

**CALIFORNIA COASTAL COMMISSION**

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**RECORD PACKET COPY****Item Tu 13i**

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270th Day: February 19, 2002  
Staff: ALB-LB **ALB**  
Staff Report: November 20, 2001  
Hearing Date: December 11-14, 2001  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 5-01-199

**APPLICANTS:** Philip A. and Lynne M. Butterfield

**AGENT:** Ronald A. Zumbrun

**PROJECT LOCATION:** 3401 Ocean Blvd., City of Newport Beach, County of Orange

**PROJECT DESCRIPTION:** Request for after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels on the existing bluff face stairway on a beachfront lot adjacent to Corona del Mar State Beach.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission take one vote adopting a two-part resolution which would approve portions of the "after-the-fact" development and deny other portions of the "after-the-fact" development. The major issue of this staff report is development at the base of a bluff adjacent to the sandy beach. The proposed development consists of the establishment of a new "sand pit" cut-out at the toe of the bluff and replacement of a decorative gate with lattice panels enclosing the landings on the existing bluff face stairway.

Staff recommends that the Commission **deny** the "sand pit" cut-out that was installed without benefit of a coastal development permit since the cut-out alters a natural landform and may discourage public use of the adjacent beach. Staff also recommends denial of the portions of the lattice paneling occurring on a previously unpermitted landing area. Staff recommends that the Commission **approve** the remainder of the gate replacement and lattice panels with three (3) special conditions requiring 1) submittal of revised project plans showing removal of the toe of slope cut-out and removal of the new lattice paneling on the unpermitted stairway landing area, 2) recordation of a future improvements deed restriction and 3) timely compliance with the conditions of approval.

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**LOCAL APPROVALS RECEIVED:** Approval in Concept from the City of Newport Beach and correspondence from Building Department dated May 8, 2001.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan, 5-93-030 (Butterfield), 5-93-024 (Parker), and 5-89-1086 (Parker).

**EXHIBITS:**

1. Vicinity Map
2. AP Map
3. City of Newport Beach Building Dept. letter dated May 25, 2001
4. Project Plans for 5-01-199
5. Project Plans for 5-93-030
6. Letter from applicant dated August 28, 2001
7. Letter from agent dated October 24, 2001
8. Letter from staff counsel to agent dated November 2, 2001

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**STAFF RECOMMENDATION:**

**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 to approve in part and deny in part CDP No. 5-01-199, 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 **GRANTS**, as conditioned, a coastal development permit for the portion of the proposed project consisting of: replacement of a wooden gate and decorative lattice work panels on the previously existing landing area, and adopt the findings set forth below, 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 the sand pit cut-out at the toe of the bluff and new lattice paneling on the unpermitted stairway landing area, and adopts the findings set forth below, 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 public access and recreation policies of Chapter 3 of the Coastal Act, 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 construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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 of 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

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of revised project plans which show that the "sand pit" cut-out is deleted. The plans shall also show deletion of all improvements to the portion of the lower stairway landing not previously permitted, as generally depicted in Exhibit 3, page 2.

2. Future Development Deed Restriction

- A. This permit is only for the development described in Coastal Development Permit No. 5-01-199. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities 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. 5-01-199 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 applicant 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 applicant's 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.

3. Condition Compliance

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit including the submittal of revised plans and recordation of the future improvements deed restriction. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations:

The Commission hereby finds and declares as follows:

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

1. Project Location

The proposed project is located between the first public road and the sea at 3401 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits 1 & 2).<sup>1</sup> The subject site is an ocean front lot adjacent to Corona del Mar State Beach. The subject

<sup>1</sup> The applicants' attorney contends in a letter dated October 25, 2001 that the subject site is not located between the first public road and the sea (Exhibit 7). The Commission's staff counsel has responded to this contention in a letter dated November 2, 2001 (Exhibit 8).

property cascades down a bluff face. At the top of the bluff is Ocean Boulevard and at the toe of the slope is the sandy beach. The site is currently developed with a three-story single-family residence, attached two-car garage and decks located at the top of the bluff. The bluff face remains relatively undisturbed and vegetated, with exception of an existing wooden stairway located along the southwestern property line. Development at the subject site is consistent with the pattern of development along this segment of Ocean Boulevard, with structural development sited at the top of the bluff and minimal disturbance of the bluff face (i.e. stairways only).

## 2. Project Description

The applicant is requesting after-the-fact approval for a new "sand pit" cut-out, consisting of three (3) 32" high, 15' long retaining walls at the toe of the bluff enclosed on the seaward side by a nautical rope attached to four (4) wooden pier posts installed in the sand. The project results in the removal of vegetation (primarily non-native groundcover, including iceplant) at the toe of the bluff. As characterized by the applicant, the retaining walls located along the toe of the bluff are "*decorative, interlocking, stacking blocks*" that serve aesthetic purposes only. The walls are not designed to function as a bluff retention device. Also, as noted by the City of Newport Beach Building Department in a letter to the applicant dated May 8, 2001 (Exhibit 3), the wall is "*short enough that a building permit is not required.*"

The project also involves an after-the-fact request for approval of the replacement of a decorative gate and lattice panels on the lower landing and placement of lattice panels on the upper landing of the existing bluff face stairway. The proposed lower landing gate replacement involves the removal of an existing wooden gate with two wooden panels on either side, reconfiguration of the gate alignment and the installation of a new wooden gate with one lattice wooden panel. The project encloses both the lower and upper landings with the new lattice work panels. Project plans are included as Exhibit 4.

## 3. Prior Commission Action at Subject Site

On March 18, 1993, the Commission approved CDP No. 5-93-030 (Butterfield) for the demolition of an existing single-family residence and construction of a 3231 square foot, 34 foot high at maximum point from finished grade, three-story single family residence with an attached two-car garage. Grading of 150 cubic yards of cut and 50 cubic yards of fill was also approved. This development was undertaken in 1993/1994.

Based on analysis of historical aerial photographs of the site, staff has determined that a stairway existed on the bluff slope along the eastern property line of the subject site prior to the Coastal Zone Conservation Act of 1972. In addition, staff notes that the currently proposed project plans show that an existing portion of the lower landing of the stairway extends approximately 3 ft. beyond the applicant's property line to the southeast. The project plans approved by CDP 5-93-030 did not include any portion of the stairs or landing extending beyond the property line (Exhibit 5). As such, the current landing is not constructed to the same specifications as previously allowed under that permit action. However, although the plans previously approved by CDP 5-93-030 do not specifically show this extension, the applicant asserts in a letter dated August 28, 2001, that the size and location of the landing are no different than existed prior to development constructed pursuant to the permit approved in 1993 (Exhibit 6).

Based on the available evidence, including analysis of aerial photographs, staff is not able to determine when the portion of the existing landing which extends approximately 3 ft. onto the neighboring property was constructed. In the case of this project, the proposed gate will be located entirely on the existing portion of the landing located on the applicant's property, while a portion of the lattice paneling will extend onto the neighboring parcel. Only those portions of the gate and lattice work that are sited on the previously permitted landing are approvable. As such, the Commission has conditioned the project for removal of improvements sited on the portion of the landing that was not previously approved or acknowledged by CDP No. 5-93-030.

**4. Related Commission Action in Project Vicinity**

There are multiple permit applications for development in the subject area scheduled to be heard by the Commission in late 2001/ early 2002. These include 5-01-112 (Ensign), 5-01-191 (Tabak), and 5-01-080 (Palmero), described below. All of the proposed projects involve alteration of the bluff face to varying extents. Previously, development has been limited to the top of bluff. Allowance of the currently proposed projects will contribute to adverse cumulative impacts to scenic resources and public access in the subject area.

