Permit. Section 30610.1(a) of the Coastal Act provides an exemption for development that meets all three of the following, separate criteria:

- (1) it is construction of a single family residence on a vacant lot,
- (2) it meets the criteria in subdivision (c), and
- (3) it is "located in a specified area designated by the commission pursuant to subdivision (b)."

Your letter claims that the construction at issue satisfies the first two criteria. We take no position with respect to those claims at this point. However, the section of your letter quoted above goes on to imply that the proposed development also satisfies the third criterion listed above, *on the basis* that it satisfies the second criterion, which requires that development meet the criteria in subdivision (c). This claim confuses two separate criteria, both of which must be satisfied for the proposed development to qualify for the Section 30610.1(a) exemption.

Moreover, our Technical Services Department has confirmed that the proposed development does *not* meet the third criterion, as it is *not* within any of the areas designated by the commission pursuant to subdivision (b) (known as the "Categorical-Exclusion" areas). Therefore, the proposed development does not qualify for the Section 30610.1(a) exemption. This is true regardless of whether the development would satisfy the criteria of subdivision 30610.1(c). Consequently, the project must obtain a Coastal Development Permit.

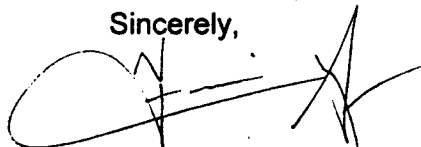
We further note that the City of Newport Beach agrees with this analysis. In fact, the city has informed us that, according to its records, the development is outside the Categorical Exclusion

area. We have communicated with the City, and they have informed us that they do not plan to issue the Exemption Certificate. However, even were the city to issue a certificate of the sort you describe, it would only say that you meet the subdivision (c) criteria, so you would still be required to obtain a Coastal Development Permit because the proposed project is not located in the Categorical Exclusion area.

We recognize your client's intent to proceed with the noticed hearing on October 8, and the Commission also intends to proceed as scheduled.

If you have questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'Fernie Sy', written over a horizontal line.

Fernie Sy  
Coastal Program Analyst

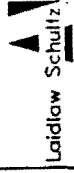
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**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 2 OF 2

