

CALIFORNIA COASTAL COMMISSION

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Staff Report: August 23, 2001
Hearing Date: September 11-14, 2001
Commission Action:

**Item Tu 23a****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-00-459

APPLICANT: Laidlaw Family Trust

RECORD PACKET COPY

AGENT: Jordan Architects, Inc.

PROJECT LOCATION: 354 Paseo de Cristobal, San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a new two-story, 5888 square foot single-family residence with basement and attached 525 square foot two-car garage on an existing vacant lot at the convergence of Trafalgar Canyon and the coastal bluff. The project also involves approximately 800 cubic yards of cut and 100 cubic yards of fill for basement construction and light well excavation and site preparation. Excess material will be disposed of outside the coastal zone.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission **APPROVE** the proposed development with eight (8) special conditions. The subject site is located on a vacant lot at the convergence of a coastal bluff and coastal canyon. Primary issues raised by the project include public access, avoidance of geologic hazard and protection of environmentally sensitive habitat areas (ESHA). The proposed development conforms to the blufftop setback requirements of the certified LUP, as the proposed structure will be sited 25 feet from the bluff edge. However, the proposed basement level light wells will encroach into the area that may be required for a "privacy buffer" should a future prescriptive rights case prevail. The proposed development conforms to the canyon setback policies in the certified LUP, as the structure will be set back 30% the depth of the lot and more than 15 feet from the canyon edge.

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 submittal of revised project plans showing removal or relocation of the window wells on the bluffward side of the structure in order to demonstrate conformance with the 25' blufftop setback and potential privacy buffer requirements. Special Condition 3 requires conformance to the landscape plan, which shows that only drought-tolerant native species will be used. 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 recordation of a no future protective device deed restriction. Special Condition 7 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. Special Condition 8 informs the applicant that the Commission's approval of the project does not constitute a waiver of any public rights that may exist on the property.

STAFF NOTE: *This item has been continued from the August 2001 Commission hearing for further evaluation of potential public rights of access acquired at the subject site through historical use. Staff has since conducted a preliminary prescriptive rights analysis that involved distribution of questionnaires, local newspaper notice, posting on the Commission's website and review of aerial photographs.*

LOCAL APPROVALS RECEIVED: Approval-in-Concept from the City of San Clemente Community Development Department dated July 9, 2001.

SUBSTANTIVE FILE DOCUMENTS:

City of San Clemente certified Land Use Plan; Coastal Development Permits 5-93-035 (Klinkert); *Geotechnical and Engineering Geologic Investigation, Single Family Residential Lot, 354 Paseo de Cristobal, San Clemente, California*, Project No. FG 9241-00 prepared by Geo-Etka, Inc. dated September 27, 2000; *Supplemental Geotechnical / Geologic Investigation for 354 Paseo de Cristobal* prepared by Peter and Associates dated March 26, 1993 and *Geotechnical Investigation* prepared by South Coast Geologic, Inc. dated August 7, 1989.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Coastal Canyons
4. Coastal Access Points
5. Project Plans
6. 5-93-035 (Klinkert) Original Staff Report
7. 5-93-035 (Klinkert) Revised Findings Staff Report (without exhibits)
8. Addendum to Revised Findings Staff Report (with Chain of Title Search Results)
9. Results of Prescriptive Rights Survey Results and Correspondence
10. Sun Post Newspaper Notice of August 14, 2001

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP #5-00-459 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 Report
 - A. All final design and construction plans, including foundation, grading and drainage plans, shall be consistent with all recommendations contained in the *Geotechnical and Engineering Geologic Investigation, Single Family Residential Lot, 354 Paseo de Cristobal, San Clemente, California*, Project No. FG 9241-00 prepared by Geo-Etka, Inc. dated September 27, 2000.
 - B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
 - C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the

Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Submittal of Revised Plans

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of revised project plans that demonstrate conformance with the following blufftop and canyon setbacks:
- 1) Neither the structure nor the window wells shall be constructed nearer than 25 feet from the designated "top of bluff," or nearer than 15 feet from the canyon edge, as generally depicted in Exhibit 5, attached in the current staff report, and
 - 2) No ancillary development or hardscape features (i.e. patios, decks, fencing) shall be constructed nearer than 15 feet from the designated "top of bluff," or nearer than 5 feet from the canyon edge, as generally depicted in Exhibit 5, attached in the current staff report.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Conformance with Landscape Plan

- A. The applicant shall comply with the landscape plan submitted on July 13, 2001 prepared by M. Paul Ramsey. In addition, the applicant shall comply with the following provisions:
- (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 and bluff-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 Trafalgar 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 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;

- (e) Native vegetation shall be utilized to screen the above-grade drainpipe along the bluff slope leading to the canyon mouth; and
 - (f) 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.
- C. Five years from the date of issuance of Coastal Development Permit No. 5-00-459 the applicant shall submit for the review and approval of the Executive Director, a monitoring report, prepared by a licensed biologist, landscape architect or qualified resource specialist, that certifies the on-site landscaping is in conformance with the mitigation plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or a qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

4. Conformance with Grading and Drainage Plan

- A. The applicant shall comply with the Grading and Drainage Plan submitted July 13, 2001 prepared by Jordan Architects, Inc. and with all recommendations contained in the *Conclusions and Recommendations* section of the *Geotechnical and Engineering Geologic Investigation, Single Family Residential Lot, 354 Paseo de Cristobal, San Clemente, California*, Project No. FG 9241-00 prepared by Geo-Etka, Inc. dated September 27, 2000. 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 mouth outlet point to avoid ponding or erosion either on- or off- site.
 - (b) The drainpipe along the bluff slope leading to the canyon mouth outlet point shall be above-grade;
 - (c) Run-off shall not be allowed to pond adjacent to the structure or sheet flow directly over the sloping surface;
 - (d) 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.
- B. **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. No Future Blufftop of Canyon Slope Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no blufftop or canyon slope protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-00-459, including the patios and any future improvements, in the event that the property is threatened with damage or destruction from bluff or canyon slope failure in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall include a legal description of the 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.

7. Future Development Deed Restriction

- A. This permit is only for the development described in Coastal Development Permit No. 5-00-459. 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. 5-00-459 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.

8. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed development is located on a vacant lot at the convergence of a coastal canyon and a coastal bluff in the City of San Clemente, Orange County (Exhibits 1 & 2). The project site is located between the first public road and the sea at the end of the Paseo de Cristobal cul-de-sac, which runs parallel to the shoreline. The site is located directly inland of the OCTA railroad tracks and adjacent to the mouth of Trafalgar 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). The site is bound by the cul-de-sac to the southeast, an existing residence to the northeast, a coastal canyon to the northwest and an approximately 40' high coastal bluff to the southwest. The nearest formal public coastal access is available via the T-Street overpass approximately 500 feet downcoast (Exhibit 4).