**5-01-112 (Ensign) 3415 Ocean Boulevard**

The application is a request for after-the-fact approval of new switchback bluff face stairway with keystone-type earth retention blocks, landscaping and in-ground irrigation. The project is located at the lot immediately south (downcoast) of the subject site.

**5-01-191 (Tabak) 3431 Ocean Boulevard**

The applicant proposes demolition of an existing three-story single family residence and construction of a new 6,305 square foot five-story single family residence with an attached 782 square foot three car garage, down a coastal bluff to a maximum height of 24 feet above finished grade. Additional construction consists of retaining walls, elevator, new concrete steps to the beach, spa and pool, kayak storage, shower, trash enclosure, waterfalls, decks, BBQ, tree wells, planters, an aqueduct, and a loggia. Grading will consist of 2,395 cubic yards of cut, 23 cubic yards of fill and 2,372 cubic yards of export. A caisson and grade beam foundation system will support the proposed structure.

**5-01-080 (Palmero) 3317 Ocean Boulevard**

The applicant proposes to construct a pool house, pool, spa and exercise room on a lower portion of the bluff face down to the toe of the bluff. Construction also includes retaining walls, fences, a BBQ, trellis, iron gate, glass railing, drainline, concrete paving, steps, including the repair and modification of the existing stairs. A total of 120 cubic yards of grading will take place. Grading will consist of 60 cubic yards of cut and 60 cubic yards of fill. Footings, slab on grade and a caisson foundation system will support the proposed structures.

**B. Approval Findings and Declarations**

**1. Scenic Resources**

Section 30251 of the Coastal Act pertains to scenic and visual resources. It states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and*

*designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...*

The proposed project is located along a bluff face immediately adjacent to Corona del Mar State Beach. The site is highly visible from the sandy beach. The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated. Although several lots have stairways traversing the bluff face and some have unpermitted development at the base of the bluff (currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. Development at this site must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms.

The applicant is requesting after-the-fact approval to carry out aesthetic improvements to the existing stairway landings, including gate replacement and lattice panel installation. The lattice design is shown in Exhibit 4. The Commission finds the gate replacement and lattice enclosures on the previously permitted landing areas to be consistent with the scenic and visual resources policies of the Coastal Act, as they will not obstruct views to or along the shoreline and are in keeping with the pattern of development in the area.

The applicant is also requesting after-the-fact approval of a new "sand pit" cut-out at the toe of the slope. When the residence was approved in 1993, the Commission found that the "structure is within the deck stringline and structural stringline, thereby protecting views from the public beach." At that time, no new development or removal of vegetation was proposed along the toe of the bluff. However, between 1993 and the present, vegetation was removed along the base of the slope in order to establish the new retaining wall and rope enclosure. The proposed "sand pit" cut-out will affect public views of the vegetated bluff from the adjacent public beach, inconsistent with the pattern of development in the subject area. The Commission finds that the proposed sand pit cut-out does not minimize alteration natural landforms, is not visually compatible with the character of surrounding development and will affect the scenic and visual qualities of the subject area. As such, the portion of the proposed project involving the establishment of a sand pit cut-out area is inconsistent with Section 30251 of the Coastal Act.

In addition, although not proposed (and indeed denied) by the applicant, any enlargement of the lower landing area would constitute increased development on the bluff face, thereby affecting views inland from the beach and along the shoreline. As the cumulative effects of increased development would adversely impact the natural bluff appearance, such enlargement would not be allowed. Consequently, this permit does not authorize enlargement of the stairway in any manner. However, the portion of the project involving gate replacement and lattice work is allowable, so long as the improvements occur on previously-approved landing areas. If placed in the same location as originally permitted, the gate replacement and panel installation will not degrade the visual quality of the bluff face beyond what was previously approved and will be consistent with the existing pattern of development.

The Commission finds the portion of the project consisting of the sand pit cut-out to be inconsistent with the scenic resources policies of the Coastal Act, as more fully described in

Section IV.C, Denial Findings and Declarations. To protect the scenic and visual qualities of the coastal bluff at the location, the Commission imposes Special Conditions 1 and 2. Special Condition No. 1 requires the applicant to submit revised project plans showing that the proposed sand pit cut-out at the base of the bluff has been deleted and that the portions of the lattice work on the landing area previously unpermitted have been deleted, as shown in Exhibit 3, page 2. Special Condition No. 2 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 or amendment to this permit from the Commission or its successor agency. This condition ensures that development on the coastal bluff which may affect the stability or appearance of the bluff or may contribute to an adverse cumulative effect on community character, require a coastal development permit.

Therefore, the Commission finds that, as conditioned for submittal of revised plans and recordation of a future development deed restriction, the replacement of the decorative gate and lattice panels on the previously approved portion of the bluff face stairway is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

## 2. Public Access

Sections 30211 and 30212 (a) of the Coastal Act contain policies regarding public access to the shoreline. Section 30240 addresses appropriate development adjacent to a recreation area.

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, in pertinent part:

*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.*

Section 30240 (b) of the Coastal Act states:

*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.*

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The project site is located on the seaward side of Ocean Boulevard, which is the first public road immediately inland of Corona del Mar State Beach. The nearest vertical public access is available at Orchid Avenue to the southeast and via the Corona del Mar State Beach parking lot to the northwest. The nearest lateral access is available directly



seaward of the toe of the slope at Corona del Mar State Beach. Corona Del Mar State Beach is a public beach, which serves as a very popular visitor destination point for recreational uses. Further southeast of the project site is a bluff park known as Inspiration Point. There is also a public access way from Inspiration Point to the beach below.

As described previously, the applicant is requesting after-the-fact approval for a "sand pit" cut-out at the base of the bluff on private property directly adjacent to Corona del Mar State Beach. The sand-pit consists of three low block walls along the toe of the slope enclosed by a nautical rope supported by wooden pier pilings in the sand. The area will be used for the placement of temporary furniture such as tables, umbrellas, and chairs, thereby establishing a private use area at the base of the bluff. (The applicant's property extends approximately 20+ feet beyond the toe of slope, as shown in Exhibit 3.) While the project is proposed entirely on private property, the presence of the applicant's sand pit area will discourage public use of the sandy beach directly adjacent to the enclosed area by giving the appearance of a private beach. Beach-goers are less likely to utilize a segment of the beach that is physically restricted by the neighboring private property owner. In addition, adjoining property owners may wish to construct similar private enclosures at the toe of the slope, thereby contributing to a cumulative adverse impact.

Consequently, the portion of the proposed development consisting of the sand pit cut-out will adversely affect the public's continued use of the beach, inconsistent with the public access policies of the Coastal Act. Therefore, the Commission imposes Special Conditions 1 and 2, as previously discussed in Section B. As discussed in the previous section, Special Condition 1 requires the applicant to submit revised plans showing that the proposed sand pit cut-out at the toe of the bluff is deleted. Special Condition 2 requires recordation of a future improvements deed restriction. The portion of the proposed project including the replacement of the decorative gate and lattice panels on the previously approved bluff face stairway, as conditioned, is consistent with the public access and recreation provisions of the Coastal Act, specifically Sections 30211, 30212 and 30240.