# COASTAL COMMISSION

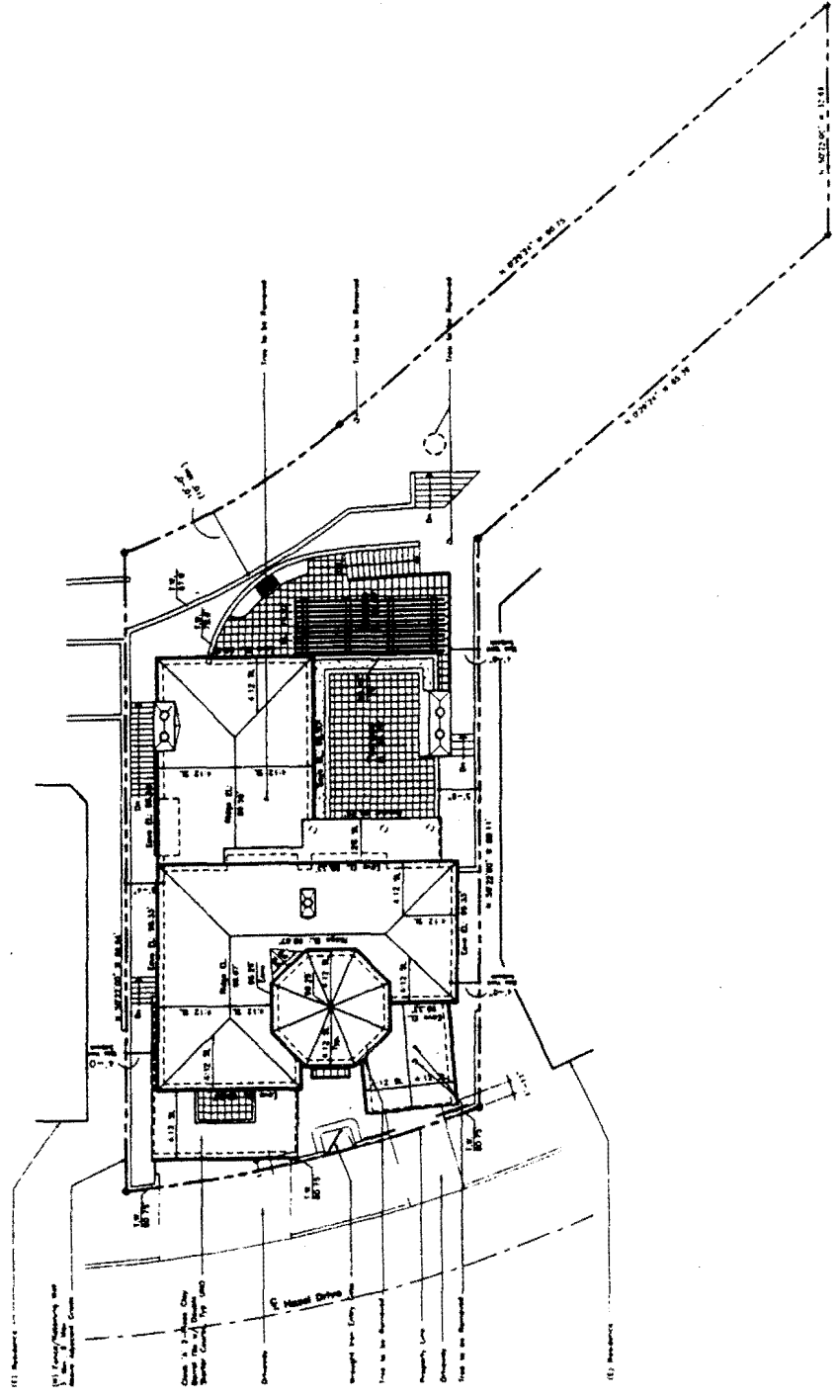
EXHIBIT # 6  
PAGE 1 OF 1



Corrigan Residence  
218 Hazel Drive  