The proposed development consists of the construction of a new two-story, 5888 square foot (1621 sq. ft. first floor, 2131 sq. ft. second floor and 2136 sq. ft. basement) single-family residence and an attached 525 square foot two-car garage, decks, hardscape and landscape improvements (Exhibit 5). The applicant is proposing four (4) window wells supported by 4' deep retaining walls within the 25' blufftop setback and 15' canyon setback to provide natural light to the basement. The below-grade light wells will extend 4' into the required setbacks. The project also involves approximately 800 cubic yards of cut for basement and light well excavation and approximately 100 cubic yards of fill for site preparation. Export will be taken to a disposal site outside the coastal zone. All rooftop, driveway, front and side yard runoff and will be taken to the street, while

the existing gradual slope around the canyon/bluff convergence will continue to drain to the canyon mouth. This portion of rear yard runoff will be conveyed to a controlled discharge point at the base of the bluff slope adjacent to the canyon mouth.

The proposed development conforms to the bluff and canyon setback policies in the certified LUP, as the residence will be set back 25 feet from the bluff edge to the southwest and 30% the depth of the lot and more than 15 feet from the canyon edge to the northwest. However, the proposed window wells will encroach 4 feet into the blufftop setback area. As will be discussed in Section E, Public Access, the entire 25-foot blufftop setback area must be kept free of encroachments because of the possibility of a future public rights claim prevailing in court.

There is no existing native vegetation on the proposed building pad. The pad area is vegetated by annual grasses and weeds. Coastal sage scrub exists along the adjacent bluff and canyon slopes. The applicant is proposing to retain all coastal sage brush along the slopes.

B. PRIOR COMMISSION ACTION AT THE SUBJECT SITE

5-93-035 (Klinkert)

On May 13, 1993, the Commission denied CDP application 5-93-035 for construction of a 25-foot high, 4159 square foot single-family residence with a 450 square foot garage and spa at the subject site. The project also included reconstruction of the existing curb, gutters and sidewalk in a right-of-way to be abandoned by the City of San Clemente and construction of a retaining wall at the rear of the property. No grading was proposed.

The Commission denied the application because the applicant at the time (Klinkert) was not able to demonstrate proof of ownership of a portion of the project site. As stated in the staff report,

"Because the applicant cannot demonstrate proof of legal ownership over the blufftop right-of-way, the applicant can not comply with Coastal Act Section 30601.5. Therefore, any proposed development including the blufftop right-of-way must be denied."

At the time the application was considered, there was disagreement between Commission staff and the applicant as to the existence and location of rights-of-way on the subject property. As described in the original staff report (Exhibit 6),

"The project involves two right-of-ways. One right-of-way is located on the cul-de-sac of Paseo de Christobal (hereinafter referred to as the cul-de-sac right-of-way), and the applicant has reached agreement with the City on abandoning this right-of-way, but has not obtained a coastal development permit for the abandonment. The second easement or right-of-way is a 20 foot wide strip of property located on the coastal bluff (hereinafter referred to as the blufftop right-of-way). This right-of-way which is alleged to have been abandoned leads from the shoreline and navigable waters back to other public rights-of-way."

The applicant's agent refuted the existence of the "blufftop right-of-way" at the May 1993 hearing, but was unable to present proof that the 20 foot wide strip of land was in private ownership prior to passage of the Coastal Act in 1972. In a letter dated July 5, 1993, the agent provided results of a "chain of title search" performed by Chicago Title in Santa Ana, which clarified ownership issues at the subject property and concluded that the "blufftop right-of-way" had not been in public ownership since 1927 (Exhibit 8). The letter also explained that the proposed abandonment of the "cul-de-sac right-of-way" was contingent upon approval of the coastal development permit. As the permit was denied by the Commission, so was the right-of-way abandonment.

On July 15, 1993, the Commission adopted Revised Findings that incorporated the comments of the Commission's Chief Counsel at the May 1993 hearing that provided a legal interpretation of the basis for the finding of denial (Exhibit 7).

The current application (5-00-459) involves development on private property. No development is proposed on the one public "cul-de-sac right-of-way" that exists over the property. As such, the proposed project is consistent with Section 30601.5 of the Coastal Act. While the applicant requested City abandonment of the cul-de-sac easement in March 2000, the City Council denied the request. Concerns raised at the City Council hearing related to potential loss of on-street parking spaces and private view impacts.

C. GEOLOGIC STABILITY

The subject site is located at the convergence of a coastal bluff and coastal canyon. This type of development poses potential adverse impacts to the geologic stability of coastal bluffs and canyons, to the preservation of coastal visual resources, and to the stability of residential structures. Blufftop stability has been an issue of historic concern throughout the City of San Clemente. Coastal bluffs in San Clemente are composed of fractured bedding which is subject to block toppling and unconsolidated surface soils which are subject to sloughing, creep, and landsliding. The setback and stringline policies of the Commission were instituted as a means of limiting the encroachment of development seaward to the bluff edges on unstable bluffs and preventing the need for construction of revetments and other engineered structures to protect development on coastal bluffs, as per Section 30253 of the Coastal Act. Stringlines have also been applied to limit canyonward encroachment into sensitive habitat areas, as will be discussed in Section D, ESHA. A stringline does not apply in this instance. Therefore, the City's 25-foot blufftop setback and 15-foot canyon setback will be utilized.

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.*

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

2. City of San Clemente Policies

The City of San Clemente Certified LUP contains policies establishing stringlines for purposes of limiting the seaward encroachment of development onto eroding coastal bluffs and into sensitive

coastal canyons. Although the standard of review for projects in San Clemente is the Coastal Act, the policies of the Certified LUP are used as guidance. These policies include the following:

Policy VII.13:

Development shall be concentrated on level areas (except on ridgelines and hilltops) and hillside roads shall be designed to follow natural contours. Grading, cutting, or filling that will alter landforms (e.g.; bluffs, cliffs, ravines) shall be discouraged except for compelling reasons of public safety. Any landform alteration proposed for reasons of public safety shall be minimized to the maximum extent feasible.

Policy VII.14 states:

Proposed development on blufftop lots shall be set back at least 25 feet from the bluff edge, or set back in accordance with a stringline drawn between the nearest corners of adjacent structures on either side of the development. This minimum setback may be altered to require greater setbacks when required or recommended as a result of a geotechnical review.

Policy VII.16 states:

In a developed area where new construction is generally infill, no part of a proposed new structure, including decks, shall be built further onto a beachfront than a line drawn between the nearest adjacent corners of the adjacent structures. Enclosed living space in the new unit shall not extend further seaward than a second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structures.

Policy VII.15 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."

3. Project Site Geotechnical Reports

In 1993, a similar development project was proposed at the subject site. At that time, site specific geotechnical information was submitted. The applicant provided a "Supplemental Geotechnical / Geologic Investigation for 354 Paseo de Cristobal" prepared by Peter and Associates dated March 26, 1993. The report incorporated findings from a previous investigation performed by South Coast Geologic, Inc. dated August 7, 1989. These reports have been used as reference documents in the Commission's current consideration of the proposed development.