### 3. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development 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 the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Public Access, Policy 4 states,

*Public access in coastal areas shall be maximized consistent with the protection of natural resources, public safety, and private property rights.*

Development of Coastal Bluff Sites, Policy 2 (b) states,

*Public Views. The location and design of a proposed project shall take into account public view potential.*

Development of Coastal Bluff Sites, Policy 2 (b) states,

*Grading, cutting and filling of natural bluff face or bluff edges shall be prohibited in order to preserve the scenic value of bluff areas, except for the purpose of performing emergency repairs, or for the installation of erosion-preventive devices or other measures necessary to assure the stability of the bluffs.*

The portion of the proposed project including the replacement of a decorative gate and lattice panels on the previously approved bluff face stairway, as conditioned, is consistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal Act. The proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

4. Unpermitted Development

Development has occurred on site without benefit of the required coastal development permit, including construction of a "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels on the existing bluff face stairway. All work occurred either on a beach or within 50 feet of the edge of a coastal bluff. Consequently, the work that was undertaken constitutes development that requires a coastal development permit application.

To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition 3 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The Executive Director may grant additional time for good cause. Although construction has taken place prior to submission of this permit application.

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 Newport Beach Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of 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.

5. California Environmental Quality Act (CEQA)

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 which the activity may have on the environment.

The portion of the proposed project including the replacement of a decorative gate and lattice panels on the previously approved bluff face stairway, has been conditioned as follows to assure that the project will not have a significant adverse impact on coastal

resources: 1) submittal of revised project plans showing removal of the toe of slope cut-out and new lattice paneling on the unpermitted portion of the lower stairway landing, 2) recordation of a future improvements deed restriction and 3) timely compliance with conditions of approval. The portion of the proposed project including the replacement of a decorative gate and lattice panels on the existing bluff face stairway, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no other feasible alternatives or feasible mitigation measures which would substantially lessen any significant adverse effects the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

**C. Denial Findings and Declarations:**

The Commission hereby finds and declares as follows:

**1. Scenic Resources**

Section 30251 of the Coastal Act requires new development to minimize landform alteration and be visually compatible with the character of surrounding development. As described previously, a portion of the applicant's proposal involves the construction of a "sand pit" cut-out at the toe of a vegetated bluff immediately adjacent to Corona del Mar State Beach (Exhibit 3). Due to its location next to a heavily utilized public recreation area, it is necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms.

**a. Landform Alteration**

The Coastal Act requires new development to be sited to "*minimize the alteration of natural land forms.*" The sand pit cut out is located at the toe of a coastal bluff. The existing bluff is a natural landform visible from public vantage points such as the adjacent beach (Corona Del Mar State Beach) and Inspiration Point. Any alteration of this landform affects the scenic views of the coastline when viewed from the State Beach and Inspiration Point.

The City's LUP policy regarding coastal bluffs states that grading, cutting and filling of a natural bluff face or bluff edges is prohibited in order to preserve the scenic value of the bluff area. Grading, cutting and filling are allowed if it is for the purpose of performing emergency repairs or for the installation of erosion-preventive devices to assure the stability of the bluff. The requested project does not meet the City's LUP criteria for allowable bluff alteration, nor is it consistent with the visual resource policies of the Coastal Act.

**b. Community Character**

The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated. Although several lots have stairways traversing the bluff face and some have unpermitted development at the base of the bluff (currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped.

The project will result in a visible intensification of use of the site as compared to its undeveloped state. Removal of existing vegetation along the base of the slope has occurred in order to construct the requested retaining wall and rope enclosure. Although the vegetation is largely non-native groundcover (including iceplant), the bluff face appears natural and undeveloped. The sand pit cut-out will affect public views of the vegetated bluff from the adjacent public beach, inconsistent with the current pattern of development in the immediate vicinity. At present, no development has been permitted at the toe of the slope. Over time, incremental impacts can have a significant cumulative adverse visual impact. Applicants in the subject area may begin to request new construction on the bluff face and at the toe of slope, thus affecting the pattern of development in the subject area.

c. Cumulative Impacts

The proposed project would set a precedent for future development to intensify residential development in the subject area. Over time, incremental impacts can have a significant cumulative adverse visual impact. Applicants could begin to request new construction on the bluff face and/or at the toe of the slope, thus contributing to adverse visual impacts.

As described previously, the proposed project is located along a coastal bluff immediately inland of Corona Del Mar State Beach, a public beach. The site is highly visible from the sandy beach. Although several lots have stairways traversing the bluff face and some have unpermitted development at the toe of the bluff, the overall appearance of the bluff in this area is natural and undeveloped. Approval of the proposed project would set a precedent for the construction of other such development along the bluff face that would alter the natural land form, resulting in adverse visual impacts and seaward encroachment. Development at this site must be sited and designed to be visually compatible with the undisturbed character of the surrounding area.

Cumulative adverse impacts will result if additional lots along Ocean Boulevard develop the toe of slope and/or bluff face in a similar manner. In addition, the proposed cut-out results in alteration of the natural landform. As such, the portion of the proposed project involving the establishment of a sand pit cut-out area is inconsistent with Section 30251 of the Coastal Act. Therefore, the Commission denies the sand pit cut-out to protect views of the bluff from the public beach and along the shoreline and to minimize landform alteration.

Conclusion

The Commission finds that the project is not sited and designed to protect scenic and visual qualities of the site as an area of public importance. Denial of the proposed project will preserve existing scenic resources and will be consistent with preserving the existing community character where development occurs at the top of the coastal bluff. The alteration of the bluff from construction of the stairway will result in an adverse visual effect when viewed from public vantage points such as the beach and Inspiration Point. Allowing the proposed project would also lead to seaward encroachment of new development in an area where extensive unpermitted development has occurred that has encroached seaward

and threatens to affect the community character. The Commission finds that the proposed project will result in the alteration of natural landforms and would not be visually compatible with the character of the surrounding area. Consequently, the project will increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites and therefore must be denied.

Lastly, although not proposed by the applicant, any enlargement of the stairway landing area would constitute increased development of the bluff face, thereby affecting views inland from Corona del Mar State Beach and along the shoreline. As the cumulative effects on increased development would adversely impact the natural bluff appearance, this permit does not authorize enlargement of the stairway or landing in any manner.

## 2. Public Access

Sections 30211 and 30212 (a) of the Coastal Act contain policies regarding public access to the shoreline. Section 30240 addresses appropriate development adjacent to a recreation area. The applicant is requesting after-the-fact approval of a "sand pit" cut-out at the base of the bluff. The sand-pit consists of three low block walls along the toe of the slope enclosed by a nautical rope supported by wooden pier pilings in the sand. The area will be used for the placement of temporary furniture such as tables, umbrellas, and chairs, thereby establishing a private use area at the base of the bluff. As discussed previously, the proposed cut-out will adversely affect the public's ability to use the beach due to the perception of privatization. Allowance of the cut-out at this location may also contribute to adverse cumulative impacts as neighboring property owners construct similar features at the toe of the slope. The establishment of a private enclosure at the toe of the slope will effectively discourage the public from using this portion of the public beach.

