

CALIFORNIA COASTAL COMMISSION

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

RECORD PACKET COPY

Filed: March 20, 2001
 49th Day: May 8, 2001
 180th Day: September 16, 2001
 Staff: ALK-LB *AK*
 Staff Report: May 24, 2001
 Hearing Date: June 12-15, 2001
 Commission Action:

**Item Th 19j****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-01-097

APPLICANT: John and Cheryl Moe

PROJECT LOCATION: Parcel 2 of Map 89-112, 229/231 W. Avenida Alessandro,
 San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a new 1912 square foot, three level, 25' average maximum height, single-family residence with an attached 448 square foot two-car garage on a vacant coastal canyon lot. The project also involves approximately 40 cubic yards of cut and 4 cubic yards of fill for basement excavation and site preparation. Excess material will be disposed of outside the coastal zone.

LOCAL APPROVALS RECEIVED: Approval-in-Concept from the City of San Clemente Community Development Department dated February 8, 2001.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission **APPROVE** the proposed development with six (6) special conditions. The site is located adjacent to Riviera Canyon, one of seven coastal canyons in San Clemente identified as containing environmentally sensitive habitat. 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 proposed development conforms to the canyon setback policies in the certified LUP, as development will be set back 30% the depth of the lot and more than 15 feet from the line of native vegetation. Additionally, the project is consistent with a building area restriction imposed by the Commission under CDP 5-97-122, which allowed subdivision of the subject site.

Special Condition 1 requires the applicant to submit plans that show evidence of conformance with geotechnical recommendations, including those regarding site preparation, foundation design and drainage. Special Condition 2 requires submission of a revised planting plan which shows that only drought-tolerant native species will be used. Special Condition 3 requires the applicant to limit disturbance of existing vegetation and ensures that the canyon slope will be replanted with natives if disturbed during construction. Special Condition 4 requires compliance with the grading and drainage plan. Special Condition 5 requires the recordation of an assumption of risk deed restriction. Special Condition 6 requires the applicant to record a deed restriction, which ensures that the applicant and future landowners are aware that future development requires a coastal development permit.

SUBSTANTIVE FILE DOCUMENTS:

City of San Clemente certified Land Use Plan; Coastal Development Permits 5-97-122 (Sawall); 5-99-385 (Reddington); 5-99-380 (Beck); P-7-10-73-1429 (Villa Development Co.); 5-82-785 (Di Stephano); G5-92-400 (Villa Montalvo Vista Ltd.); 5-92-478 (Villa Montalvo Vista Ltd.); P-193 (36 Unit Condominium); P-193-A (33 Unit Condominium); *Report on Investigation Geologic/Soils and Foundation Conditions the West 200 Block of Avenida Alessandro (Portion of Block 11 of Tract No. 852), San Clemente, CA (Job No: 90-001)* prepared by Ian S. Kennedy, Inc. dated June 3, 1997 and revised on March 12, 2001.

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP #5-01-097 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL 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, located between the first public road and the sea, 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. Conformance of Design and Construction Plans To Geotechnical Recommendations

- A. The applicant shall comply with all recommendations contained in the *Report on Investigation Geologic/Soils and Foundation Conditions the West 200 Block of Avenida Alessandro (Portion of Block 11 of Tract No. 852), San Clemente, CA (Job No: 90-001)* prepared by Ian S. Kennedy, Inc. dated June 3, 1997 and revised March 12, 2001.
- B. The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Submittal of Revised Planting Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a revised planting plan prepared by an appropriately licensed professional 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 planting plan;
 - (c) Landscaped areas in the rear and side yard (canyon-facing) areas 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 adjacent to Riviera Canyon 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 (street-facing) area can include ornamental or native, drought-tolerant plants. Vegetation installed in the ground shall consist of native, drought tolerant plants. 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 permittee 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.

3. Revegetation of Canyon Slope

The applicant shall limit disturbance to existing native canyon vegetation to the maximum extent feasible. In the event that existing vegetation is disturbed during construction of the project authorized by CDP 5-01-097, the applicant shall replant the canyon slope with native, drought-tolerant species.

4. Conformance with Drainage and Runoff Control Plan

A. The applicant shall comply with the Grading and Drainage Plan prepared by Toal Engineering dated March 19, 2001 and with all recommendations contained in the *Conclusions and Recommendations* section of the *Report on Investigation Geologic/Soils and Foundation Conditions, the West 200 Block of Avenida Alessandro (Portion of Block 11 of Tract No. 852), San Clemente, CA (Job No: 90-001)* prepared by Ian S. Kennedy, Inc. dated June 3, 1997, as revised March 12, 2001. In addition, the applicant shall comply with the following provisions:

- (a) Run-off from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street or designated canyon outlet point to avoid ponding or erosion either on- or off- site;
 - (b) Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the sloping surface to the canyon bottom;
 - (b) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Assumption-of-Risk, Waiver of Liability, and Indemnity Deed Restriction

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability; (ii) to assume the risks to the applicant 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, (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 injury or damage due to such hazards.

- C. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant and landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The deed restriction shall include a legal description 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. The deed restriction and lease restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

6. Future Development Deed Restriction

- A. This permit is only for the development described in Coastal Development Permit No. 5-01-097. 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. 5-01-097 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(s). 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.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed development is located on the westerly parcel (Parcel 2) of a vacant two-parcel site on W. Avenida Alessandro in the City of San Clemente, Orange County (Exhibits 1 & 2). (A street address has not yet been assigned to the subject parcel.) The project site is located adjacent to Riviera Canyon, identified in the City of San Clemente Certified Land Use Plan (LUP) as one of seven environmentally sensitive coastal canyon habitat areas (Exhibit 3). Surrounding development consists of low-density single-family residences.

The subject site is a sloping lot, descending from a narrow, level pad area adjacent to the street to a gully and narrow streambed at the rear of the property. (The applicant's property extends to the canyon bottom.) The project site is located approximately one-half mile from the beach. Due to the curvilinear configuration of the streets in the subject area, the site is considered to be located between the first public road and the sea. The nearest public coastal access is available via the Riviera Access point (Exhibit 4).

The proposed development consists of the construction of a new 1912 square foot, 25' average maximum height, three level (including basement) single-family residence with an attached 448 square foot two-car garage and minimal landscaping on an approximately 0.83 acre lot (Exhibit 5). The project also involves approximately 40 cubic yards of cut and 4 cubic yards of fill for basement excavation and site preparation. The proposed structure will be supported by a caisson and grade beam foundation system, as recommended by the geotechnical consultant. All rooftop runoff will be taken to the street, while rear and side yard runoff will be conveyed to a controlled discharge point on the canyon slope.

The proposed development conforms to the canyon setback policies in the certified LUP, as development will be set back 30% the depth of the lot and more than 15 feet from the line of native vegetation. There is no existing native vegetation on the proposed building pad; however, a sparse grouping of coastal sage scrub exists on the easterly portion of the two-parcel site (to be considered under a separate permit) and a mix of native and non-native species exists along the adjacent canyon slope. Protection of the canyon as an environmentally sensitive habitat area will be discussed in Section D of the current report.

B. PRIOR COMMISSION ACTION AT THE SUBJECT SITE

On October 7, 1997, the Commission approved Coastal Development Permit No. 5-97-122 (Sawall) for the subdivision of a single 1.47 acre parcel into two parcels of 28,060 square feet (Parcel 1) and 36,040 square feet (Parcel 2). No structures or other development, except for the subdivision, was proposed. The permit included three (3) special conditions that required a limitation on the location of future residences, recordation of a future development deed restriction and submittal of revised final plans showing conformance with the required canyon setback. The current application (5-01-097) is for development at Parcel 2. A subsequent application will be submitted for future development at Parcel 1. The proposed development at Parcel 2 is consistent with the requirements of the original permit will not affect special conditions imposed under CDP No. 5-97-122.

C. **GEOLOGIC STABILITY**

1. **Coastal Act Policies**

Section 30253 of the Coastal Act states:

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.

2. **Project Site Geotechnical Report**

The applicant submitted a geotechnical report update (dated March 2001) to supplement the original report prepared in June 1997 by Ian S. Kennedy, Inc. The revised geotechnical investigation includes the results of geologic mapping of the site area, logging of two deep borings, and laboratory tests of the soil samples.

The report provides a description of the general geology of San Clemente, as well as the site geology of the subject lot. As discussed in the report, the bedrock materials present in the vicinity of the subject site are composed of gray siltstone beds, which are assigned to the Capistrano Formation of marine origin and of Upper Pliocene Age. These rocks have been deformed and displaced by faults with numerous landslides in other areas. However, they are fairly flat-lying and are found to be undisturbed at depth in the subject lot area.