For the current application (5-00-459), the applicant submitted a geotechnical and engineering geologic investigation prepared by Geo-Etka, Inc. dated September 27, 2000. The geotechnical investigation was carried out to "explore and evaluate existing soil and geologic conditions at the site and to present opinions as to the adequacy of the site for development; provide recommendations for mitigation of unsuitable soil and/or groundwater conditions; and provide

geotechnical design parameters for foundations and grading." The investigation consisted of 1) review of geologic maps, geotechnical reports and other geotechnical data for the site and surrounding area; 2) reconnaissance level geologic mapping of the site and immediate vicinity; 3) excavation, sampling, and logging of exploratory borings; 4) laboratory testing of relatively undisturbed and representative bulk samples taken from exploratory excavations; and 5) engineering and geologic analysis of the collected data.

The subject site is described in the Geo-Etka geotechnical report as a level pad with descending graded slopes on the southwest and northwest sides of the lot. As stated in the report, *"graded slopes include a 20 to 25 foot high 1 1/2 to 1 (horizontal to vertical) fill over cut slope on the southwest side of the lot descending to the railroad tracks and a 20 to 30 foot high 2 to 1 (horizontal to vertical) fill over cut on the northwest side of the lot descending to a drainage course" [Trafalgar Canyon].* The report goes on to provide a description of the regional and local geologic conditions at the subject site. As stated in the report, *"the site appears to have been previously developed by cut and fill terraced grading of the original hillside surfaces."* The artificial fill soils were likely placed during development of the tract and range from about eight to sixteen feet in thickness across the site. Fill soils consist of mixtures of terrace and bedrock materials along with gravel, cobbles, and construction debris such as asphalt. Both marine and non-marine terrace deposits are present beneath the fill soils. As described in the report, the bedrock underlying the terrace deposits at this site belongs to the *"Siltstone facies of the Pliocene age Capistrano Formation."*

The Geo-Etka report addresses potential affects of groundwater, faulting, and seismicity at the subject site. According to the report, groundwater is not expected to be a factor during or after construction of this project. However, *"moderate to severe ground shaking will affect the subject site sometime within the life of the structure."* No other potentially hazardous conditions, such as historic landsliding or slope instability, were discussed in the report.

However, the Peter and Associates report states *"the site's location is known to be in the area of an ancient landslide, as indicated in the California Division of Mines and Geology Special Report 98. According to South Coast Geologic, Inc.'s findings, the upper zone of the bedrock appears to have undergone rotational or block-glide sliding."* The report states that the landslide debris under the subject site is considered to be static and assures that no movement in the subject site area is known to have occurred in the last 30 years. The report presents the results of a slope stability analysis, which shows that *"the factor of safety for the subject site slope, based on the subject slope gradient, is 1.0 percent."* The Peter and Associates report concludes *"the site is suitable for the proposed development, and the development will not have any adverse effect on the neighboring property, provided the following recommendations are incorporated during grading and subsequent construction."* Recommendations include the use of a caisson and grade beam foundation system.

The Geo-Etka report concludes, *"the site can be made suitable for the construction of the proposed single family residence, provided the recommendations presented in this report are incorporated into the project plans and specification of the project. The site appears grossly stable; however, upper portions of the existing fill soils are not suitable for support of traditional foundation, slabs or compacted fills. All in-situ uncertified fill soils should be removed and recompacted to provide a properly compacted fill pad."* The report recommends that a continuous wall or conventional spread footing system be used to support the proposed structure.

While the foundation recommendations differ, both geotechnical reports conclude that the site is suitable for development.

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 Geo-Etka 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 continuous wall or conventional spread footing system be used to support the proposed structure and discusses allowable bearing capacity to be used in determining footing depth. As stated in the report, the footings should be *"founded a minimum of 18 inches into dense, engineered fill, with the concrete placed against in-place, undisturbed engineered fill."* The applicant has not submitted a foundation plan for the proposed structure. As described below, final foundation plans (signed and stamped by the geotechnical consultant) must be submitted prior to permit issuance.

Regarding drainage the report advises, *"the on-site earth materials are not considered resistant to erosion. Water should not be allowed to collect and discharge over the top of slopes. Area drains should be installed and maintained where necessary. Positive drainage should be established to drain away from the foundations."* As submitted, all rooftop, side yard and front yard runoff will be directed to the street. Runoff from the rear yard and patio areas will be collected in an area drain and directed to a discharge point at the base of the bluff slope.

As discussed previously, approximately 900 cubic yards of grading (800 cubic yards of cut and 100 cubic yards of fill) is proposed for excavation and site preparation. The geotechnical report contains recommendations for 1) clearing, grubbing and removal of compressible materials, 2) processing of natural soils, 3) fill placement, 4) fill slopes, 5) compacted fill material, 6) shrinkage and subsidence, 7) sulfate potential, 8) utility trench backfill, construction observation, plan review, and footing inspection. The report also provides recommendations for site excavation and construction of basement retaining walls, including a recommendation that *"all retaining walls should be provided with adequate backdrainage systems."*

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. The condition requires the applicant to submit two (2) full-size copies of the project plans (including final foundation plans) that have been reviewed and approved by the geotechnical consultant prior to issuance of the coastal development permit. As such, Special Condition 1 guarantees that all final development plans are consistent with Section 30253 of the Coastal Act.

Setback Requirements

1. *Coastal Bluff Setback*

The site is located at the terminus of a cul-de-sac with Trafalgar Canyon to the northwest; an approximately 35'-40' high bluff face, railroad tracks and ocean to the southwest; and a residence

immediately inland. Only the 25-foot bluff setback policy could be applied in this situation because the configuration of the lot is such that a stringline setback would be inappropriate.

The coastal bluffs in San Clemente are not subject to direct wave attack because they are separated from the beach by the OCTA railroad tracks and right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to weathering caused by natural factors such as wind and rain, poorly structured bedding, soils conducive to erosion and rodent burrowing. Bluffs may also be subject to erosion from human activities, such as irrigation, improper site drainage and grading.

To meet the requirements of the Coastal Act, bluff and cliff developments must be sited and designed to assure stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms. The Commission typically requires that structures be setback at least 25 feet from the bluff edge and hardscape features (including decks and patios) be setback at least 10 feet from the bluff edge to minimize the potential that the development will contribute to slope instability. Bluff and cliff developments (including related storm runoff, foot traffic, site preparation, construction activity, irrigation, waste water disposal and other activities and facilities accompanying such development) must not be allowed to create or contribute significantly to problems of erosion or geologic instability on the site or on surrounding geologically hazardous areas which would then require stabilization measures such as caissons, pilings or bluff re-structuring.

As shown on page 1 of Exhibit 5, the structure proposed by the applicant will be set back 25 feet from the bluff edge. While all above-grade development is consistent with the setback requirement, the applicant is proposing window wells within the 25' blufftop setback to provide natural light to the basement. The below-grade light wells will extend 4' into the setback. The 4' deep light wells will not serve as stabilization devices, nor will they be visible from the shoreline. Also, the window wells are not habitable space. Additionally, the applicant's geologist attests, *"provided all unsuitable fill is removed beneath structural areas there should be not problems with having light wells. The light wells should have no adverse affect on the site, as long as adequate support and drainage is provided for these excavations."* Nonetheless, the light wells proposed on the bluffward side of the structure will be sited in an area that may be necessary for a future privacy buffer if a prescriptive rights claim is successful. (Public access will be discussed further in Section E.) Those on the canyon side will not affect potential public access.