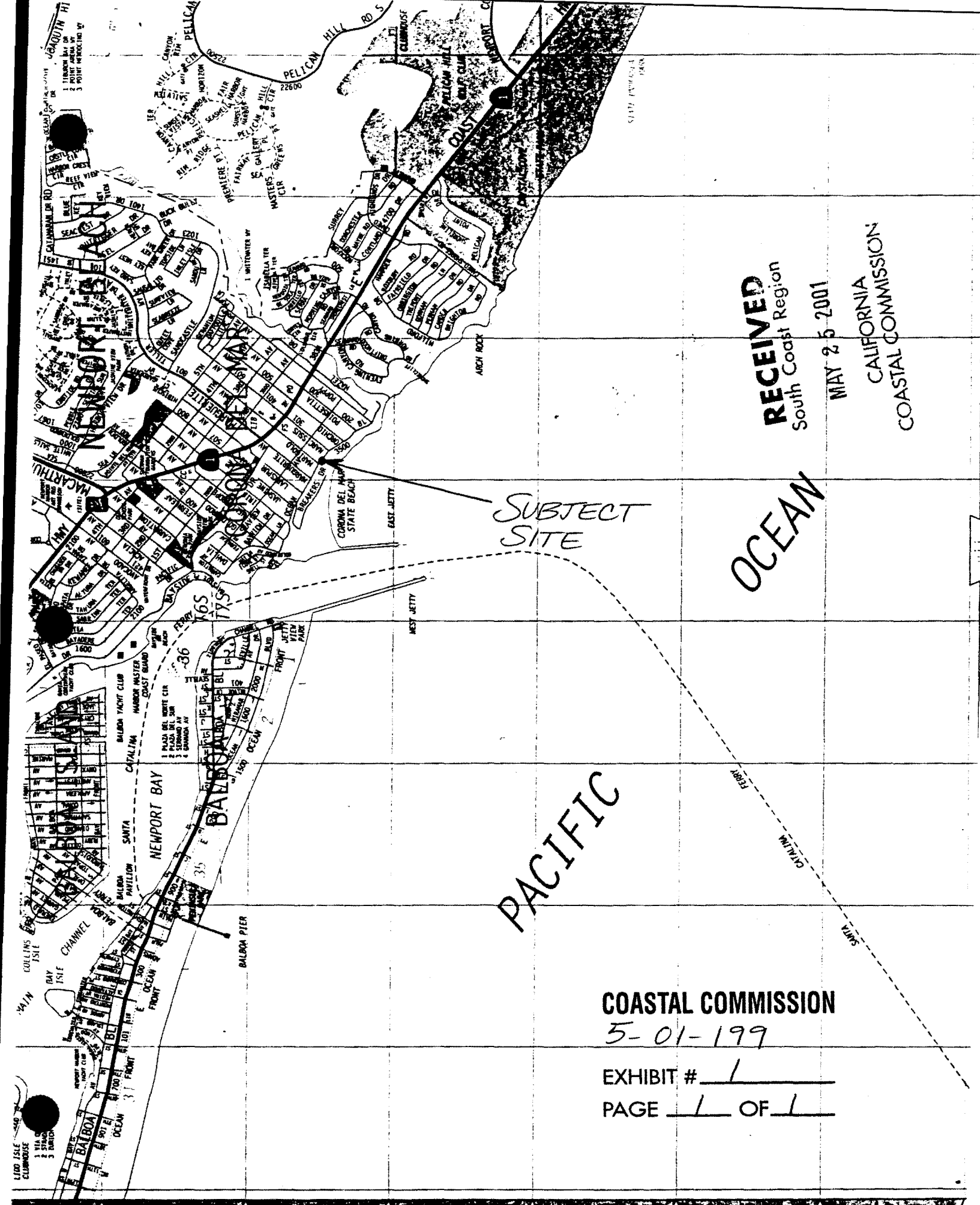
While the project is proposed entirely on private property, the presence of the applicant's sand pit area will discourage public use of the sandy beach directly adjacent to the enclosed area by giving the appearance of a private beach. Beach-goers are less likely to utilize a segment of the beach that is physically restricted by the neighboring private property owner. Consequently, the portion of the proposed development consisting of the sand pit cut-out will adversely affect the public's continued use of the beach, inconsistent with the public access policies of the Coastal Act. Therefore, the Commission denies the sand pit cut-out to protect public access and recreation at Corona del Mar State Beach.

## 3. Alternatives

Denial of the sand pit cut-out will not deny all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant is left with a substantial residential development of significant economic value covering much of the property and several alternatives to the proposed sand pit cut out. Among those alternatives are the following:

- Placement of Furniture on Private Deck Above  
Comparable area to place temporary furniture such as tables, chairs and umbrellas is available at the applicants' deck area at the top of the bluff, directly adjacent to the existing residence.

- Placement of Furniture on Private Property or Corona del Mar State Beach  
The applicant's property extends approximately 20 feet beyond the toe of the bluff. In addition, Corona del Mar State Beach is located just beyond the applicant's seaward property line. As such, the applicant may place temporary furniture on either their private property or on the adjacent public beach on a short term basis, similar to the manner in which other beach-goers utilize this area. Therefore, the establishment of a sand pit cut-out is not necessary for the applicants to utilize the sandy beach at the subject site.



**RECEIVED**  
South Coast Region

MAY 25 2001

CALIFORNIA  
COASTAL COMMISSION

SUBJECT  
SITE

OCEAN

PACIFIC

COASTAL COMMISSION

5-01-199

EXHIBIT # 1

PAGE 1 OF 1



06

COASTAL COMMERCIAL  
5-01-1999  
EXHIBIT # 2  
PAGE 1 OF 1  
MARCH 1949





**CITY OF NEWPORT BEACH**  
**BUILDING DEPARTMENT**

3300 NEWPORT BLVD.  
P.O. BOX 1768, NEWPORT BEACH, CA 92658  
(949) 644-3275

**RECEIVED**  
South Coast Region

May 8, 2001

MAY 25 2001

CALIFORNIA  
COASTAL COMMISSION

Philip and Lynne Butterfield  
3401 Ocean Blvd.  
Newport Beach, CA 92661

**SUBJECT: Illegal Construction on the Ocean Side of the Property  
at 3401 Ocean Blvd.**

Dear Mr. and Mrs. Butterfield:

We initially discovered a crib wall-type retaining wall built at the bottom of the bluff on the ocean side of your property without permits. When we originally discovered the problem, the wall was tall enough that a building permit would have been required. Since that time, you have removed the top portion of the wall down to approximately 32 inches above grade. Building Inspector Jim Uitermark inspected the site and verified that the wall is now short enough that a building permit is not required.

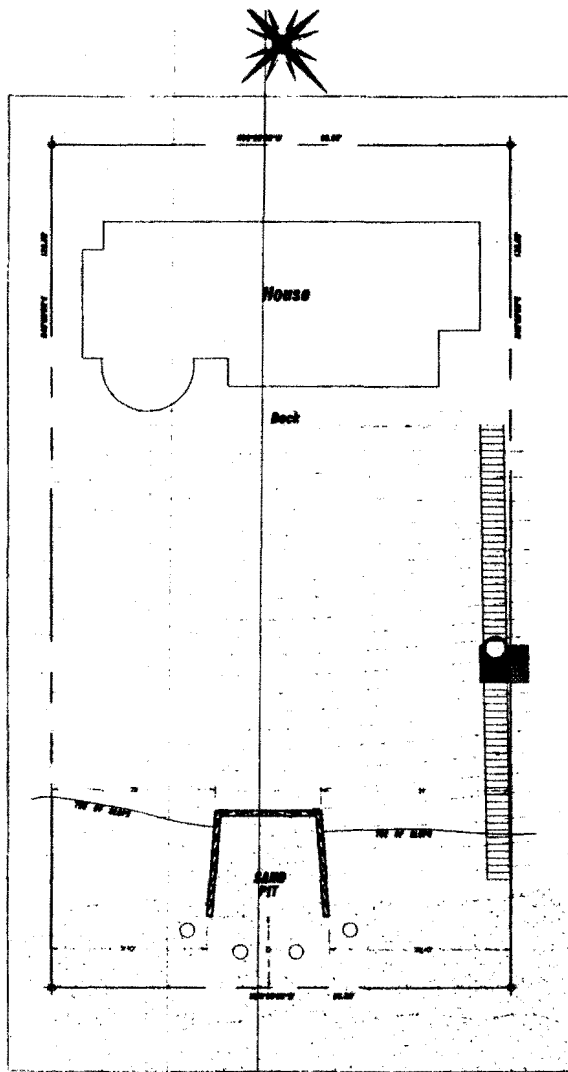
Thank you for your cooperation in this matter.