The Capistrano Formation siltstone was found to be overlain by marine and non-marine terrace deposits and artificial fill. The artificial fill covers the upper portion of the site and was found to be as much as five feet in depth within the slope area. The fill was probably placed at the time the subject property and street were graded in the late 1960s. Illegal dumping of excess material from nearby construction projects may have also occurred.

The report concludes that the site bedrock is stable, no faults are located on the property, and no evidence of groundwater was found in the test borings. The report also notes that the artificial fill materials are poorly consolidated and unstable, but do not pose a threat to development if the development is anchored in bedrock. Lastly, the report states, "*the subject site is considered suitable if the proposed residence built in compliance with the recommendation made in this report, and upon additional recommendations to be made during construction.*" (Recommendations are discussed in the subsequent section.)

3. **Project Analysis/Special Conditions**

Section 30253(2) of the Coastal Act states that new development shall assure stability and structural integrity and shall not contribute to erosion, geologic instability or destruction of the site or require the construction of protective devices which would substantially alter natural landforms.

Geotechnical Recommendations

The geotechnical report states that the construction of the proposed residence is feasible provided the applicant complies with the recommendations contained in the report. The geotechnical report includes recommendations focusing on foundation design and drainage. The report recommends that a caisson and grade beam foundation system be used to support the proposed structure and discusses allowable bearing capacity to be used in determining caisson depth. The report also advises, *"runoff water should not to be allowed to be directed to the structure, nor allowed to pond adjacent to the structure, nor to spill uncontrolled over the sloping surface. Runoff water collected should be conducted to the street or drainage device."* As submitted, all rooftop runoff will be directed to the street. Runoff from the yard and deck areas will be directed to a discharge point on the lower canyon slope via a 4" drainline to outlet onto a 2'6"(l) x 2'6"(w) x 1'0"(h) rip-rap pad. The placement of rip-rap will prevent erosion and potential damage to the slope from uncontrolled runoff. (The proposed rip-rap will not displace any native plant species, as will be discussed in Section D.)

As discussed previously, a minimal amount of grading (approximately 40 cubic yards of cut) is proposed for excavation of a 300 square foot basement. The geotechnical report provides recommendations for site excavation and construction of basement retaining walls, including a recommendation that *"construction excavations be inspected by an engineering geologist or soils engineer in order to confirm the estimate of subsurface conditions based upon preliminary recommendations."*

Since the recommendations provided by the geotechnical consultant include measures to mitigate any adverse geologic effects, the Commission finds that Special Condition 1 ensures that the consulting geotechnical expert has reviewed the development plans and verified their conformance with the geotechnical recommendations. As such, Special Condition 1 guarantees that the final development plans are consistent with Section 30253 of the Coastal Act.

Coastal Canyon Setback

The City's certified LUP (Policy VII.15), to which the Commission may look for guidance, requires new development on coastal canyon lots to be set back as follows:

"New development shall not encroach into coastal canyons and shall be set back either: a. a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or b. a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or c. in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.

The development setback shall be established depending on site characteristics."

These canyon setback requirements serve the purpose of appropriately siting new development to avoid geologic hazard and/or adverse impacts to environmentally sensitive habitat areas (ESHA). (ESHA impacts will be discussed in Section D.)

The proposed development conforms to the canyon setback requirements in the certified LUP, as development will be set back 30% the depth of the lot (or 30% from the rear of the lot at the canyon bottom) and more than 15 feet from the line of native vegetation (Exhibit 5). While the rear portion of the structure will be constructed into the uppermost canyon slope, the project will be sited more than 15' from any native vegetation. The siting of the proposed development was previously considered by the Commission under CDP No. 5-97-122. In approving the two-lot

subdivision, the Commission found that *"single family residences can be safely constructed on the site in the future."* The Commission recognized that there were sensitive plant species present nearby and approved the subdivision with a limited building area (Exhibit 8). The allowable building area was established in response to potential ESHA impacts. The siting restriction was not established for avoidance of geologic hazard impacts, but for avoidance of native plant species. Based on the information provided in the geotechnical report prepared in 1997 and updated in 2001, the siting of the proposed development is found to be appropriate in this case.

Landscaping

Developments on both coastal canyon and blufftop lots in San Clemente are 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. Review of landscaping plans is necessary to assure that appropriate plant species are selected and limited watering methods are applied. Appropriate vegetation can help to stabilize slopes. Native, drought-tolerant plants common to the local area do not require watering after they become established, 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. Landscaping that involves in-ground irrigation may lead to overwatering or sprinkler line breaks that can contribute to slope instability. Therefore, review and approval of final landscaping and irrigation plans is necessary prior to the issuance of a coastal development permit.

The applicant has submitted a "Planting Plan" prepared by Malefy Land Planning that has been designed to minimize the amount of irrigation necessary, while meeting local fuel modification requirements (Exhibit 6). The plan identifies two planting zones—Zone 1 and Zone 2. Zone 1 is designated the "Enclosed Children's' and Front Yard Zone" which consists of a fenced *"child's play area (with a small lawn area or straw ground cover) and flowering ornamental plantings by owner. Plantings on slope to be of the following fire retardant plantings approved for this use by the Orange County Fire Department."* Zone 2 is the "Existing Zone," which includes plantings that will remain undisturbed. The Planting Plan also illustrates a proposed row of trees and a 42" high hedge adjacent to the frontage street sidewalk. The proposed plantings list for Zone 1 consists of drought tolerant plant species approved by the Orange County Fire Authority. As such, the need for water application will be minimized. Additionally, the Planting Plan indicates that irrigation will be limited to a temporary drip system along the streetside property line. No in-ground irrigation is proposed.

While the applicant is proposing the use of entirely drought tolerant species, the plantings proposed in Zone 1 and along the street include non-native species, such as jacaranda, eucalyptus and bougainvillea. This is inconsistent with efforts to improve the canyon as an environmentally sensitive habitat area through *"vegetation restoration, control of alien plants and animals, and landscape buffering."* (LUP Policy VII.12) To ensure that non-native plant species do not encroach into the adjacent canyon, the Commission imposes Special Condition 2, which requires the submittal of a revised planting plan. The revised planting plan must demonstrate that only native, drought tolerant plant species be planted in the ground throughout the entire lot and affirms that no in-ground irrigation systems may be installed on the site. If the applicant chooses to plant some form of lawn in Zone 1, it must consist solely of drought-tolerant native species. The special condition allows non-native, non-invasive ornamental plants to be utilized in above-ground pots and planters and allows the use of temporary irrigation systems to help plantings establish. Lastly, the condition requires that the plantings be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan. These requirements are necessary to protect nearby environmentally sensitive habitat area (ESHA) and to minimize erosion from uncontrolled site runoff.

As stated previously, the site is located adjacent to Riviera Canyon, designated as an ESHA in the City's certified LUP. While the quality of the ESHA is considered low due to the presence of invasive, ornamental species, the vegetation along the canyon slope serves to stabilize the site. Therefore, the Commission imposes Special Condition 3. The condition requires the applicant to minimize disturbance to existing canyon vegetation during construction. If disturbed, the applicant is required to replant the slope with native, drought-tolerant species. This will serve to minimize erosion of the slope, consistent with geotechnical recommendations.

Site Drainage

Since the manner in which a site drains is important to site stability on canyon lots, a grading and drainage plan has been submitted which documents how site drainage will be accomplished. The plan (prepared by Toal Engineering) shows how runoff from impervious surfaces will be diverted toward the canyon in a non-erosive manner. As shown in Exhibit 7, a 4" drainline will convey runoff to an approximately 2'6"(l) x 2'6"(w) x 1'0"(h) outlet rip-rap pad near the canyon bottom. Rooftop runoff will be directed toward the street. To ensure that the project is carried out in accordance with the plan, the Commission imposes Special Condition 4. Special Condition 4 requires the applicant to carry out the project in conformance with the grading and drainage plan submitted, which incorporates the recommendations of the geotechnical report. The special condition also requires that drainage devices be maintained throughout the life of the development.

As noted above, the geotechnical report provides recommendations regarding site drainage. These recommendations are provided by the geologist in order to avoid any adverse effects that improper site drainage may have upon site stability. For instance, improper site drainage could cause an area subject to slope creep and/or failure to activate and cause damage to the structure. Excessive water infiltration at the subject site will result in potentially hazardous conditions. The geologist's recommendations regarding site drainage are designed to avoid such adverse effects.