Corona Del Mar, CA  
92651

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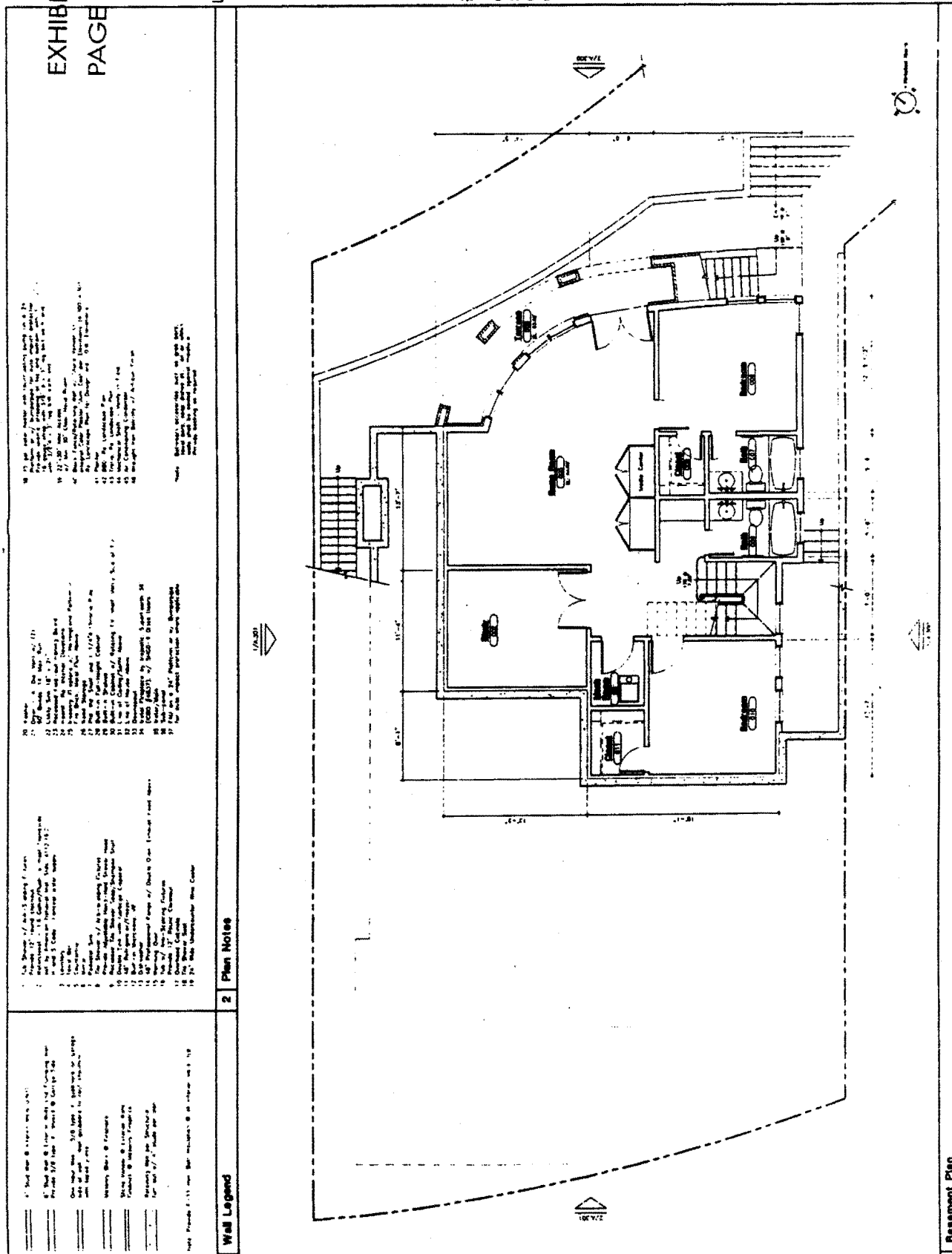
A.10