Very truly yours,  
BUILDING DEPARTMENT  
Jay Elbettar, P.E., C.B.O.  
Director

By: *Steven Hook*  
Steven Hook, Chief Building Inspector

SH:mg

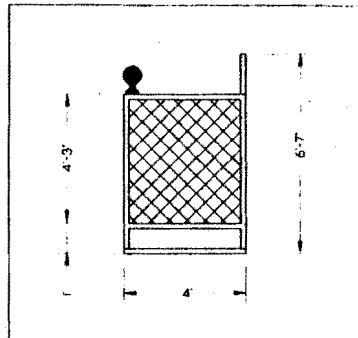
**COASTAL COMMISSION**  
5-01-199  
EXHIBIT # 3  
PAGE 1 OF 1



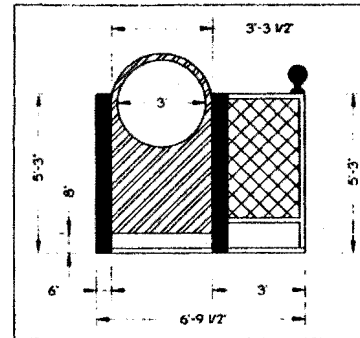
**SITE PLAN**  
SCALE: 1/8" = 1'-0"

**NOTICE:**

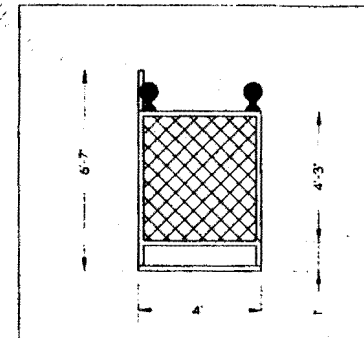
THIS DRAWING IS A REPRESENTATION OF THE BUTTERFIELD RESIDENCE.  
ALL DIMENSIONS AND GRAPHICS ARE APPROXIMATE LENGTH AND WIDTH.  
THIS DRAWING IS FOR THE SOLE PURPOSE OF THE COASTAL COMMISSIONS  
USE TOWARDS GRANTING AN APPROVED COASTAL DEVELOPMENT PERMIT TO  
THE BUTTERFIELD'S. IT IS INTENDED FOR THAT USE AND THAT USE ONLY.  
UPON DELIVERY AND COMPENSATION, THIS PLAN BECOMES THE RESPONSIBILITY  
OF THE OWNER



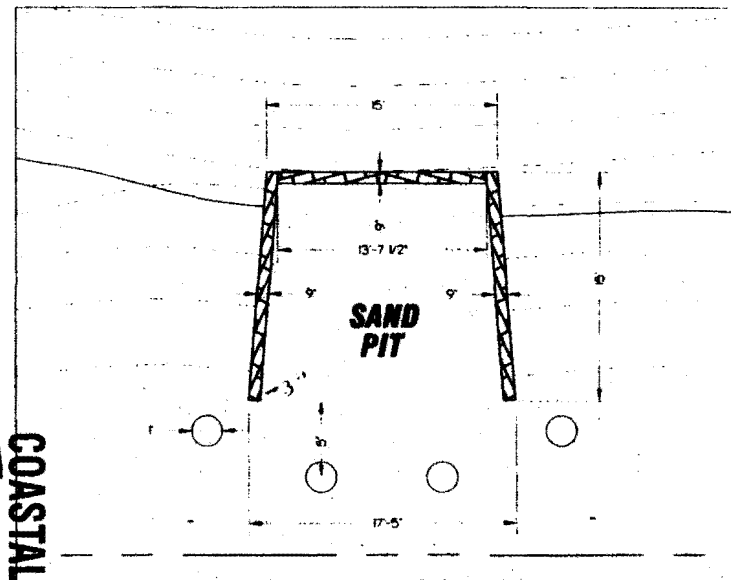
**LT SIDE VIEW GATE DETAIL**  
SCALE: 1/4" = 1'-0"