According to the geotechnical report, the 25-foot setback is appropriate to ensure long-term stability of the proposed development. No blufftop protective devices are proposed or anticipated. With implementation of proper drainage and erosion control measures, erosion of the blufftop will not adversely affect the subject property. In addition, the site is not subject to erosion from wave attack. As such, the proposed development is consistent with the geologic hazard policies of the Coastal Act.

2. 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 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."* 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 canyon edge (Exhibit 5). However, as discussed previously, the applicant is proposing window wells within the 15' blufftop setback to provide natural light to the basement. The below-grade light wells will extend 4' into the setback. The light wells will not serve a stabilization purpose. As such, the light wells may be sited nearer the canyon edge than the proposed residence. The light wells on the canyon side of the proposed residence will not affect potential public access.

3. *Revised Project Plans*

The siting restrictions placed on the proposed development serve to avoid geologic hazard impacts as well as to avoid native plant species within the canyon. Based on the information provided in the geotechnical report, the siting of the proposed development is found to be appropriate from a geologic hazard perspective. However, public access concerns (which will be discussed in Section E of the current staff report) necessitate a modification of the project plans to eliminate the proposed window wells, as the window wells on the bluffward side of the structure would encroach into the required "privacy buffer" should a public trail be established in the future. Special Condition 2 requires the submittal of revised project plans, which show the residence and all hardscape features sited in conformance with the required blufftop and canyon setbacks. The condition specifies that no portion of the structure or the light wells may be sited nearer than 25 feet from the bluff edge to avoid potential interference with potential public use.

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 "Landscape Plan" prepared by M. Paul Ramsey that shows use of entirely native, drought tolerant species throughout the project site (Exhibit 5, page 3). The plan demonstrates that the building pad will be planted with native species such as Coyote Bush, Black Sage, Hummingbird Sage and Coast Sunflower, while the existing coastal sage brush on the slopes will remain undisturbed. No in-ground irrigation is proposed. A "temporary surface piped drip irrigation" system will be installed initially so that the new planting can take root.

To ensure that the project is carried out in conformance with the plan submitted, the Commission imposes Special Condition 3. The condition specifies that only drought tolerant plant species may be planted in the ground throughout the entire lot and affirms that no in-ground irrigation systems may be installed on the site. 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 of the bluff slope and canyon slope from uncontrolled site runoff.

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 Jordan Architects, Inc.) shows how runoff from impervious surfaces will be diverted toward the street and canyon in a non-erosive manner. As shown on page 2 of Exhibit 5, runoff from the rear yard will be collected in an area drain and conveyed to the toe of the slope near the canyon mouth via an above-grade pipeline. The pipeline will be screened by native vegetation. All rooftop, front yard and side yard 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, No Future Protective Devices and Future Improvements

Although the proposed project will be constructed in conformance with the geologic recommendations, risk from development on a coastal bluff and coastal canyon is not eliminated entirely. Specifically, development on a coastal bluff is inherently risky. 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. In addition, a prior geotechnical report identified potentially hazardous conditions at the subject site. 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.

Special Condition No. 6 of the permit requires the applicant to record a deed restriction on the property placing the applicant and their successors in interest on notice that no bluff protective devices shall be permitted to protect the structure, patios or future improvements if threatened by bluff failure. The development could not be approved if it included provision for a bluff protective device. Instead, the Commission would require the applicant to set the development further landward. The condition states that in the event any bluff protective work is proposed in the future, the applicant acknowledges that as a condition of filing an application for a coastal development permit, the applicant must provide the Commission or its successor agency with sufficient evidence enabling it to consider all alternatives to bluff protective works, including consideration of relocation of portions of the residence that are threatened, structural underpinning, or other remedial measures identified to stabilize the residence that do not include bluff or shoreline stabilization devices.

Whereas Special Condition No. 6 applies to bluff protective measures, Special Condition No. 7 is a future development deed restriction which states that any future improvements or additions on the property, including hardscape improvements, grading, landscaping, vegetation removal and structural improvements, require a coastal development permit from the Commission or its successor agency. This condition ensures that development on coastal bluffs which may affect the stability of the bluffs and residential structures or may require future bluff protective structures, require a coastal development permit. 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, Geo-Etka, Inc.; 2) submit revised plans showing conformance with the required blufftop, canyon and privacy buffer setbacks; 3) conform to the landscape plan; 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 Trafalgar Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP. Trafalgar Canyon is located in the central portion of San Clemente. The proposed development is consistent with LUP canyon setback policies contained in the City's LUP. The proposed structure will not be sited within 15' of the canyon edge, 15' of native vegetation or 50' of riparian vegetation.

The existing building pad contains annual grasses and weeds, which are regularly cut and cleared. Vegetation in the adjacent coastal canyon consists of a mixture of natives and exotics. The Landscape Plan provided by the applicant shows that all yard areas on the pad area will be landscaped with native, drought-tolerant trees, shrubs, and groundcovers. The adjacent canyon slope and bluff slope contain coastal sage that will remain undisturbed. No permanent irrigation is proposed. The Landscape Plan states that a "temporary surface piped drip irrigation will be installed initially so that the new planting can take root only and the it shall be removed."

3. Special Conditions

The previous section on geologic hazards includes findings to support the special conditions requiring conformance with geologic recommendations, conformance with the setback requirements, conformance with the landscape plan, conformance with the grading and drainage plan, assumption of risk deed restriction, no future protective device 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 Trafalgar 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 3, 4 and 6. Special Condition 3 requires the applicant to conform to the landscape plan submitted demonstrating that all in-ground landscaping be of native, drought tolerant species. The condition also requires monitoring of the landscaping over a five-year period. As such, non-native species will not be allowed to encroach into the adjacent canyon and establishment of appropriate plantings will be assured.

The applicant is informed through Special Condition 4 (Conformance with Grading and Drainage Plan) 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 base of the bluff slope near the mouth of the canyon 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 3, the landscaping condition, also requires the drainpipe to be effectively screened by vegetation. 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 Trafalgar 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 Trafalgar 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 Trafalgar 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 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)(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. The proposed development is located between the first public road and the sea at the convergence of a coastal bluff and coastal canyon inland of the OCTA railroad tracks. The nearest formal vertical coastal access is available approximately 500 feet downcoast of the subject site via the T-Street public access point (Exhibit 4). The T-Street public access point is an enclosed overpass leading from Paseo de Cristobal to the beach below. Lateral access to the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks.