**Laidlaw Schultz**

Corrigan Residence  
218 Hazel Drive  
Corona Del Mar, CA  
92661

A2





# COASTAL COMMISSION

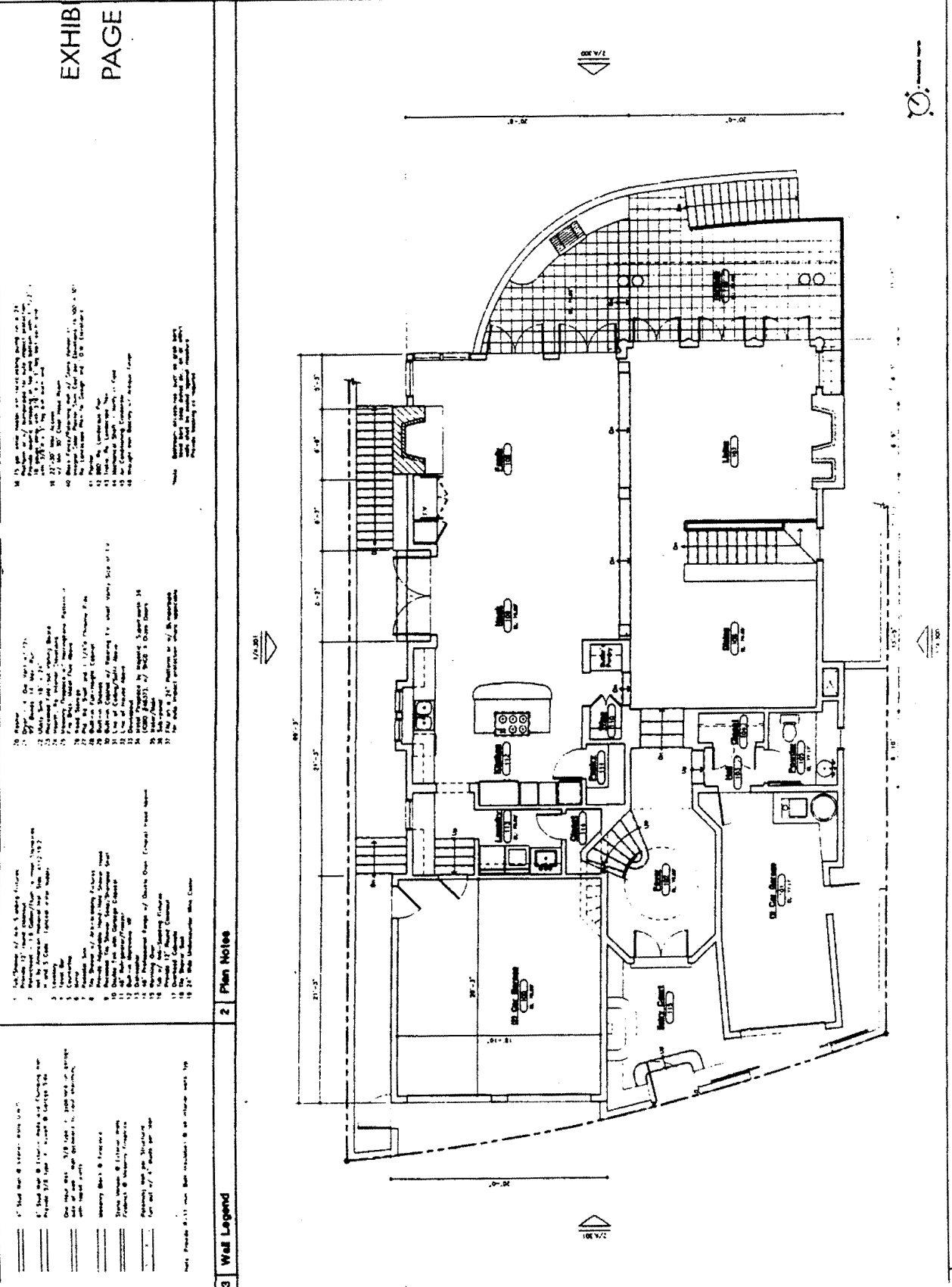
EXHIBIT # 7

PAGE 2 OF 3

Laidlaw Schull

Corrigan Residence  
218 Hazel Drive  
Corona Del Mar, CA  
92651

A.2



## 2 Plan Notes

## 3 Wall Legend

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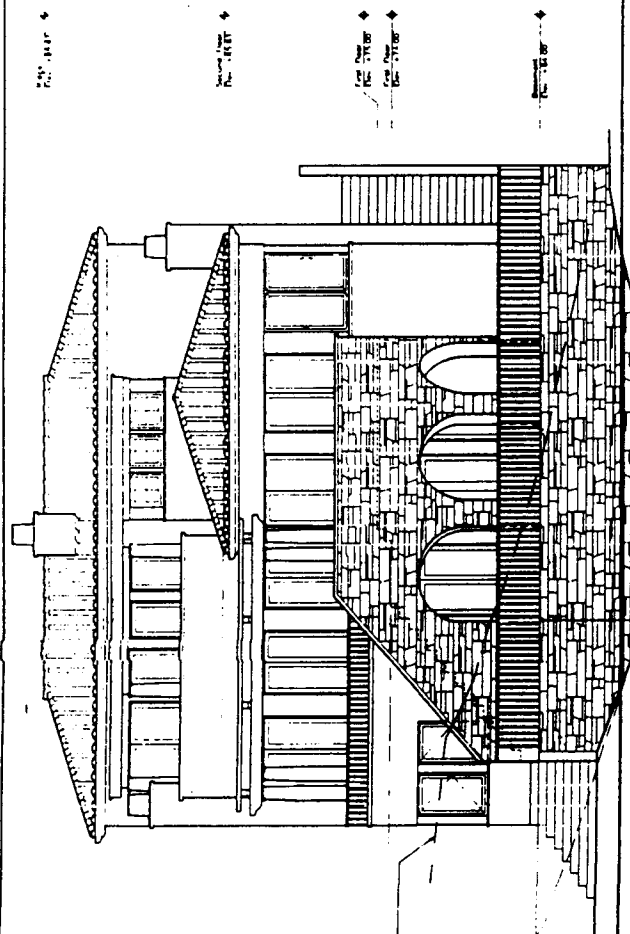