**FRONT VIEW GATE DETAIL**  
SCALE: 1/4" = 1'-0"



**RT SIDE VIEW GATE DETAIL**  
SCALE: 1/4" = 1'-0"



**SAND PIT DETAIL**  
SCALE: 1/2" = 1'-0"

COASTAL COMMISSION  
5-01-199  
EXHIBIT # 4  
PAGE 1 OF 2

**RECEIVED**  
South Coast

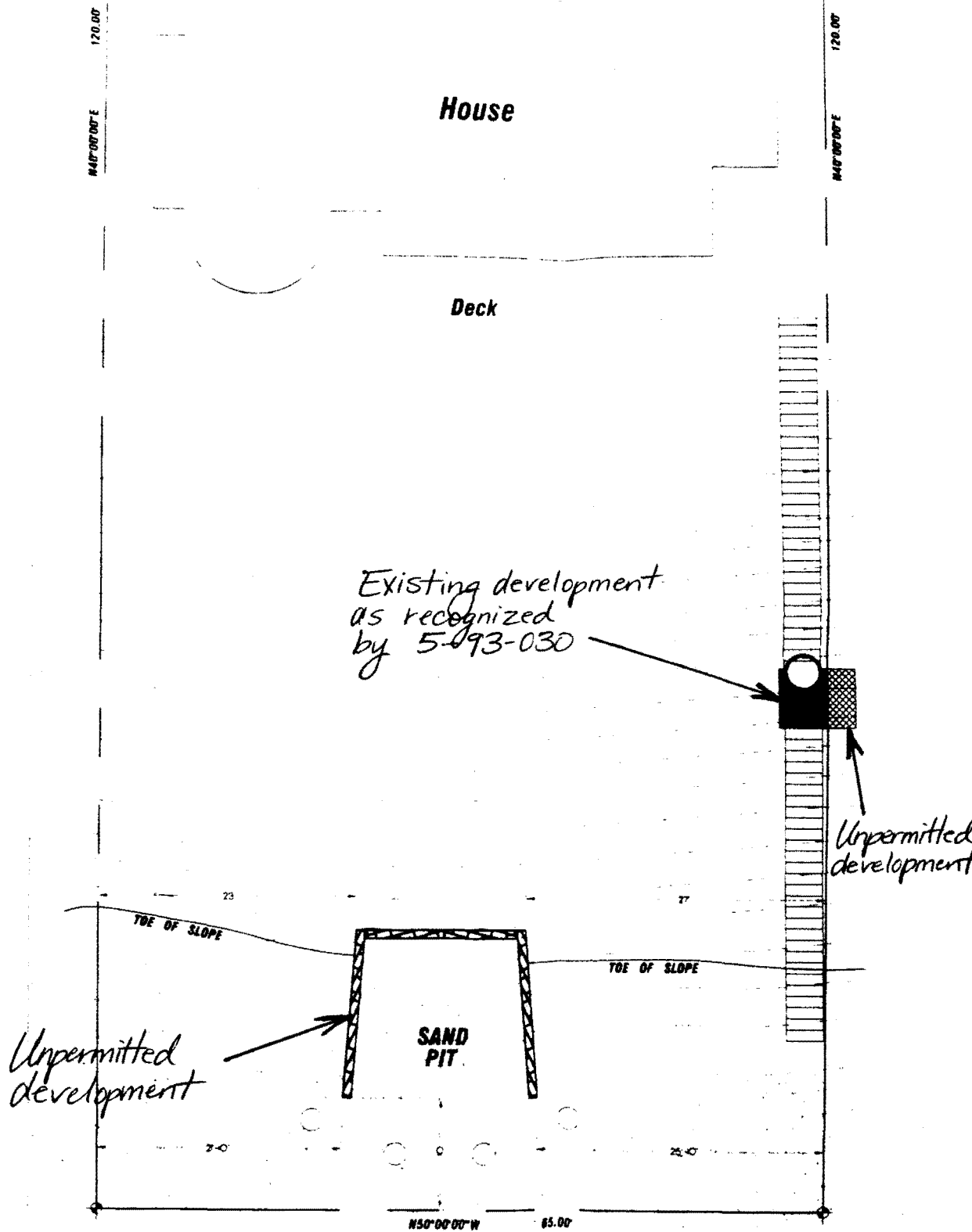
MAY 25 2001

CALIFORNIA  
COASTAL COMMISSION

**COASTAL PERMIT PLAN**  
THE BUTTERFIELD RESIDENCE  
3481 OCEAN BLVD  
CORONA DEL MAR, CA 92625

PROJECT NO.	PP-1
DATE	05-15-01
SCALE	1/2" = 1'-0"
DATE	05-15-01
BY	

**REDLINE M & E**  
Engineering and Drafting Service  
1425 SERRANO AVE. #101  
MIRAMAR BEACH, CA 92652  
(949) 487-1800  
e-mail: dm@redline.com



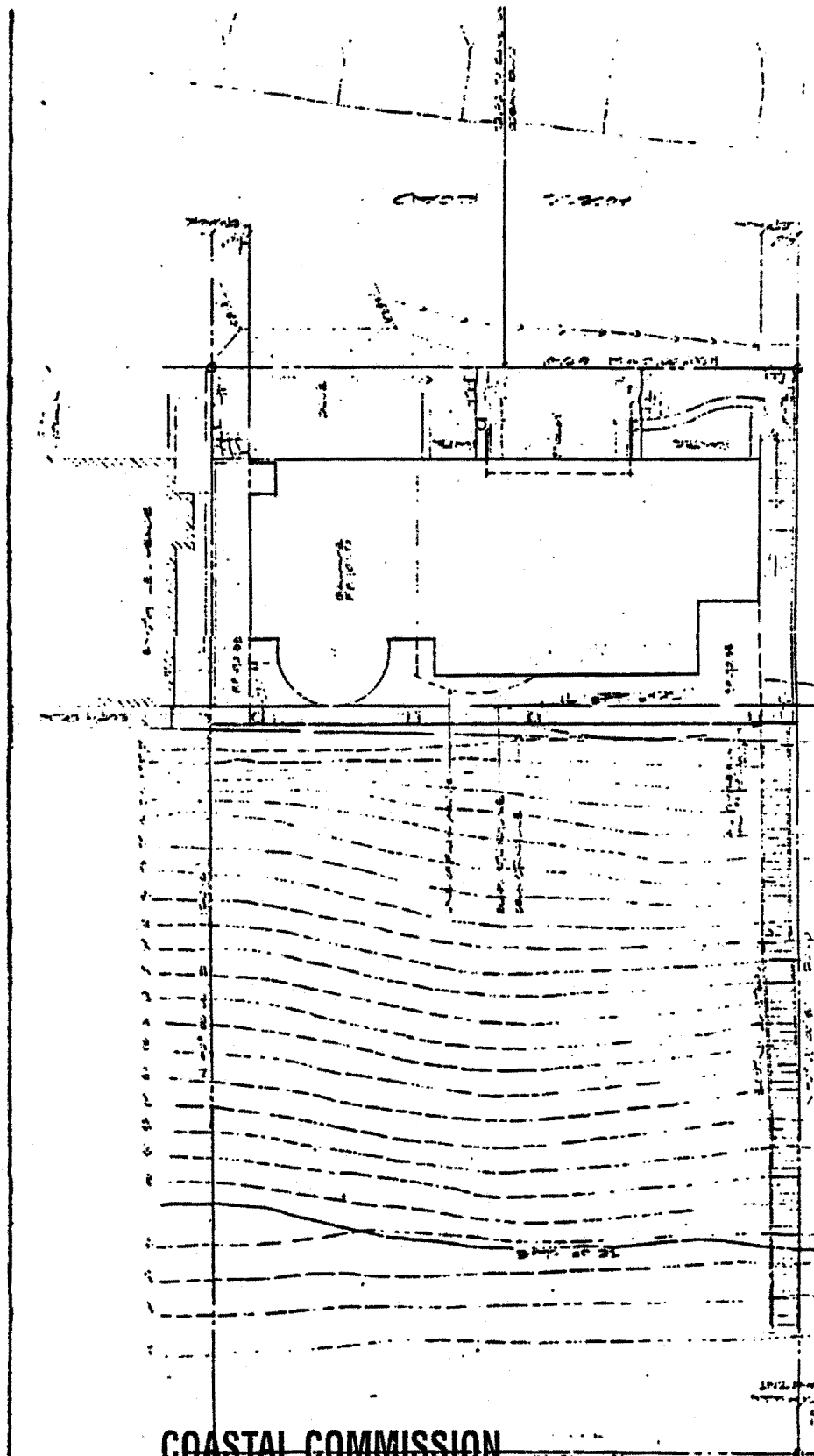
COASTAL COMMISSION

5-01-199

EXHIBIT # 4

PAGE 2 OF 2

SITE PLAN  
SCALE 1/8"=1'-0"