At the August 2001 Coastal Commission hearing in Redondo Beach, members of the public testified to the Commission that pedestrians have historically crossed the subject property at 354 Paseo de Cristobal to reach a vertical accessway to the beach at the mouth of Trafalgar Canyon and also to access a lateral accessway on the opposite side of the canyon. As described by the speakers at the hearing (and since supported by responses to a Prescriptive Rights Questionnaire), an informal vertical accessway exists immediately upcoast of the subject site beneath the train trestle at the mouth of the canyon. The path on the opposite side of the canyon is said to be used to reach the Pier Bowl area of the City.

In order to more fully investigate potential public use of the subject site, Commission staff distributed a "Prescriptive Rights Study Public Use Questionnaire and Declaration" to owners and occupants within 100 feet of the subject site, speakers on the item at the August 7, 2001 hearing, City staff in the Planning Division and the San Clemente Sun Post News. The questionnaire and accompanying documents were also posted on the Coastal Commission's website at <http://www.coastal.ca.gov/access/prc-access.html>. (Questionnaire results are included as Exhibit 9.) The Sun Post News printed a brief write-up on August 14, 2001 informing readers of the prescriptive rights analysis underway (Exhibit 10). In addition, aerial photographs from the years 1972-1993 were reviewed to determine if trails were present historically.

To approve the proposed project, the Commission must find the project to be consistent with the policies of Chapter 3 of the Coastal Act, including the public access policies outlined in Sections 30211 and 30212 listed above. The project's consistency with each of these policies is described below.

1. Consistency with Section 30211

Section 30211 states, in part, that "*development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization.*" Applicants for coastal development permits must demonstrate that their proposed development are consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act, the permitting agency, in this case the Commission, must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained rights of access to the sea. If the agency finds that there may be such an interference or effect, then it also must determine whether there is substantial evidence to support the conclusion that the areas has been impliedly dedicated to public use. Because the authority to make the final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition comes into being without explicit consent of the owner. The doctrine of implied dedication was confirmed and explained by the

California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule establishes a statute of limitation, after which the owner cannot assert normal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a) The public has used the land for a period of five years or more as if it were public land;
- b) Without asking for or receiving permission from the owner;
- c) With the actual or presumed knowledge of the owner;
- d) Without significant objection or bona fide attempts by the owner to prevent or halt the use, and
- e) The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with Section 30211, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with any such rights.

In the present case, the applicant has not proposed public access as part of the project. The applicant wishes to construct a new single-family residence with associated hardscape and landscape on the lot. (No fencing is proposed along the bluff-facing portion of the property, where potential public access rights may exist.) If the applicant were to propose public access, the Commission would be required to evaluate any evidence of implied dedication to determine that extent to which the proposed public access were equivalent in time, place and manner to any public use that has been made of the site in the past. To the extent any proposed dedication of access is equivalent, proposed development will not interfere with any existing public access rights. Here, however, no dedication of public access is proposed, and an analysis of public rights of access is required to ensure that the project is consistent with Section 30211.

a. Potential for Development to Interfere with Public's Right of Access to Sea

As described previously, the applicant's proposed project involves the construction of a new two-story single-family residence with basement, attached two-car garage and associated landscaping and hardscape. The proposed structure would be sited on a vacant lot, which members of the public contend has been used for coastal access via the adjacent canyon mouth. As depicted on a majority of the questionnaires returned, the lot has typically been crossed diagonally from the northeastern corner to the southwestern corner. A review of the Commission's aerial photographs also shows a path crossing the lot in this manner. While construction of a house on the lot would obstruct diagonal access across the site, passage would still be possible along the seaward perimeter of the property if development is sited accordingly.

b. Nature of Any Implied Dedication of Access

Although staff was not able to conduct an exhaustive prescriptive rights analysis in the time available between the August Commission hearing and the mail-out date for the September hearing, substantial evidence has been provided which indicates potential public rights at the subject site. The Commission has before it a variety of information regarding the presence of implied dedication over the subject Laidlaw property. The format of the information that suggests that an implied dedication may have taken place includes 1) twenty-four (24) responses to the questionnaire, 2) five (5) letters from the public, and 3) the previously described aerial photographs.

The survey responses and letters from the public indicate that the writers had used the subject site over the years for access to the beach, ocean viewing, viewing of fireworks on the Fourth of July and dog walking. The time periods specified in the letters range from 1952 to the present. They state that the site has only been effectively fenced in recent months, but that the 3' high fence is easily climbable. Respondents state that the site was either previously unfenced (from the early 1950s through approximately 1998), the fence had been torn down, or the gate was typically open. (See Exhibit 9)

As discussed in the following section, the owner states that he has had the property fenced and maintained. Based on the survey responses and letters received by the Commission, it appears that many people have been using the subject property for public access purposes without the express permission of the property owner.

c. Sufficiency of Landowner Attempts to Negate Implied Dedication of Access

There are some limitations that prevent property from being impliedly dedicated, even if the basic elements of implied dedication have been met. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, he must either affirmatively prove he has granted the public a license to use his property or demonstrate that he made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g. permission) are not considered to be the "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to form in the public. If only a limited and definable number of people have used the land, those persons may be able to claim a personal easement, but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

The applicant states that the site has been fenced and that "private property" signage has been placed on the fence ever since he originally owned the property in 1968. However, the property changed ownership over the years before the current owner re-purchased the property. Commission staff has asked for more specific information about maintenance and upkeep of the fencing and signage over the years, but has not yet received a response.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 100 yards from the Pacific Ocean and its bay and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 100

yards of the sea; therefore, the required five year period of use need not have occurred prior to March of 1972 in order to establish public rights.

It is important to note that Section 1009 explicitly states that it is not to have any effect on public prescriptive rights existing on the effective date of the statute (March 2, 1972). Therefore, public use of property for the prescriptive period prior to the enactment of Section 1009 or utilization of application procedures set forth in the section is sufficient to establish public rights in the property. Assuming that the fencing and signage was posted at the time Mr. Laidlaw re-acquired the property in the late 1990s, there would have been ample time for an implied dedication to occur prior to that time.

d. Provision of Public Access Equivalent in Time, Place and Manner

As noted previously, where there is substantial evidence of the existence of a public access right acquired through use, and a proposed development would interfere with that right, the Commission may deny a permit application under Public Resources Code Section 30211. As an alternative to denial, the Commission may condition its approval on the development being modified or relocated in order to preclude the interference or adverse effect. This is because the Commission has not power to extinguish existing public rights, even though it may authorize development which affects the exercise of those rights.

A full assessment of the degree to which the criteria for implied dedication has been met in this case could only be made after a more intensive investigation of the issue has been performed. A more broad survey of potential users of the site would provide very helpful information to augment the information gathered between the August 2001 hearing and the date of this staff report.