Assumption of Risk and Future Improvements

Although the proposed project will be constructed in conformance with the geologic recommendations, risk from development on a coastal canyon is not eliminated entirely. While the project is deemed entirely adequate at this time to minimize any potential hazard, future protection and repair may be required as subsurface conditions continue to change. Therefore, the standard waiver of liability condition has been attached through Special Condition 5. By this means, the applicant is notified that the residence is being built in an area that is potentially subject to geologic hazard that can damage the applicant's property. The applicant is 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.

Finally, in order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability, environmentally sensitive habitat area and/or public access concerns expressed in this staff report, the Commission finds that the applicant shall comply with Special Condition 6, a future development deed restriction. This deed restriction will ensure that the applicant and all successors and assigns are aware that a coastal development permit is required for future development at the site. Future development includes, but is not limited to, structural additions, landscaping and fencing. (ESHA and Public Access will be discussed in the following sections.)

4. **Conclusion/Project Consistence with Coastal Act**

The Commission has found that in order to assure that the proposed development minimizes risks to life and property in areas of high geologic hazard and assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area the applicant shall be conditioned to: 1) conform to recommendations prepared by the geotechnical consultant, Ian S. Kennedy, Inc.; 2) submit a revised planting plan; 3) replant canyon slope if disturbed; 4) conform to the grading and drainage plan submitted and the recommendations of the geotechnical consultant; 5) execute and record an assumption-of-risk deed restriction; and 6) execute and record a deed restriction regarding future improvements to the subject site. Only as conditioned does the Commission find that the proposed development is consistent with Section 30253 of the Coastal Act.

D. **ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)**

1. **Coastal Act and Land Use Plan (LUP) Policies**

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.*

San Clemente's certified Land Use Plan (LUP) discusses the importance of coastal canyons and states:

In most cases, coastal canyons are designated for natural open space, which limits potential development and helps to ensure preservation.

Policy VII.12 of the certified LUP states:

Encourage activities which improve the natural biological value, integrity and corridor function of the coastal canyons through vegetation restoration, control of alien plants and animals, and landscape buffering.

Policy XV.13 of the certified LUP states:

The removal of native vegetation and the introduction of non-native vegetation in the canyons shall be minimized. The use of native plant species in and adjacent to the canyons shall be encouraged.

The policy in the certified LUP concerning setbacks on coastal canyons is found in Chapter 3, Section 302 G, policy VII.15, and states:

New development shall not encroach into coastal canyons and shall be set back either:

- a. *a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or*

- b. *a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or*
- c. *in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.*

The development setback shall be established depending on site characteristics.

2. Site Analysis

The proposed development is located adjacent to Riviera Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP. Riviera Canyon is located in the southern part of San Clemente. The proposed development is consistent with LUP canyon setback policies contained in the City's LUP. The rear portion of the structure will be constructed into the upper 8 feet of the canyon slope, but will not be sited within 15' of native vegetation or within 50' of riparian vegetation. The siting of the residence was addressed by the Commission in its review of CDP No. 5-97-122 (Sawall). In their approval of the subdivision, the Commission found the following,

"Policy VII.15 of the LUP (above) requires that one of three setback policies be applied to development on coastal canyon lots. The stringline policy (c) is not applicable because the lot is long and narrow and the adjacent structures are not situated in such a way that the string line can be applied. Both the proposed parcels meet the 30% depth of lot criteria. This means that the applicable policy is either "a" or "b" of policy VII.15. The utilization of the 15 feet from the canyon edge is not practicable because it would make building sites on both parcels problematic. Therefore, the applicable policy is policy "b," which mandates that development be situated 15 feet from the line of native vegetation and 50 feet from riparian vegetation. There is no riparian vegetation within 50 feet of the proposed development."

Based on a biological assessment report prepared at the time of the Commission's previous action, the line of native vegetation was identified as shown in Exhibit 8. This line established the allowable building area. For the purposes of that subdivision permit, building area referred to the area of enclosed living space. Other development consistent with the habitat setback would be considered with future applications for specific development in the future.

The currently proposed development conforms to the required canyon setback. Additionally, Commission staff has visited the subject site and determined that the site conditions at Parcel 2 are consistent with those present when the Commission originally approved the subdivision in 1997. The existing building pad contains annual grasses and weeds. Vegetation in the adjacent coastal canyon consists of a mixture of natives and exotics. The canyon bottom supports a dense growth of palm trees, pepper trees and a few eucalyptus trees. The canyon slope contains iceplant, jade plants and a few sage and chaparral bushes. The ascending slope to the surrounding residences contains numerous ornamental trees, iceplant, ivy and pampas grass.

The Planting Plan provided by the applicant shows that the front yard area will be landscaped with drought-tolerant trees, shrubs, and groundcovers. However, not all proposed plant types are native species. The rear and side yard portions of the site and upper canyon slope will remain largely undisturbed. A drainage outlet device will be placed along the lower canyon slope to

prevent uncontrolled site runoff. No development will occur in the canyon bottom. The applicant does not intend to physically displace or disturb any existing native plant species on the slope.

3. Special Conditions

The previous section on geologic hazards includes findings to support the special conditions requiring conformance with geologic recommendations, conformance with the planting plan, replanting of the slope if disturbed, conformance with the grading and drainage plan, assumption of risk deed restriction and future development deed restriction. 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 and enhancement of environmentally sensitive habitat area (ESHA).

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. While no rare or endangered species have been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons, including Riviera Canyon (adjacent to the subject site) as environmentally sensitive habitat areas. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis. The canyon adjacent to the subject site is considered a somewhat degraded ESHA due to the presence of both native and non-native plant species.

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 Conditions 2, 3, 4 and 6. Special Condition 2 requires that the applicant submit a revised planting plan demonstrating that all in-ground landscaping be of native, drought tolerant species. As such, non-native species will not be allowed to encroach into the adjacent canyon.

Special Condition 3 requires the applicant to minimize disturbance of existing plant species along the Riviera Canyon slope. A drainage outlet device is proposed along the canyon slope, approximately 15' above the canyon bottom. No development is proposed in the canyon bottom, where the majority of native species exist. However, if any plant species (whether native or non-native) are disturbed during construction, the applicant is required to replant the area with native, drought tolerant species.

The applicant is informed through Special Condition 4 that all water intercepted by the proposed structure must be conveyed in a non-erosive manner to the street or to the designated outlet along the canyon slope by the use of roof and area drains to reduce excessive runoff, erosion, and sedimentation. The condition requires that the grading and drainage plan ensure that sedimentation in the canyon, which may adversely affect the designated environmentally sensitive habitat area, will be prevented. Special Condition 6, the future development special condition, ensures that no development, including landscaping, takes place that would adversely impact the existing designation of the adjacent Riviera Canyon as an environmentally sensitive habitat area.

4. Consistency with Section 30240 and Land Use Plan (LUP) Policies

The proposed development is sited on a building pad adjacent to Riviera Canyon, which is identified in the certified LUP as an environmentally sensitive habitat area (ESHA). The special

conditions of this staff report are designed to protect and enhance Riviera Canyon as an environmentally sensitive habitat area. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30240(b) of the Coastal Act and the policies of the certified LUP.

E. PUBLIC ACCESS

Section 30212(a)(2) of the Coastal Act states, in pertinent 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 permit applications between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. Due to the winding configuration of the streets in the surrounding area and the presence of a cul-de-sac seaward of the property, the proposed development is located between the first public road and the sea. The nearest vertical coastal access is available approximately one half mile south of the subject site via a stairway at the Riviera public access point (Exhibit 4). The Riviera public access point is a municipally maintained stairway leading to a storm drain railroad undercrossing. The accessway serves primarily the surrounding residential development. Due to its location at the mouth of a canyon, access is somewhat isolated. The path is not commonly used by the general public. Lateral access to the Pacific Ocean and sandy beach is available adjacent to the Riviera access point, seaward of the OCTA railroad tracks.

Along the southeastern edge of the subject property is an unimproved trail leading to the canyon bottom (Exhibit 5). Access to this trail from the sidewalk is available via the next door neighbor's property. Commission staff has been informed that this fairly steep footpath is commonly used as an informal accessway to the beach. However, the path is not identified as an accessway in the City's certified LUP.

Neighbors have expressed concern that the existing path will be restricted by the property owners as a result of the proposed development. Commission staff has received communication from residents in the surrounding area who claim the path has been used historically with no physical restrictions or signage discouraging use. The owners have indicated that they have no intent to formally restrict (i.e. fence off) the path, but are concerned about the liability of continued use of their property in this manner.