Laidlaw Schull.

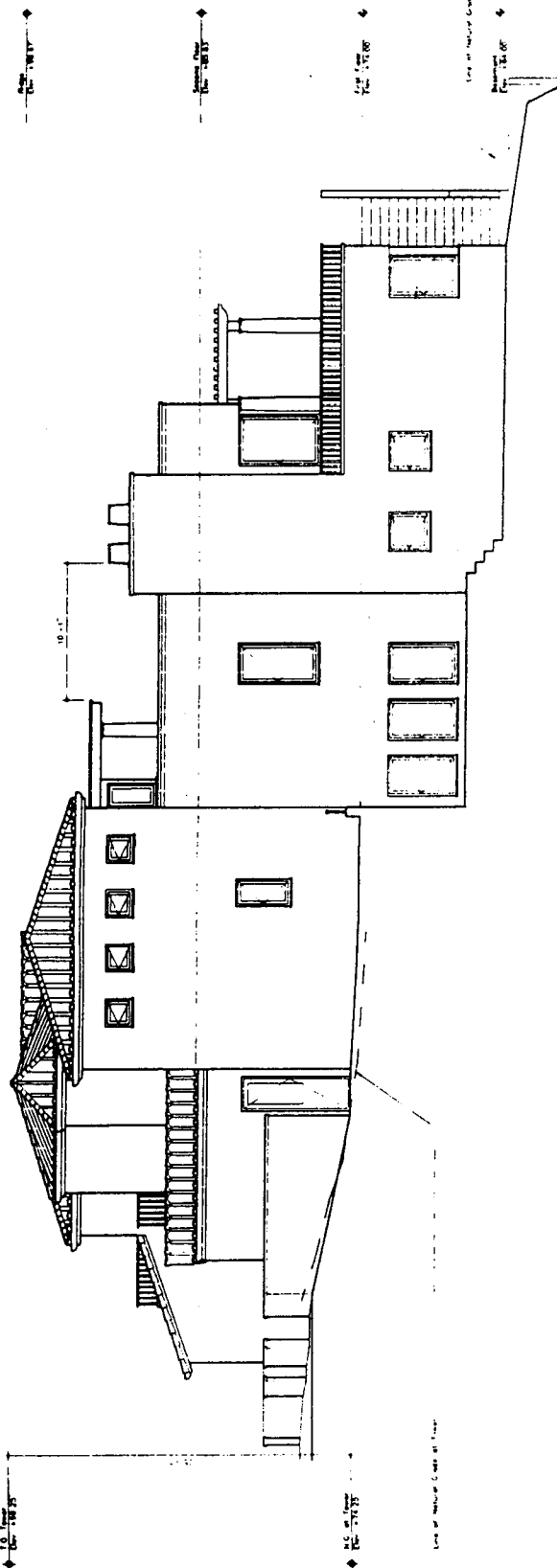
Corigan Residence  
218 Hazel Drive  
Corona Del Mar, CA  
92661

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4.03.01	Diagram 4
5.03.01	Diagram 5
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7.03.01	Diagram 7
8.03.01	Diagram 8
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97.03.01	Diagram 97
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99.03.01	Diagram 99
100.03.01	Diagram 100