In this case, although there is an unresolved controversy as to the existence of public prescriptive rights, the maintenance of a 25-foot blufftop setback excluding both the structure and the window wells could serve to protect any existing public rights which might otherwise be eliminated by the proposed development. Section 30214 of the Coastal Act directs the Commission to implement the public access policies of the Act in a manner that balances various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use. Therefore, the Commission must evaluate the extent to which a protected area is in fact equivalent in time, place and manner to the access use made of the site in the past. If the Commission determines that the protected area is, in fact, equivalent in time, place, and manner to the access use made of the site in the past, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find it consistent with Section 30211. If an investigation indicated substantial evidence of an implied dedication exists, the proposed project would not interfere with such public rights because it protected an area which is equivalent in time, place and manner to the access previously provided in the area subject to the implied dedication. As such, the Commission could find the proposed project consistent with Section 30211. If an investigation indicated that substantial evidence of an implied dedication was lacking, the Commission could also find that the proposed project could be consistent with Section 30211.

The letters and survey responses submitted by members of the public about prior public use of the Laidlaw site provide an indication of the time, place and manner of public access use that has occurred prior to the fencing and signage that may have been erected by the applicant in the late 1990s. Based on Civil Code Section 1009, if signage was posted at the site continuously, posting of the signs may have precluded an implied dedication from arising after the late 1990s. The responses from the public indicate that the site has been used for access to the beach, view of fireworks, viewing of the ocean, and walking dogs. The responses contain no indication that the uses made of the site were limited to certain days of the week or times of day. It appears that

people used the lot anytime they wanted. According to responses received, no permission to use the property had been requested or granted.

The applicant does not propose public access as part of the currently proposed development. However, if a future public rights case were to be successful, the structure is appropriately set back from the blufftop of the property to allow the establishment of a potential trail. Fifteen (15) feet would be sufficient to accommodate a meandering trail along the seaward perimeter of the property. However, the proposed window wells would encroach into the 10 feet required to accommodate a privacy buffer between the structure and the trail. Therefore, the Commission imposes Special Condition 2, which requires the structure and window wells to be sited 25 feet from the bluff edge in order to protect this area. While a potential blufftop trail would be in a different location than the diagonal configuration currently used by the public, the route would provide equivalent access opportunities to the adjacent canyon. Although there is an unresolved controversy as to the existence of public prescriptive rights, there is sufficient area to accommodate public access should public rights be proven. Therefore, the Commission finds the proposed project, as conditioned to submit revised plans eliminating development from within the 10' privacy buffer area, to be consistent with Section 30211 of the Coastal Act.

2. Consistency with Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast need not be provided in new development project where 1) it would be inconsistent with the protection of fragile coastal resources or 2) adequate access exists nearby. However, the Commission notes that Section 30212 is a separate section of the Act than Section 30211, the policy which states that development shall not interfere with the public's right of access to the sea where acquired through use. The limitation on the provision of new access imposed by Section 30212 does not pertain to Section 30211. Whether or not public prescriptive rights of access have accrued over trails that pass through environmentally sensitive area or in areas near other public access, Section 30211 requires that development not be allowed to interfere with those rights. As such, despite the presence of nearby formal public access, the potential for public rights on the subject site is not precluded by the Commission's approval of development at this site.

The nearest formal vertical coastal access is available approximately 500 feet downcoast of the subject site via the T-Street public access point (Exhibit 4). The T-Street public access point is an enclosed overpass leading from Paseo de Cristobal to the beach below. Lateral access to the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. Therefore, public access exists nearby.

As conditioned to be adequately set back from the bluff edge, the proposed development will not impact public access either directly or indirectly to the ocean. 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, as conditioned, is consistent with Section 30212 of the Coastal Act.

3. Conclusion

As discussed previously, the Commission cannot approve development that is inconsistent with the public access policies of the Coastal Act. Substantial evidence has been presented to indicate that prescriptive rights of access to the ocean may have been acquired at this site and may be adversely impacted by development at this location. As such, the development has been conditioned to be appropriately set back should a prescriptive rights case be successful in the future. The setback requirements of Special Condition 2 ensures that sufficient space is provided to allow a 15' wide public trail area and a 10' wide privacy buffer should a successful public rights

case prevail. In addition, Special Condition 8 states that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property. As conditioned, development at the subject site does not preclude access should a successful prescriptive rights claim occur.

As conditioned for appropriate setback from the bluff edge and the recordation of a future development deed restriction, the Commission finds that the proposed development is consistent with the public access policies 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 Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

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 and submittal of a final foundation plan; 2) submittal of a revised site plan showing appropriate setbacks; 3) conformance with the landscaping plan submitted; 4) conformance with the drainage and runoff plan; 5) recordation of a deed restriction regarding assumption of risk; 6) recordation of a no future blufftop protective device deed restriction; 7) recordation of a deed restriction regarding future development, and 8) informs the applicant that the Commission's approval of development does not preclude a future prescriptive rights claim. 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.