The applicant and Commission staff have discussed the possibility of requiring a public access dedication across the property to maintain the current footpath. A public access dedication can be required pursuant to Section 30212 only if it can be shown that the development either individually or cumulatively directly impacts physical public access, impacts historic public use, or impacts or precludes use of Public Trust Lands. As discussed above, fencing of the property would effectively close the trail, thereby obstructing a public accessway for which there is at least some currently available evidence of historic use. While the information presently available does not allow a conclusive determination as to whether it is a widely utilized accessway, the path allows neighborhood access to the beach that the applicant is willing to keep open for continued public use through dedication or other means.

At the time of this staff report, no entity has been identified as a potential accepting agency if a public access dedication were to be required. However, as stated above, the property owners are concerned with potential liability for unrestricted use of the path. Staff has informed the owner that

there are several immunities that the State has adopted to protect landowners that allow public recreational use of their land. At the time of this staff report, the owner has indicated that they will not restrict use of the path. Consequently, the imposition of a public access dedication special condition is not necessary to keep the accessway open for public use. To avoid any future conflicts that could arise in connection with respect to access, Special Condition No. 5 informs the applicant that future development, including fencing, requires an amendment to this permit or a new coastal development permit. Therefore, while no fencing is proposed at this time, the Commission will have the opportunity to review possible accessway restrictions in the future.

In this situation, the development is located between the sea and the first public road; however, it does not impact access either directly or indirectly to the ocean. No fencing is proposed in the current application that will obstruct the existing footpath. As such, the development will not create adverse impacts, either individually or cumulatively, on public access and will not block public access from the first public road to the shore. Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

F. LOCAL COASTAL PROGRAM

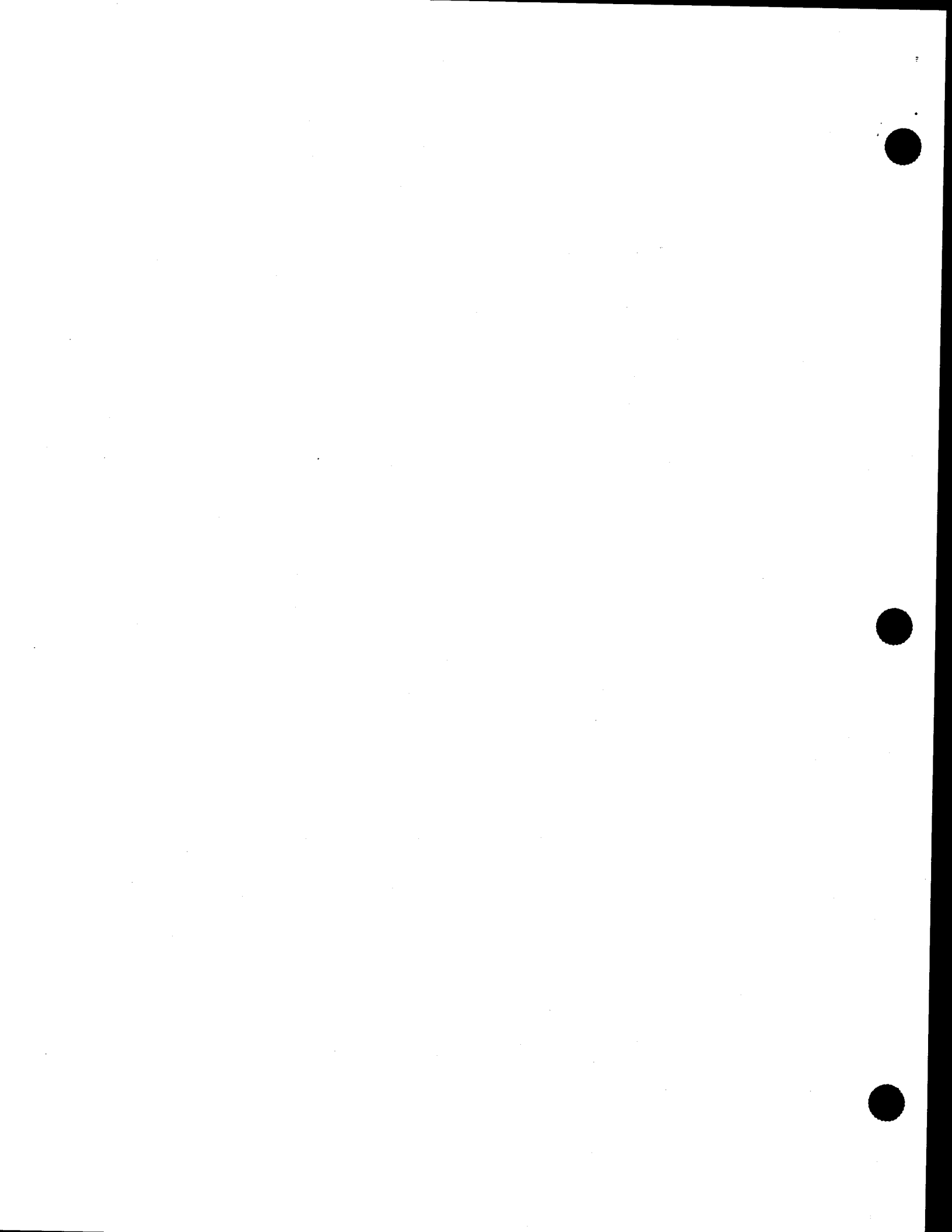
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998 the Commission certified with suggested modifications the IP portion of the Local Coastal Program. The City did not accept the suggested modifications within six months and therefore the Commission's approval of the IP portion of the LCP is no longer effective. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding enhancement of native vegetation, and geological stability. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

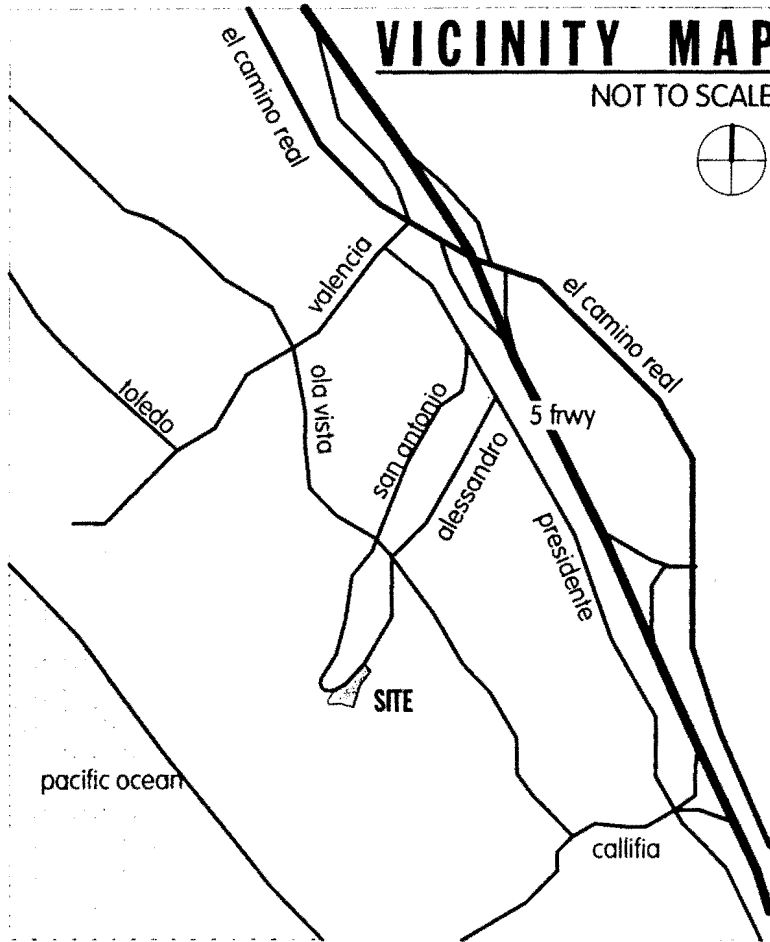
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental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

The proposed project has been conditioned in order to be found consistent with the geologic hazards, water quality and environmentally sensitive habitat policies of the Coastal Act. Mitigation measures, in the form of special conditions, require 1) conformance with geologic recommendations; 2) submittal of a revised planting plan; 3) conformance with the drainage and runoff plan; 4) recordation of a deed restriction regarding assumption of risk; and 5) recordation of a deed restriction regarding future development, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.