A.3



2 | East (Rear) Elevation



1 | South (Side) Elevation

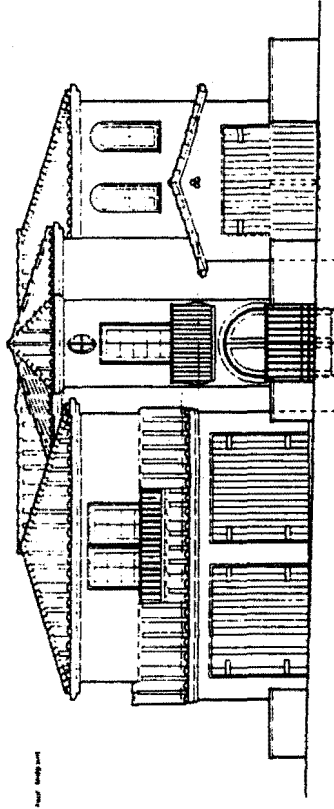
EXHIBIT # 8

PAGE 2 OF 2

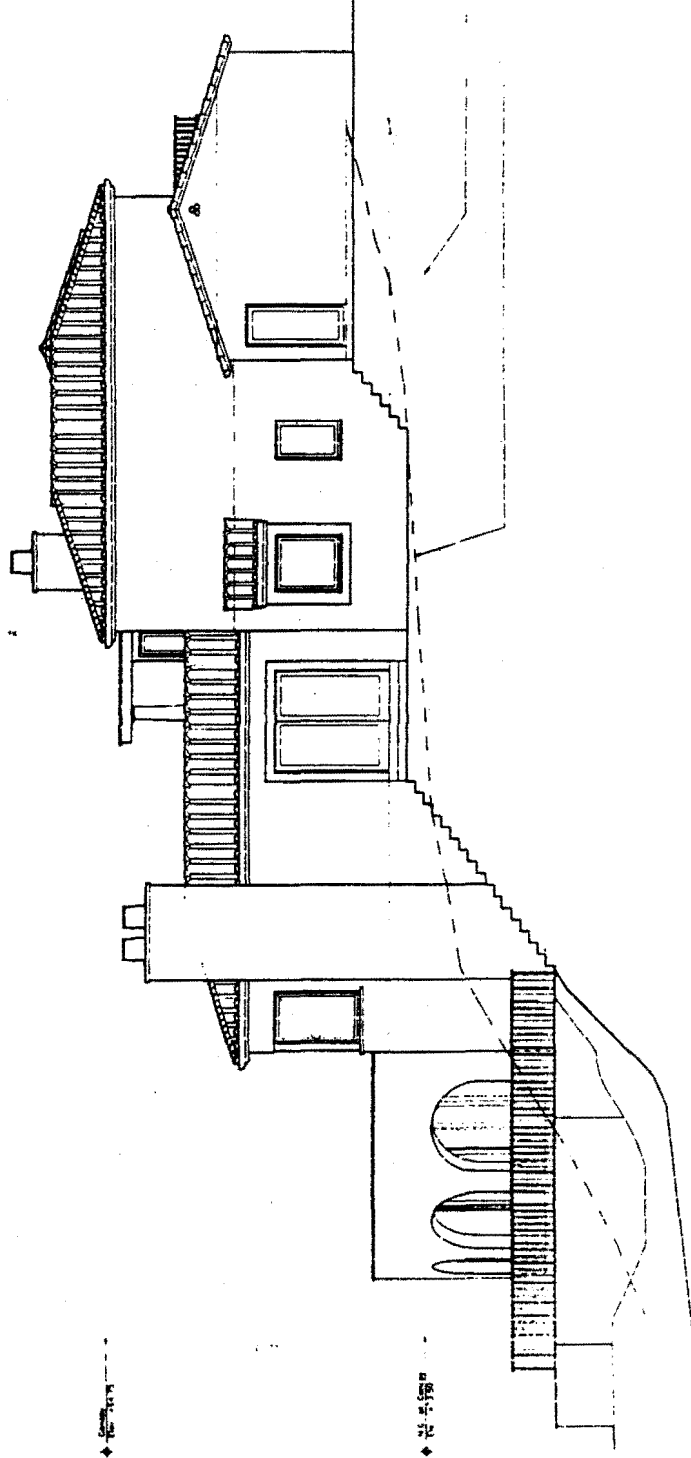
**Laidlow Schuliz**

Corrigan Residence  
218 Hazel Drive  
Corona Del Mar, CA  
92661

A.3



West (Street) Elevation

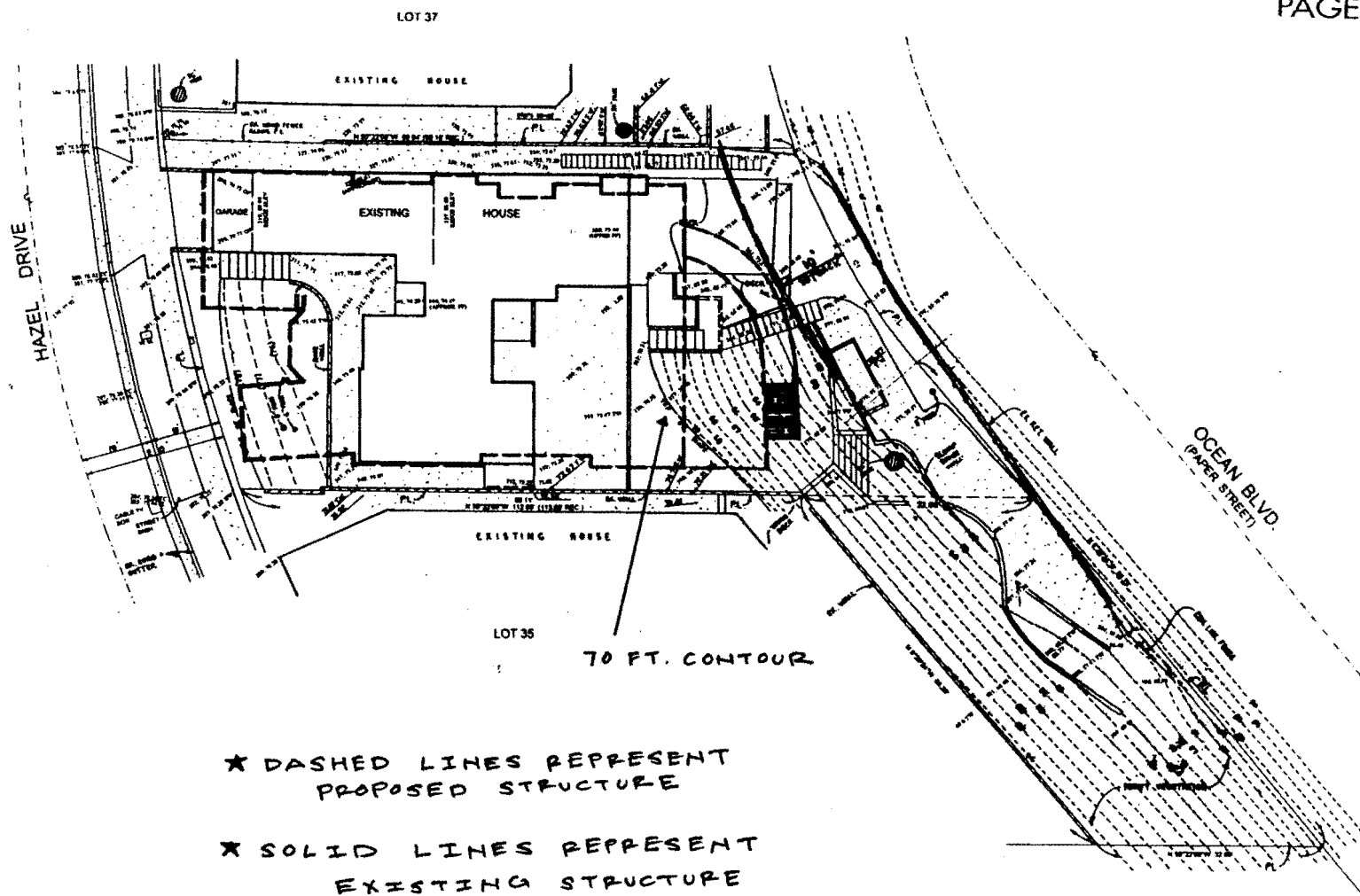


North (Side) Elevation

# COASTAL COMMISSION

EXHIBIT # 9

PAGE 1 OF 1



**LOT AREA**  
AREA = 894321.80 FT.  
= 0.1525 ACRES

**ELEVATION LEGEND**  
20 100.00  
ELEVATION  
SURVEY PT. REF. NO.

**SOILS ENGINEER:**

**BENCHMARK:**  
ESTABLISHED 1.8 M AT THE STREET  
RADIAL POINT SOUTHWEST OF  
THIS PROPERTY  
ELEV. = 74.74

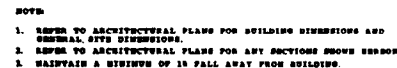