Subject Property

OCEAN

CALIFORNIA
COASTAL COMMISSION

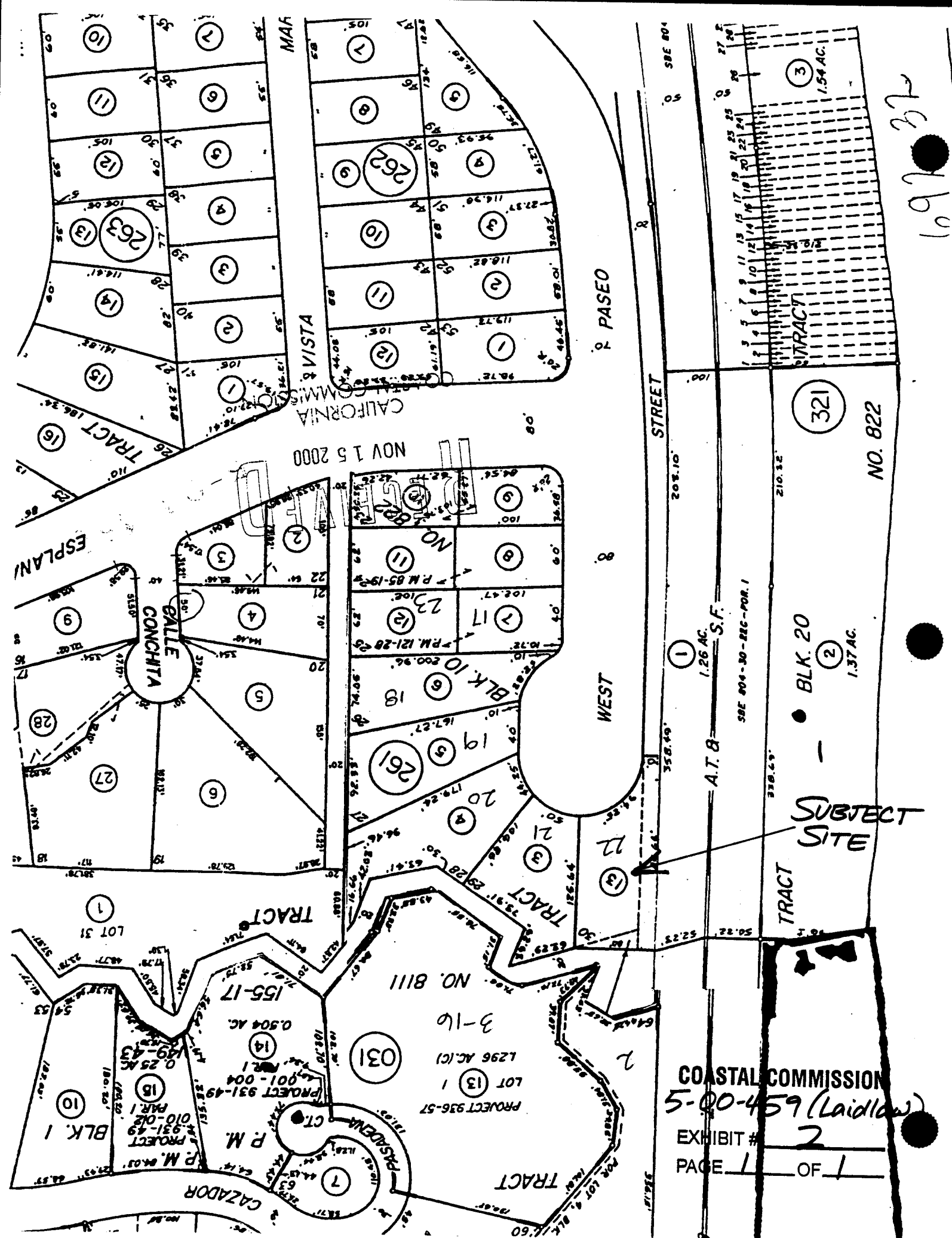
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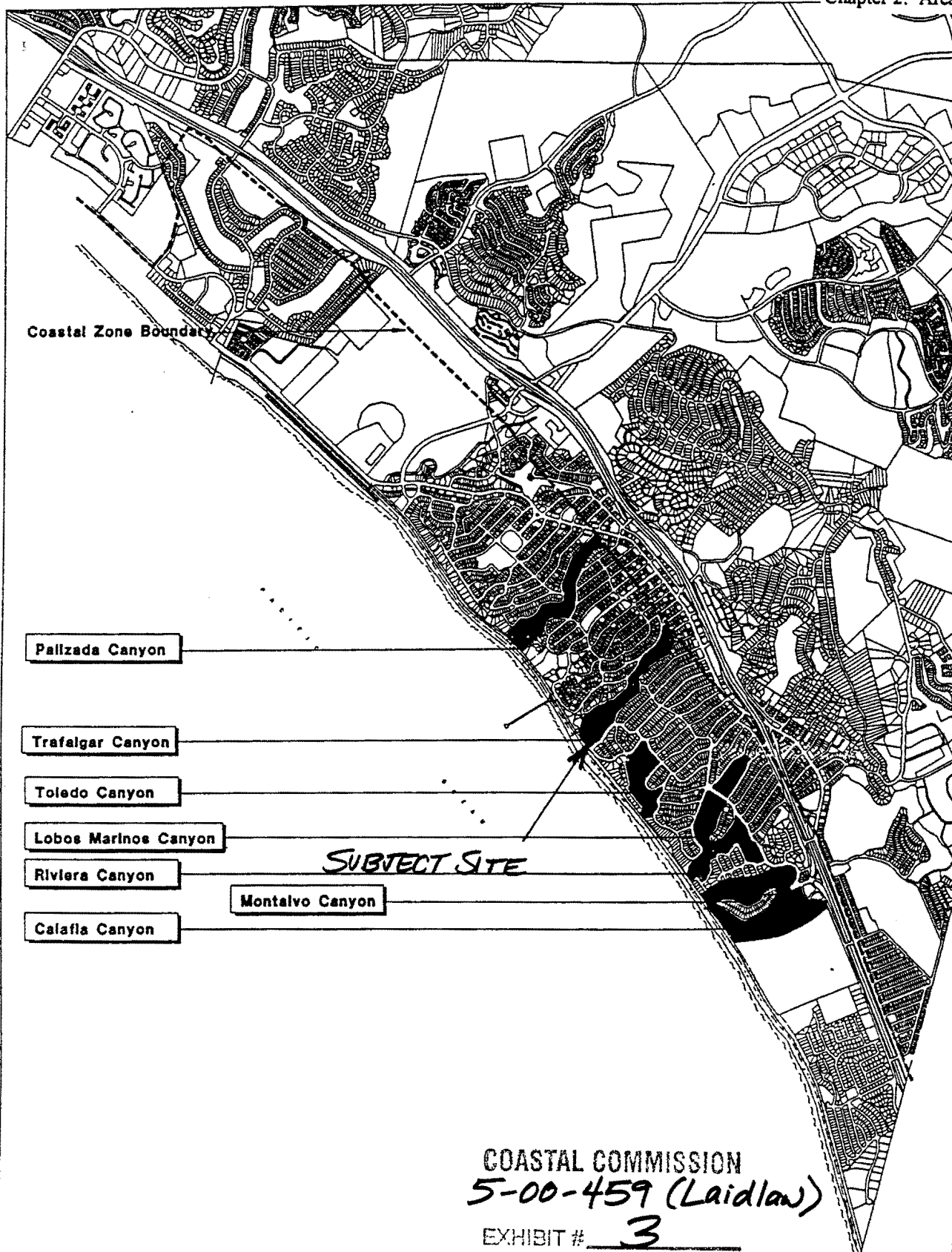
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COASTAL COMMISSION
5-00-459 (Laidlaw)

EXHIBIT # 1

PAGE 1 OF 1





COASTAL COMMISSION
5-00-459 (Laidlaw)