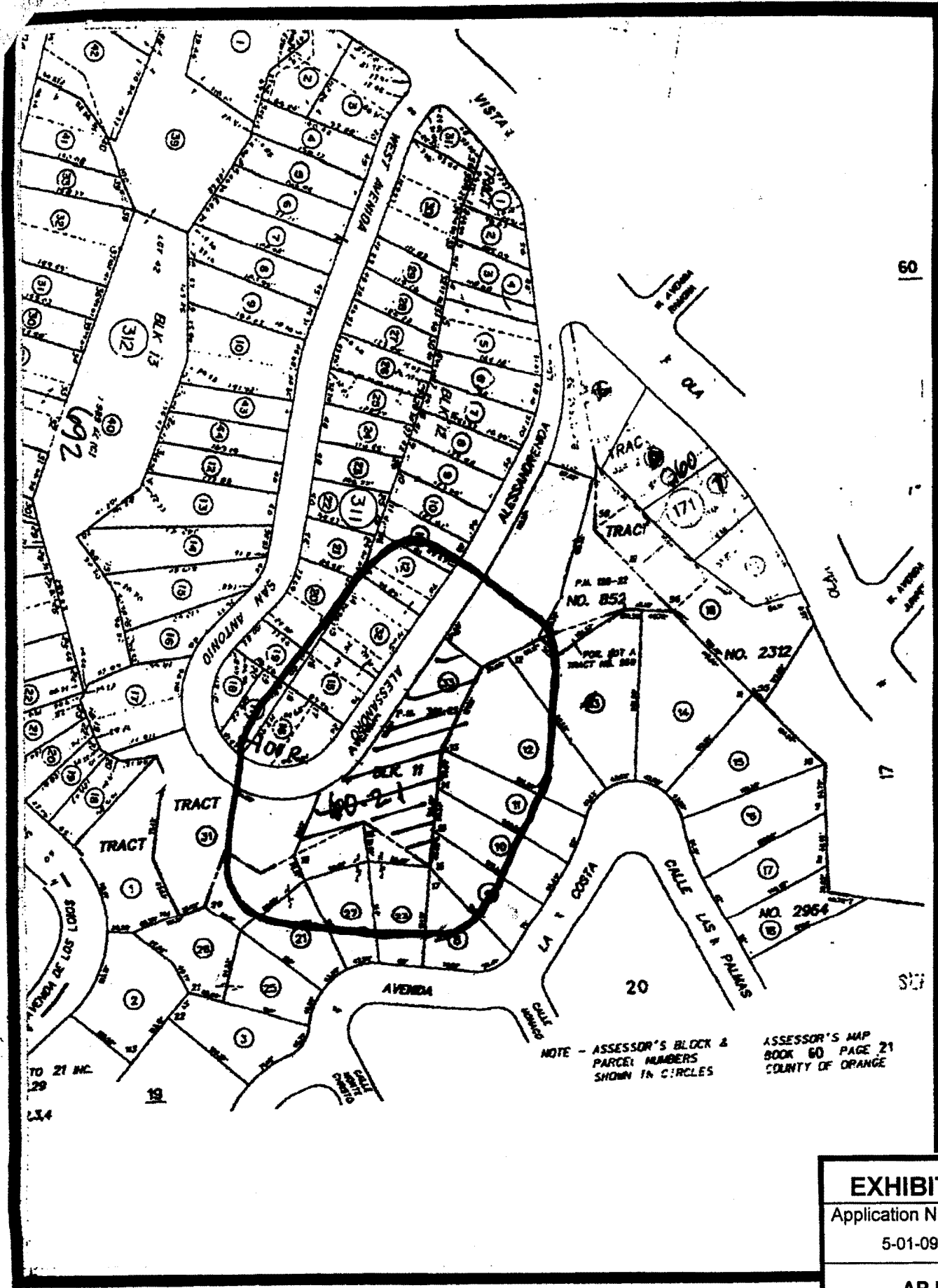
MOE RESIDENCE

200 Block of
W. Avenida Alessandro
San Clemente, CA 92672
PARCEL 2 OF PARCEL MAP 89-112



RECEIVED
South Coast Region
MAR 20 2001
CALIFORNIA
COASTAL COMMISSION

EXHIBIT No. 1
Application Number: 5-01-097 (Moe)
Vicinity Map
 California Coastal Commission



Ownership Map

EXHIBIT No. 2
Application Number: 5-01-097 (Moe)
AP Map
California Coastal Commission

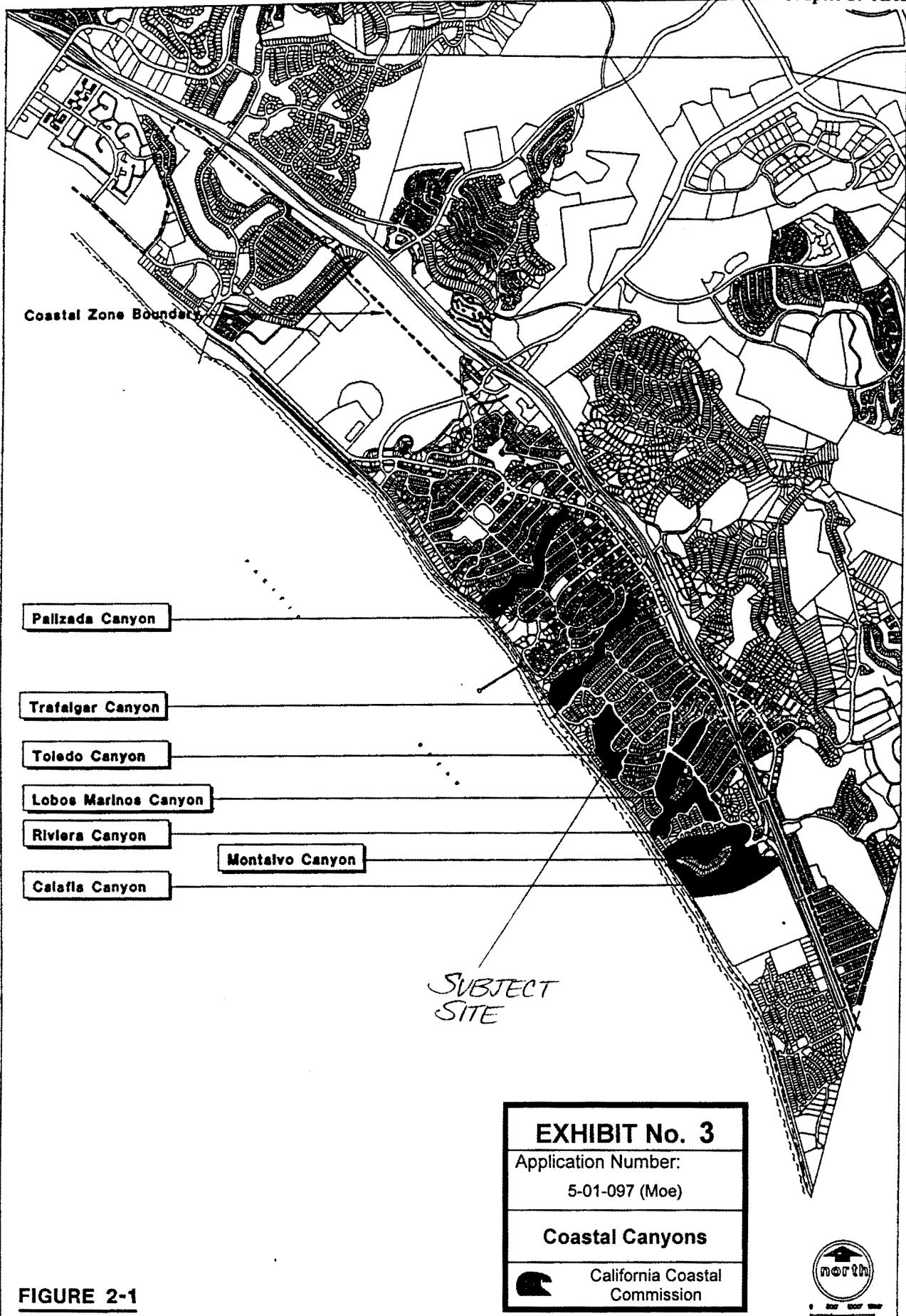
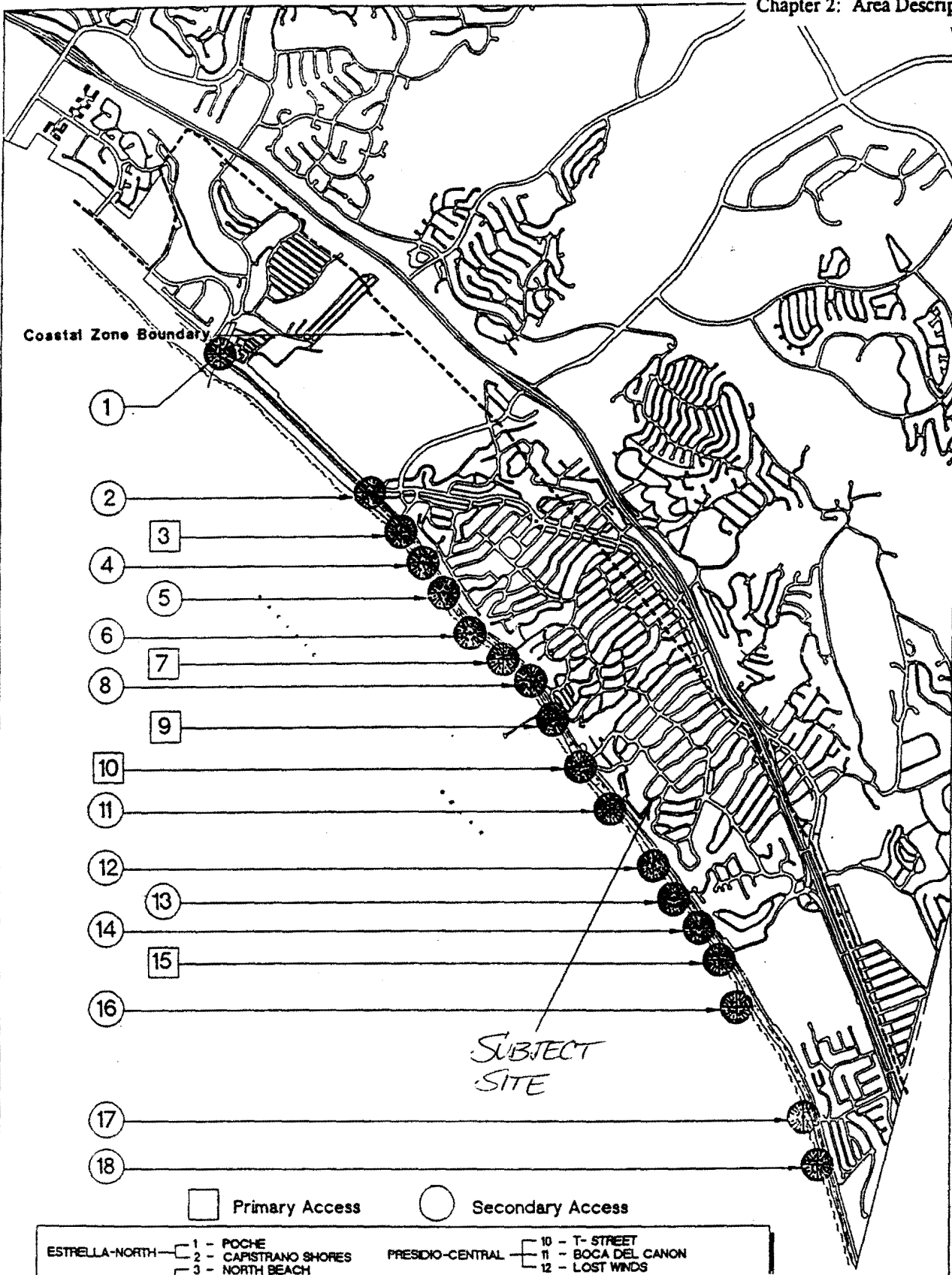