**PREPARED BY:**  
DUCA - MCCOY, INC.  
3840 E. COAST HIGHWAY  
CORONA DEL MAR, CA 92625  
(949) 975-6487

PREPARED BY: PETE J. DUCA, R.C.E. 24888

DATE

**TOPOGRAPHIC SURVEY**  
OF  
218 HAZEL DRIVE  
CORONA DEL MAR, CA  
LOT 36 AND A PORTION OF LOT 35  
BLOCK "A" OF TRACT NO. 873

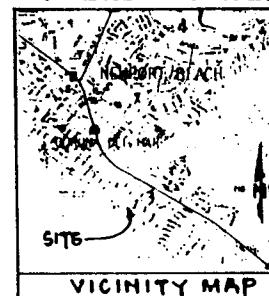
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NOTE: ALL DRAIN INLETS ARE TO BE  
INSTALLED WITH CHARCOAL  
FILTER FITTINGS FOR POLLUTION  
CONTROL.

[illegible]

LEADS			
1	P.C. CHASE 4	12	TOP OF CHASE
2	BLVD 47000000000000000000	14	TOP OF WALK
3	DEVELOPMENT OF PLAN	15	TOP OF 42 STORY
4	ELECTRIC ELEVATOR	16	PLAN 1300
5	PAINTED ELEVATOR	18	CHASE 4700
6	FINISH WARE PLAN	19	FINISH PLAN
7	FINISH WARE PLAN	20	TOP OF PLAN



(FOR PENALTIES FOR PENALTY ONLY)  
 CUT 400 CU. YDS.  
 FILL 80 CU. YDS.  
 BOTH ARE OVERSE. AND DEDUCTION FOR WALL  
 FOOTINGS HAS NOT BEEN CALCULATED.  
 CEMENTS AND LBS/100 POUNDS/100 HAS NOT  
 BEEN CALCULATED.

NOTE: EXPORTED SOILS WILL NOT BE DISPOSED OF IN A SITE LOCATED IN THE COASTAL ZONE WITHOUT A COASTAL DEVELOPMENT PERMIT

[illegible][illegible]

AREA = 864321 SQ FT  
= 0.1525 ACRES

**ELEVATION LEGEND**

20	100 00
↑	↑

## BENCHMARK

PREPARED BY:  
DUCA - McCOY, INC  
3840 E COAST HIGHWAY  
CORONA DEL MAR, CA 92625  
(949) 875-4487

**"PRELIMINARY"**  
**GRADING PLAN**  
OF  
218 HAZEL DRIVE  
CORONA DEL MAR, CA  
LOT 36 AND A PORTION OF LOT 14  
BLOCK "A" OF TRACT