COASTAL COMMISSION

5-01-199

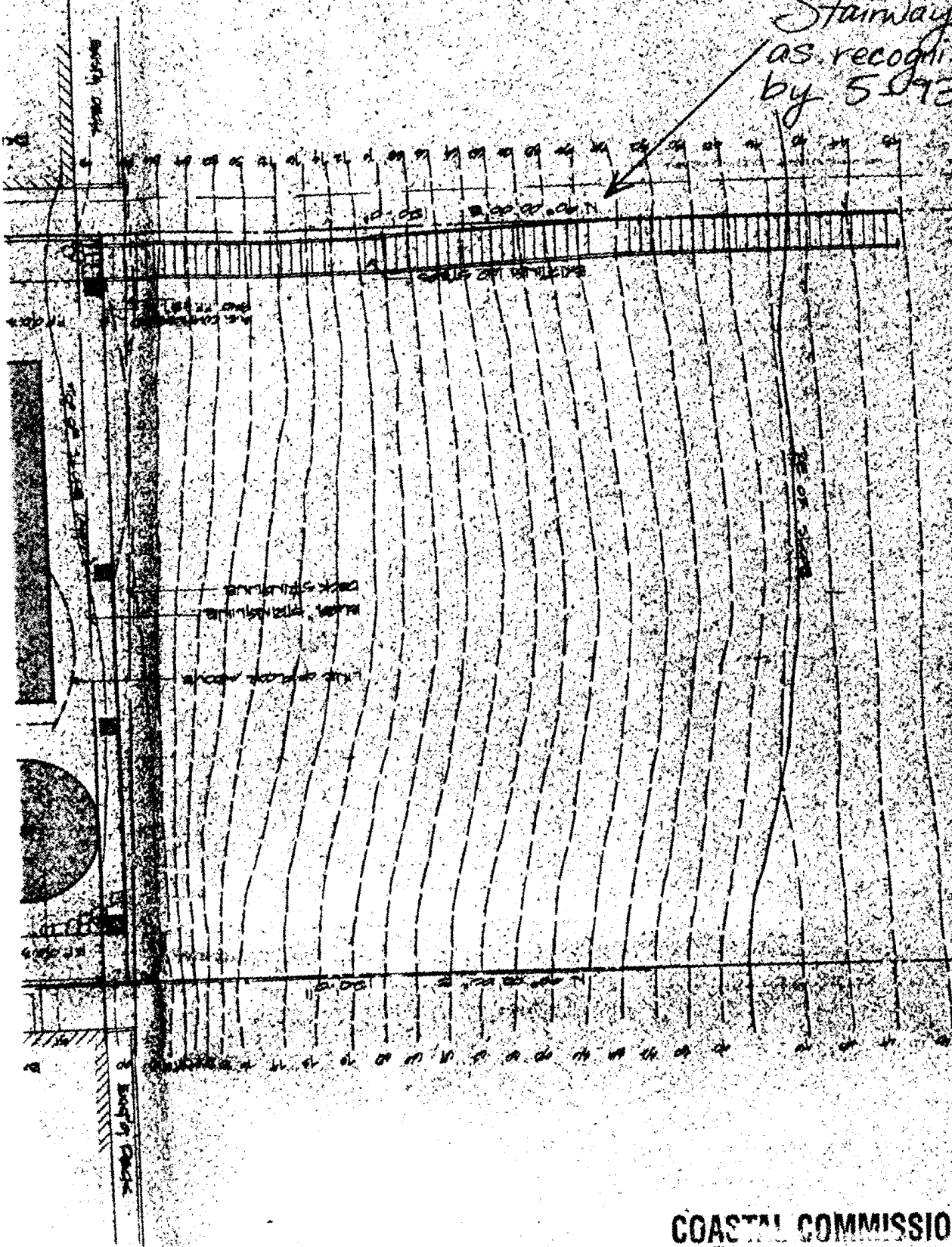
EXHIBIT # 5

PAGE 1 OF 2

Exhibit B  
SITE PLAN  
5-93-030



Stairway  
as recognized  
by 5-93-030



COASTAL COMMISSION

5-01-199

EXHIBIT # 5

PAGE 2 OF 2

*Phil Butterfield*

3401 OCEAN BLVD.  
CORONA DEL MAR, CA 92625  
714-675-7482 PHONE  
714-675-4666 FAX

RECEIVED  
AUG 29 2001  
CALIFORNIA  
COASTAL COMMISSION

August 28, 2001

California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
Attn: Anne Kramer

Appl #5-01-199  
The Butterfields  
3401 Ocean Blvd.  
CDM.CA 92625

COASTAL COMMISSION  
5-01-199

EXHIBIT # 6  
PAGE 1 OF 3

Dear Anne:

On April 24, 2001 we received your "Notice of Violation." On May 1, 2001 we met with you and Grace Noh at your office to respond to this notice, which we did in depth with photos, architectural drawings, a letter from the Newport Beach Building Department and other backup material. After much discussion and deliberation our violations were pared down to 1) the establishment of a new "sand-pit" and 2) the redesign of a decorative gate on the existing bluff face stairway on our beachfront lot. We applied for the permit as you suggested and paid the fee of \$500.00 of which \$250.00 was a penalty. Please see your receipt #3519.

During this meeting we discussed the facts and showed proof that the staircase existed when we purchased the property. (See your copy of the photos.) Therefore, there was no grading or construction of a new staircase as indicated in your "Notice of Violation." Next we addressed the block crib wall (AKA sand-pit) in the toe of the bluff on our property. The retaining walls around the crib/sand-pit retain nothing! I bought and installed the decorative, interlocking stacking blocks to make the area look attractive like the rest of our property. We also gave you a copy of a letter from the city of Newport Beach's Building Department stating that this crib/sand-pit area was not in need of any permits. Next we all addressed the issue of the permanent foundation shade umbrella, which is not permanent! I carried it down our beach stairs myself and set it up on its moveable stand in the center of our block crib/sand-pit area. Please see your copies of the photos we provided reflecting this.

On Friday, August 3, 2001 you phoned me to say you were finishing up our file before you left on a vacation to Cabo San Lucas. You said you were recommending to the commission in your report that our decorative replacement gate be allowed and our block crib/sand-pit be denied. You further went on to tell me that our hearing date would be September 11-14 in Eureka, CA, and you would call us when you returned from your vacation with the exact date so we could attend. Then on Friday, August 18, while you

were still out on your vacation, we received your "Status Letter" that our application had been filed. We signed the "Declaration of Posting" and was about to send it off when you phoned me on Tuesday, August 21.

This time you called to question us on an expanded stair landing and its location (not listed on your "Notice of Violation.") That same day you faxed me copies of my blueprint SP/101 and the new architectural drawings we had made (at your request) of the gate and block crib/sand-pit area. Your fax said I was to contact you at my convenience. I called you back that same day around 4:00 PM. We spoke about the new revelation concerning the staircase landing hanging in the air over the adjacent property (Curt Ensign, 3415 Ocean Blvd.) The area between our adjacent properties is a city-owned easement/right-of-way for the storm drain. I asked you to check the photos I had given to you to see that the landing has always hung over the adjacent property since the stairs were first built by whoever, whenever. You instructed me to respond in writing to you regarding this matter.

Thus the reason for me writing this history of our relationship. We have answered all of your notices, phone calls, questions, and faxes, came in to meet you in person, and paid the fees. We feel we have conducted ourselves in a timely, open and honest manner. We thought this had come to a conclusion after our conversation with you on August 3, 2001.

I have enclosed two new photos for you which I hope along with what I have already given to you will put to rest this new stair landing issue. The first photo shows our old gate while we were under construction, which looks identical to Mr. G. McNamees at 3329 Ocean Blvd., which is pictured in the second photo. I measured their gate landing on Sunday, August 26, 2001. Their landing is 86 1/2" long, and the two wing panels are each 27" long. Our original existing landing is 81" long and our one right-sided lattice wing wall is 30" long. When we redesigned the gate we pushed everything over to the left side of the landing, and the space that remained to the right was enough for only one lattice wing wall. If you look closely at the new photo of our old gate you will notice that it does indeed hang over the adjacent property of 3415 Ocean Blvd. and always has!

I hope this will help to clear up your new questions regarding our stair landing (not listed on your "Notice of Violation" dated April 24, 2001.) I'm sorry this took longer than I expected, Anne. I do not know how to be brief.