FIGURE 2-1



CITY OF SAN CLEMENTE
COASTAL CANYONS/ ENVIRONMENTALLY SENSITIVE HABITAT AREAS



Coastal Zone Boundary

SUBJECT SITE

□ Primary Access ○ Secondary Access

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

EXHIBIT No. 4
 Application Number:
 5-01-097 (Moe)

Public Access Points

California Coastal Commission

FIGURE 2-5

**CITY OF SAN CLEMENTE
 COASTAL ACCESS POINTS**



CLASS: RESIDENTIAL
 PROJECT: MOE RESIDENCE
 DATE: 11/15/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]

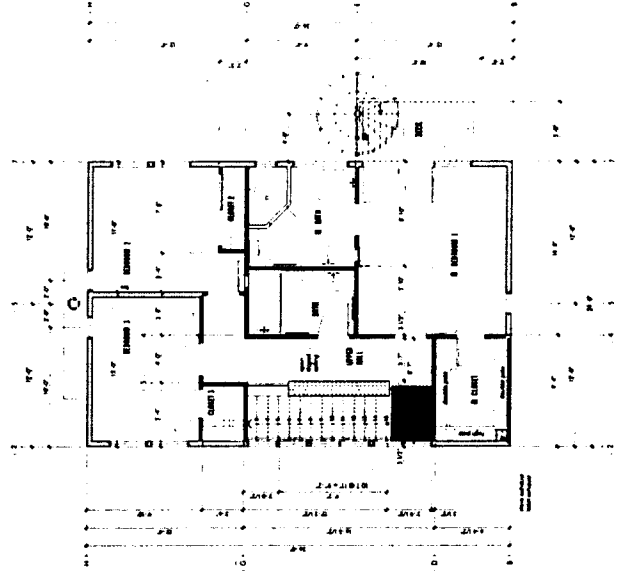
MOE RESIDENCE
 200 Block of
 W. Lincoln Boulevard
 San Francisco, CA 94112
 PHONE: 202-700-0000 FAX: 202-700-0000

FLOOR PLANS

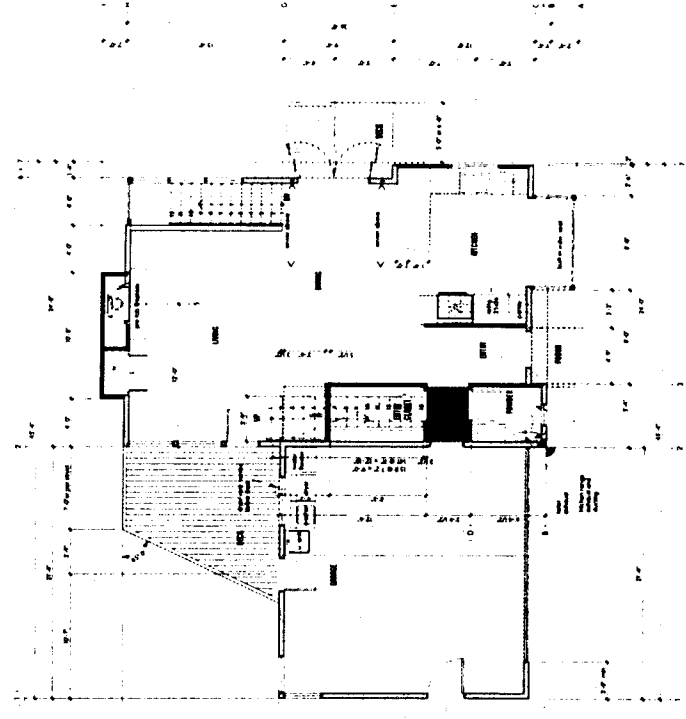
Date: Description:
 11/15/11 200 Block of W. Lincoln Blvd.
 11/15/11 200 Block of W. Lincoln Blvd.
 11/15/11 200 Block of W. Lincoln Blvd.
 11/15/11 200 Block of W. Lincoln Blvd.

200 Project Number

A1

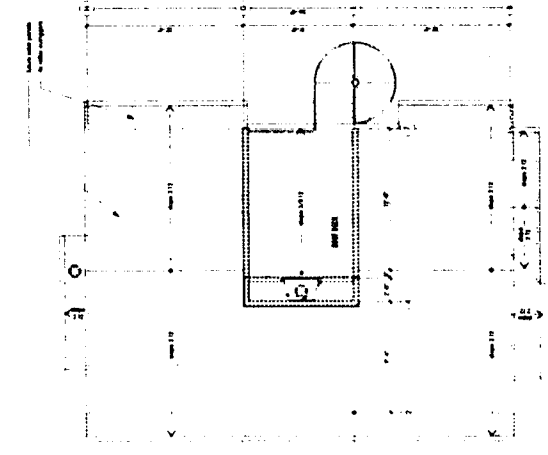


SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"

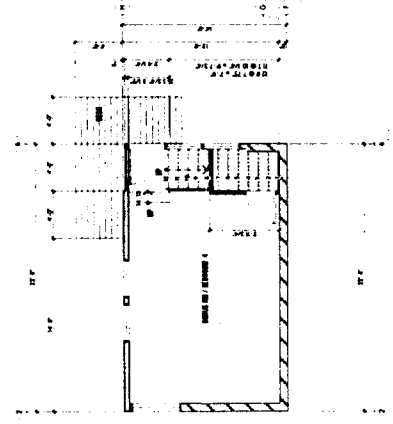


FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

WALL LEGEND
 1/2" solid and dash
 1/2" solid and dash
 1/2" solid and dash
 1/2" solid and dash



REAR DECK PLAN
SCALE: 1/8" = 1'-0"



BASEMENT PLAN
SCALE: 1/8" = 1'-0"

Ex. 5
 2/4

10'

TR. 2964

N 67°24'34"E

EG 301.58'

EG 46.97'

EG 52.49'

EG 51.16'

EG 82.38'

EG 64.38'

EG 68.91'

EG 70.71'

EG 75.85'

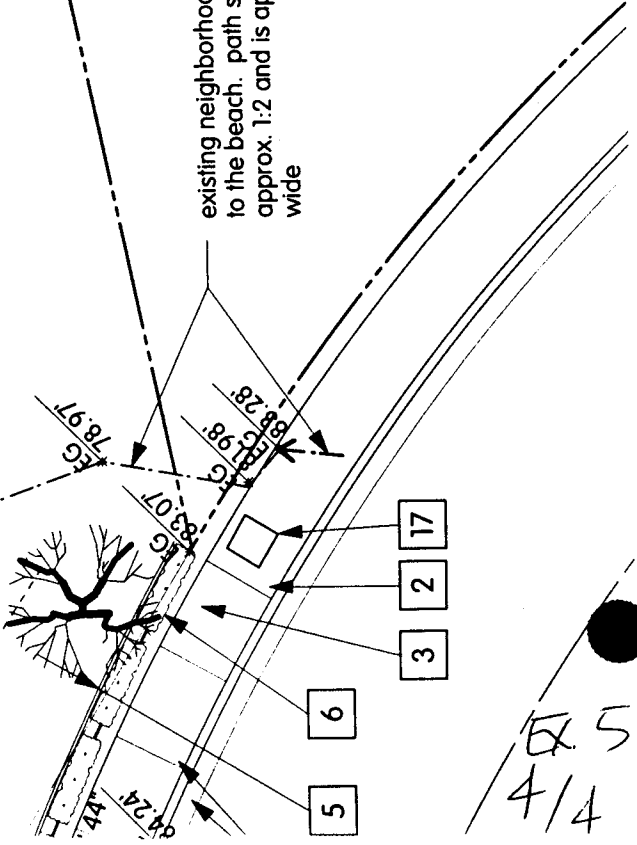
N 25°52'51"E 86.93'

existing neighborhood path travels adjacent to the drainage channel over 6-10 adjacent properties to Riviera Beach. Riviera Beach has a public access point located at street 'Plaza a la Playa' with stairs and a tunnel under the railroad tracks to the beach.

existing neighborhood dirt path to the beach. path slope is approx. 1:2 and is approx. 18" wide

MAY 1 X 2001
CALIFORNIA
COASTAL COMMISSION

EX'G RESIDENCE
237 W. AVE ALESSANDRO



EX 5
4/4

Proposed Tree Plantings

- 1 1" x 1" x 1" (10' H) - 10' H
- 2 1" x 1" x 1" (10' H) - 10' H
- 3 1" x 1" x 1" (10' H) - 10' H

Enclosed Children's and Front Yard Zone

- 1 1" x 1" x 1" (10' H) - 10' H
- 2 1" x 1" x 1" (10' H) - 10' H
- 3 1" x 1" x 1" (10' H) - 10' H

Existing Zone

- 1 1" x 1" x 1" (10' H) - 10' H
- 2 1" x 1" x 1" (10' H) - 10' H
- 3 1" x 1" x 1" (10' H) - 10' H

MoeM Land Planning
 200 Block of W. Avenida Alessandro
 San Clemente, California 92672
 Parcel 2 of Parcel Map 89-112

Project: MOE RESIDENCE
 Client: San Clemente, California 92672
 Date: 01/09/2007
 Drawn by: [Name]
 Checked by: [Name]



MOE RESIDENCE
 200 Block of W. Avenida Alessandro
 San Clemente, California 92672
 Parcel 2 of Parcel Map 89-112

PLANTING PLAN
 Sheet No. []
 of 1 Sheet

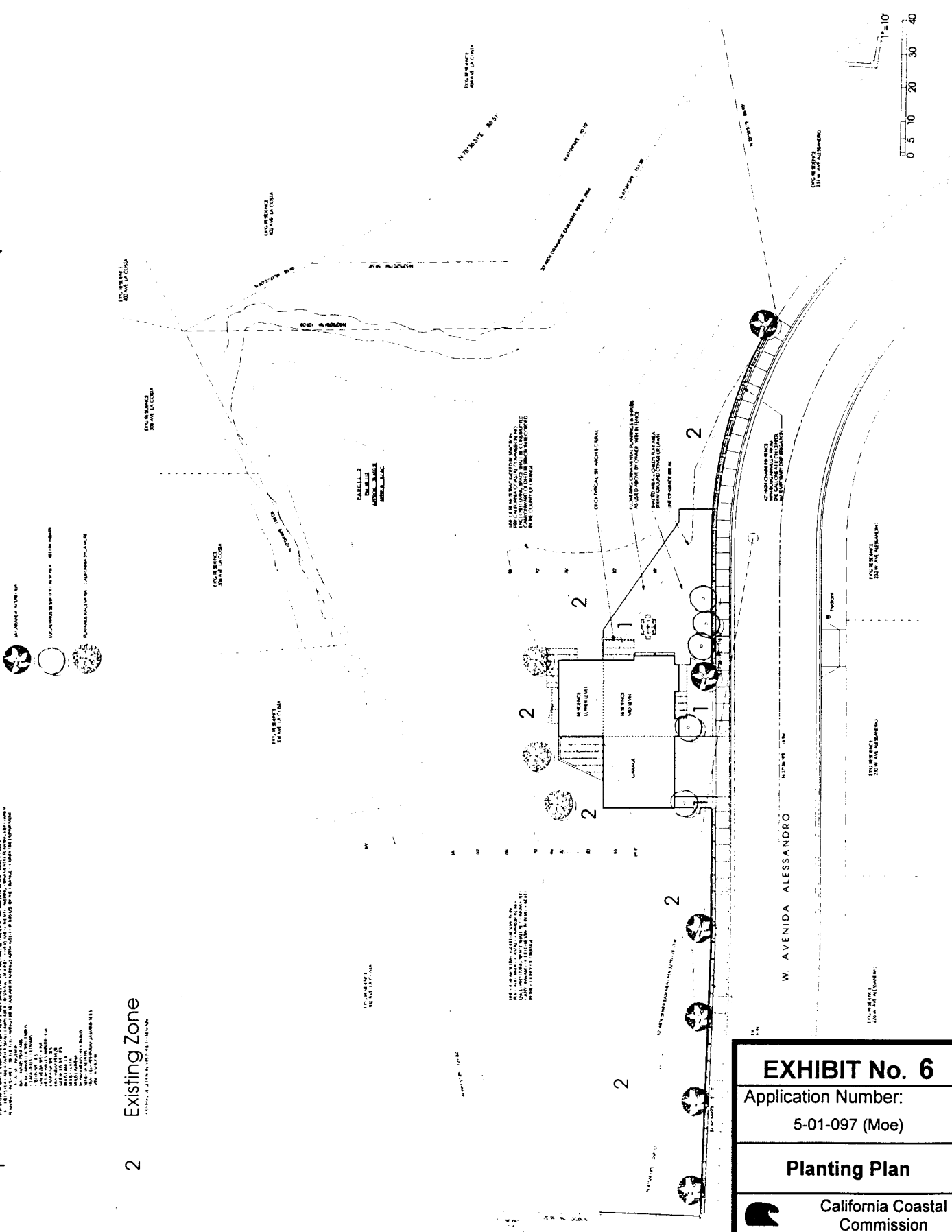


EXHIBIT No. 6
Application Number: 5-01-097 (Moe)
Planting Plan
California Coastal Commission