Respectfully,



Lynne Butterfield

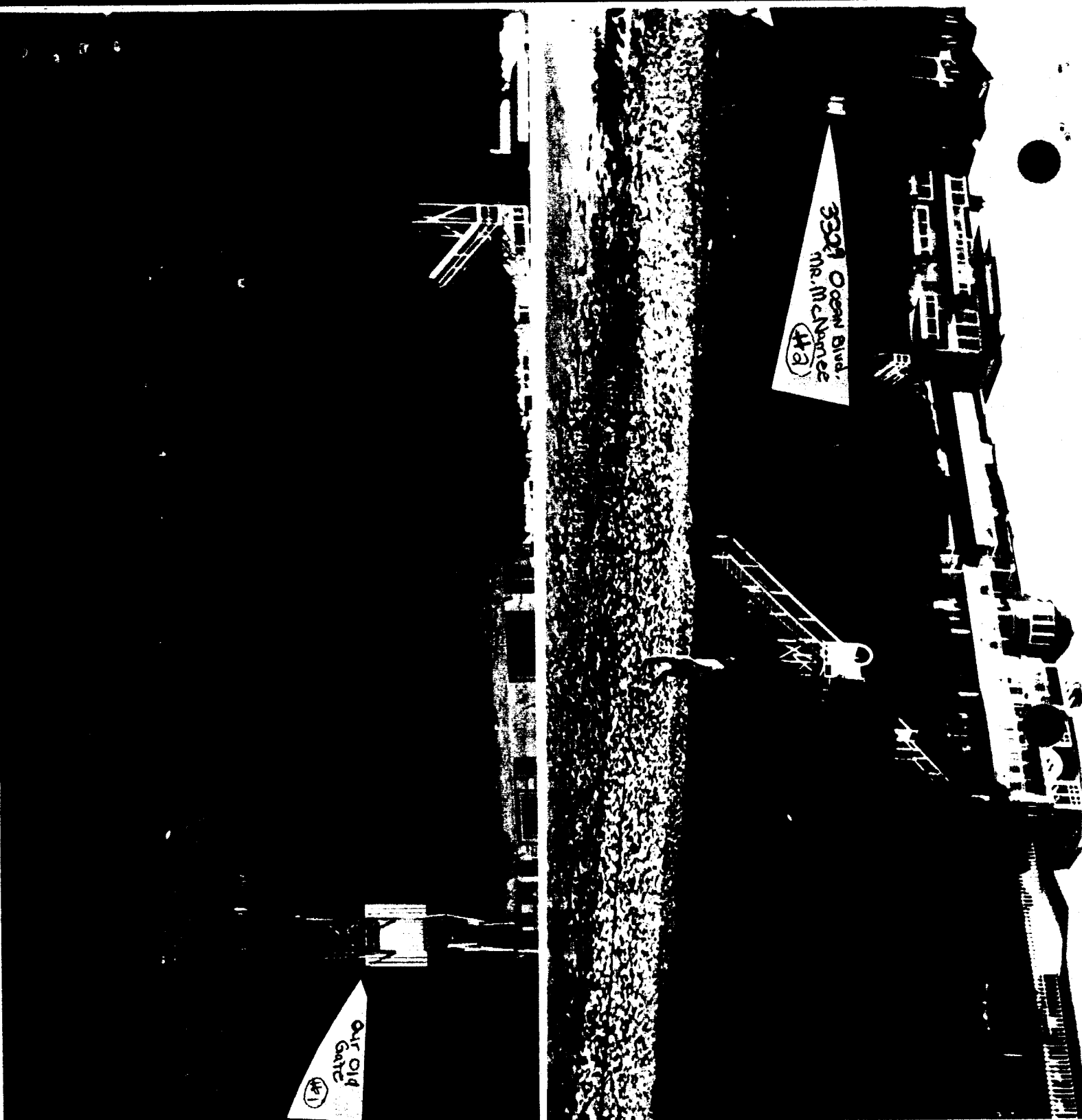
P.S. Please note that our hearing has been changed to October 9-12 in San Diego, per Anne on August 21, 2001.

COASTAL COMMISSION

5-01-199

EXHIBIT # 6

PAGE 2 OF 3



COASTAL COMMISSION

5-01-199

EXHIBIT # 6

PAGE 3 OF 3



**THE ZUMBRUN LAW FIRM**  
*A Professional Corporation*

**RECEIVED**  
South Coast Region

OCT 25 2001

CALIFORNIA  
COASTAL COMMISSION

October 24, 2001

California Coastal Commission  
South Coast Area Office  
Attention: Anne Kramer  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

**VIA FACSIMILE**  
**(582) 590-5084**

Dear Ms. Kramer:

Re: Permit No. 5-01-199, Philip A. and Lynne M. Butterfield  
3401 Ocean Boulevard, Newport Beach, California

This is to advise you that I have been retained by Mr. and Mrs. Butterfield to represent them concerning the above matter. Due to a heavy trial schedule and the need to become fully acquainted with the subject matter involved, it is requested that their California Coastal Commission (CCC) hearing be postponed until early 2002. This also will allow you time to fully evaluate the following observations:

1. Sand pit. Are you aware that Breakers Drive runs from Ocean Boulevard down to the beach and beyond the Butterfield property? I believe CCC has incorrectly used Ocean Boulevard as the closest road to the ocean. Correctly using Breakers Drive changes the application of the regulations CCC is relying upon. In addition, the City of Newport Beach was consulted in establishing this nonstructural sand pit.

2. Gate. The present gate merely replaced a previous unsightly deteriorated gate and was approved by the City of Newport Beach.

3. Latticework. This is decorative and has always been located in its present location. Any issue of intrusion on the adjoining easement area is not in issue due to adverse possession and prescriptive rights concepts.

**COASTAL COMMISSION**

5-01-199

EXHIBIT # 7

PAGE 1 OF 2

3800 Watt Avenue  
Suite 101  
Sacramento, CA 95821

Tel 916-486-5900  
Fax 916-486-5959

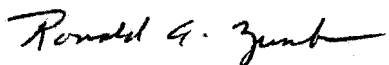
Ms. Anne Kramer  
California Coastal Commission  
October 24, 2001  
Page 2

4. Deed Restriction. There is no nexus to justify the proposed deed restriction. *See Nollan v. California Coastal Commission* (1987), 483 U.S. 825.

5. Jurisdiction. There is an issue of CCC jurisdiction in this matter. *See* May 8, 2001, decision of the Sacramento County Superior Court in *Marine Forests Society, et al. v. California Coastal Commission*, Case No. 00AS00567, which is now on appeal.

After drafting this letter I received a copy of District Manager Teresa Henry's fax to Mr. and Mrs. Butterfield. I have enclosed the Agreement for Extension of Time regarding an extension of time.

Very truly yours,

  
RONALD A. ZUMBRUN  
Managing Attorney

Enclosure

cc: Ms. Teresa Henry, District Manager

COASTAL COMMISSION  
501-199  
EXHIBIT # 7  
PAGE 2 OF 2

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
TELEPHONE AND TDD (415) 904-5200



November 2, 2001

Ronald A. Zumbrun  
The Zumbrun Law Firm  
3800 Watt Avenue, Suite 101  
Sacramento, CA 95821

Re: Coastal Development Permit Application No. 5-01-199 (Butterfield)

Dear Mr. Zumbrun,

I received a copy of your October 24, 2001 letter addressed to Coastal Commission analyst Anne Kramer. Your "Agreement for Extension of Time" form for the above-referenced matter has been received, and your request to postpone the hearing on the matter until 2002 is duly noted. At this time, I cannot tell you whether or not that request will be granted. The staff in the Long Beach District Office will make that decision.

Thank you for the additional "observations" you included in your letter. With respect to your first observation, Breakers Drive is a private road. In addition, although it exists on a lot that extends beyond the subject site, only the "upcoast" section of that lot has been improved. As a result, there is no road of any sort between the subject site and the sea.

Regarding your fifth observation, as you are well aware, the order issued by the Sacramento County Superior Court in *Marine Forests Society v. California Coastal Commission*, Case No. 00AS00567, included a stay pending completion of all appellate review.

Finally, the fact that this letter does not address your other observations individually should not be interpreted as concurrence with your stated views. The Commission's position on those additional issues will be made clear by the Commission's action on the permit request.

Please feel free to contact me at the number provided above if you have any questions. Thank you for your assistance.

Sincerely,

ALEX N. HELPERIN  
Staff Counsel  
California Coastal Commission

cc: Anne Blemker (formerly Kramer)

COASTAL COMMISSION

5-01-199

EXHIBIT #

8

PAGE 1 OF 1