TOAL ENGINEERING
 139 AVENIDA NAVARRO
 SAN CLEMENTE, CALIFORNIA 92672
 (949) 492-8586
 FAX (949) 498-8625

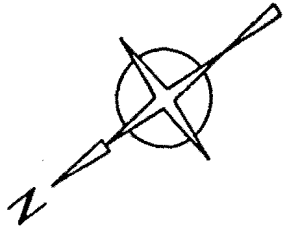
JOB 10289 - MOE RESIDENCE

SHEET NO. 1 OF 1

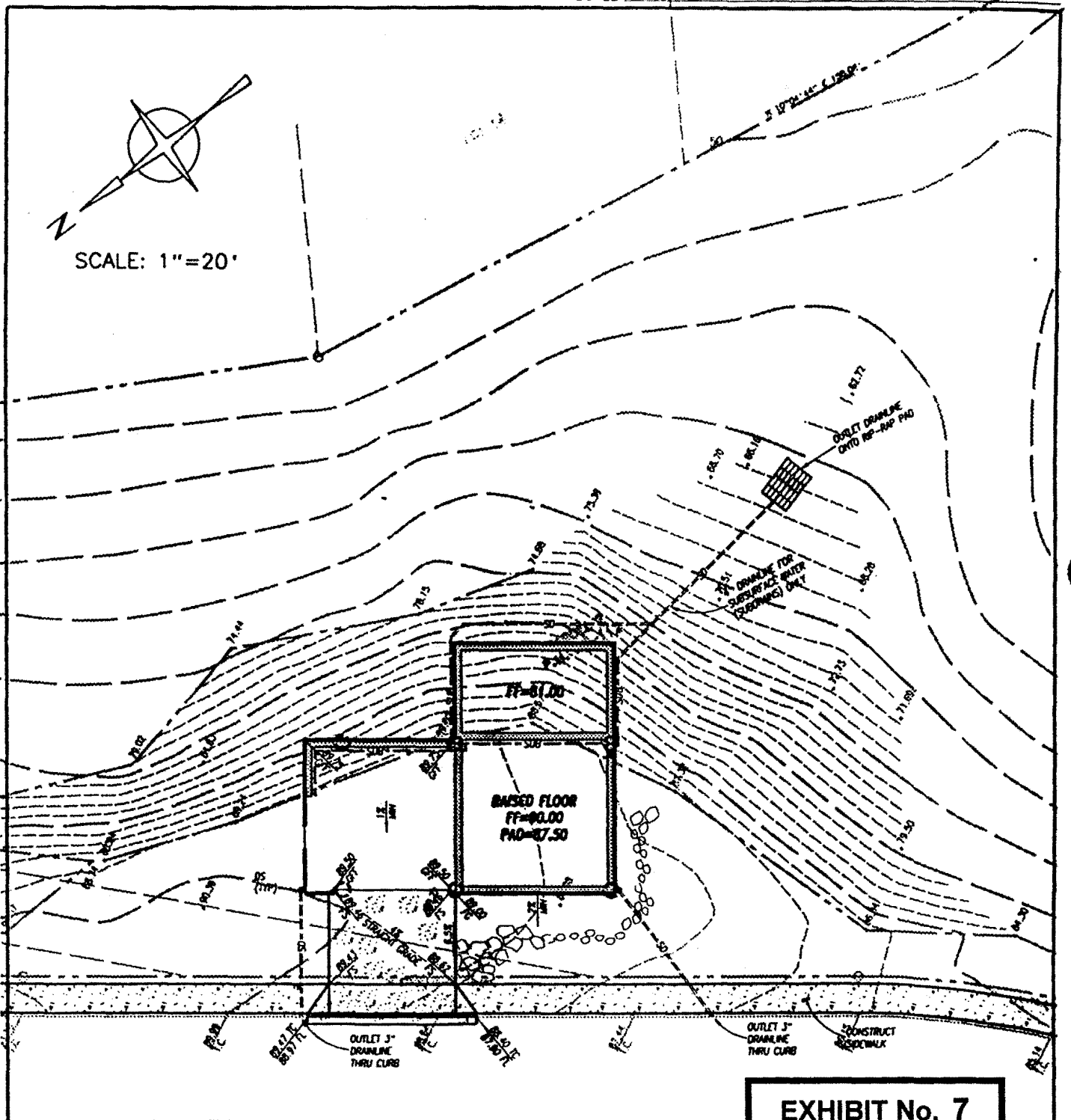
CALCULATED BY AS DATE 3-19-01

CHECKED BY CR DATE 3-19-01

SCALE 1"=20'



SCALE: 1"=20'

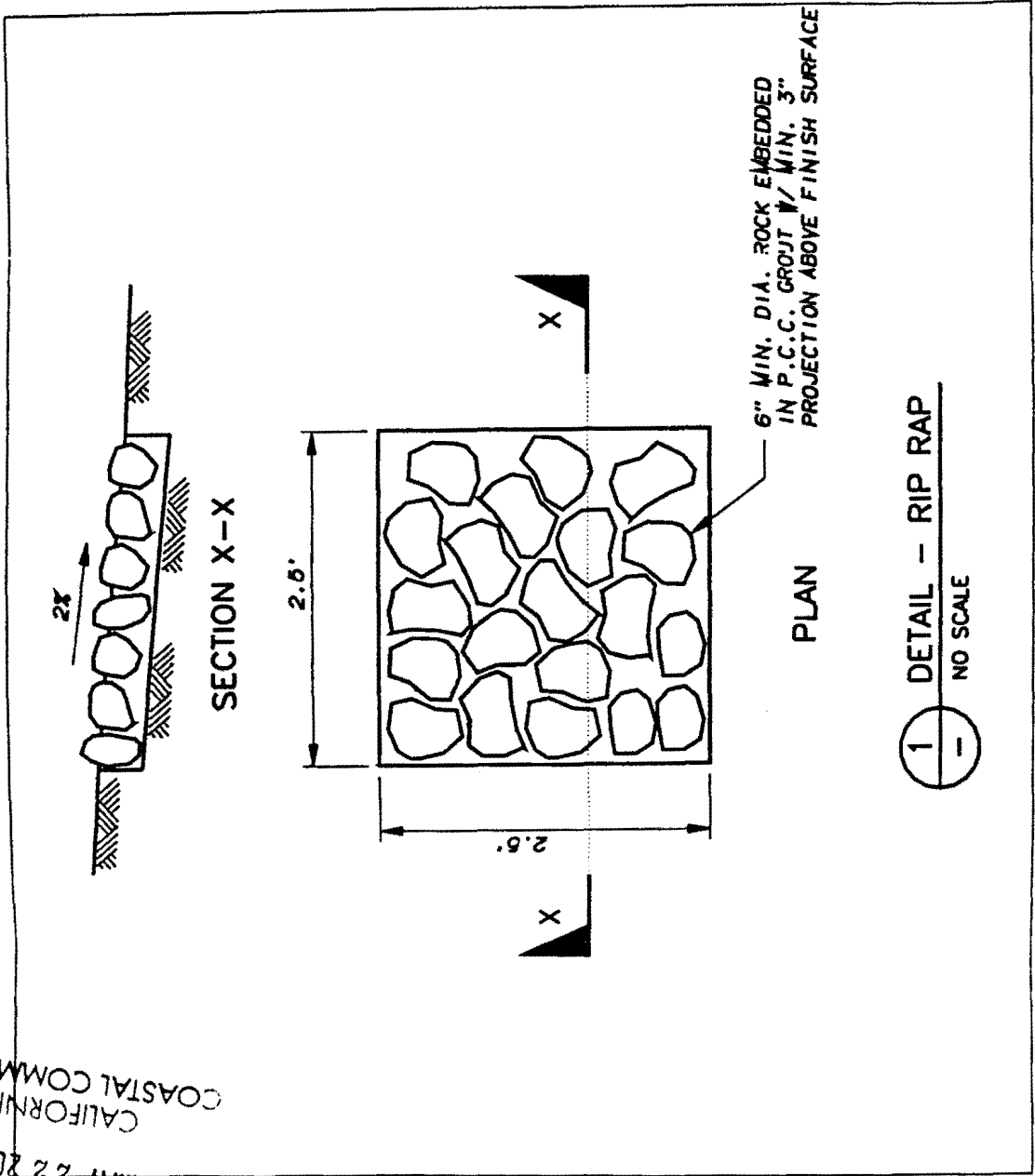


AVENIDA ALESSANDRO

EXHIBIT No. 7
Application Number: 5-01-097 (Moe)
Grading and Drainage Plan
California Coastal Commission

1/2

GRADING & DRAINAGE PLAN



1
—
NO SCALE

RECEIVED
MAY 22 2001
CALIFORNIA
COASTAL COMMISSION

EX. 7
2/2