EXHIBIT # 3

PAGE 1 OF 1

FIGURE 2-1



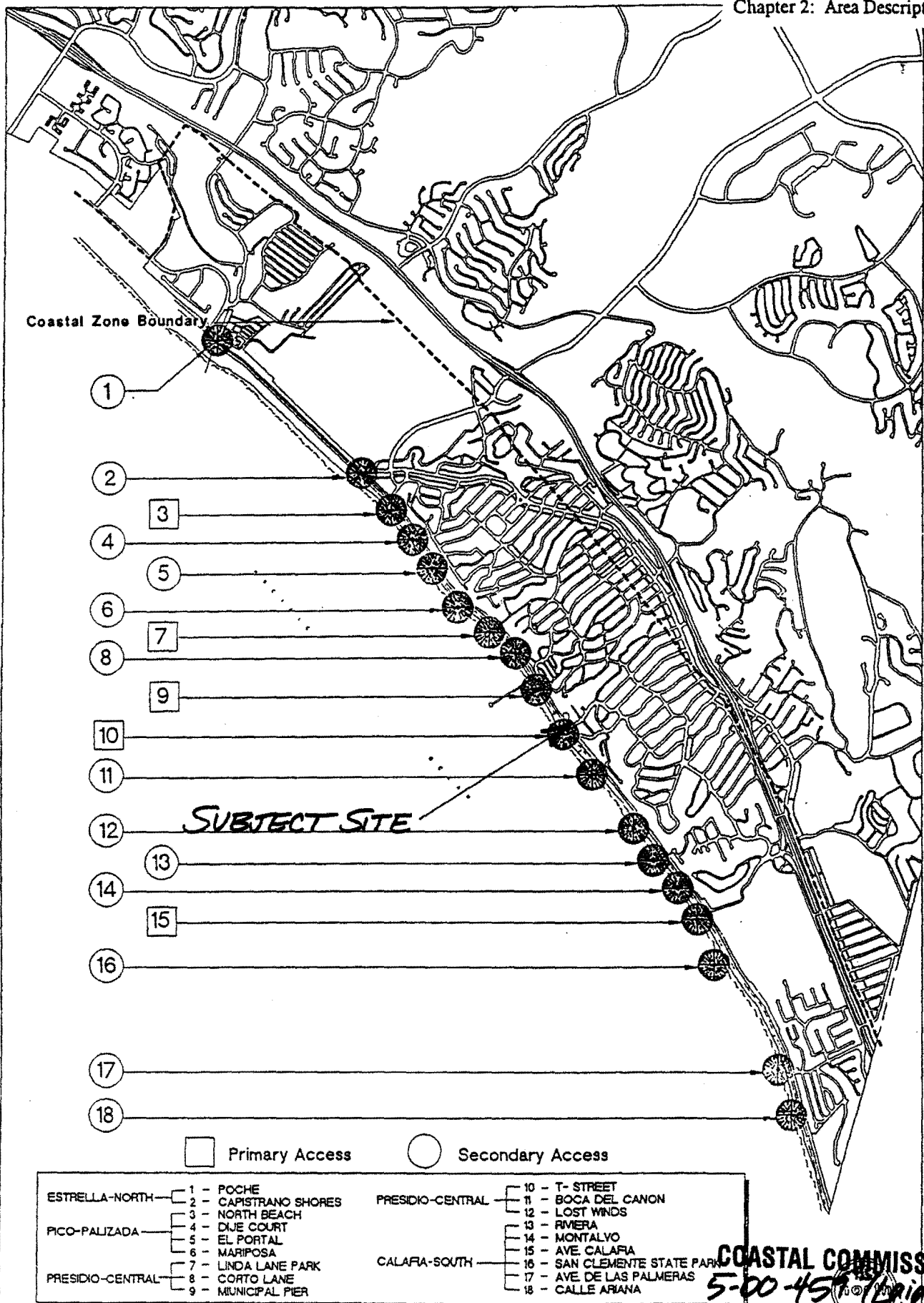


FIGURE 2-5



CITY OF SAN CLEMENTE COASTAL ACCESS POINTS

COASTAL COMMISSION
5-00-45 (10/1/14)

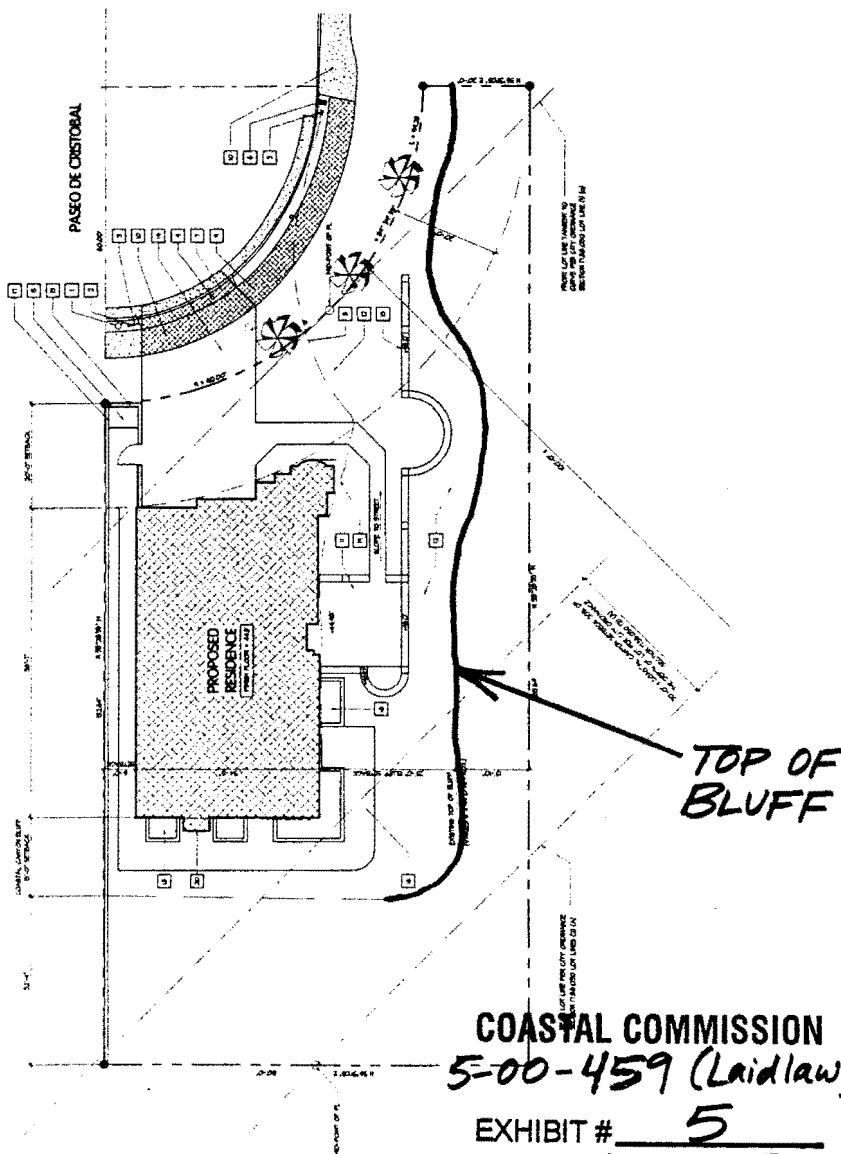
EXHIBIT #

PAGE 1 OF 1

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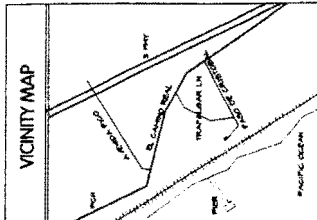
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CALIFORNIA
COASTAL COMMISSION

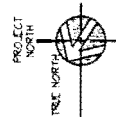


COASTAL COMMISSION
5-00-459 (Laidlaw)
EXHIBIT # 5
PAGE 1 OF 7

PROJECT DATA:	
CLIENT/APPLICANT:	
CONTACT:	JOHN L. LAIDLAW
ADDRESS:	10000 S. LAIDLAW AVE.
CITY:	SAN CLEMENTE, CA
PHONE:	(949) 480-1234
FAX:	(949) 480-1234
CONTACT:	JOHN L. LAIDLAW
DATE:	6/13/2001
BUILDING DATA:	
BASEMENT:	200 SQ FT
1ST FL:	10,000 SQ FT
2ND FL:	10,000 SQ FT
3RD FL:	10,000 SQ FT
4TH FL:	10,000 SQ FT
5TH FL:	10,000 SQ FT
6TH FL:	10,000 SQ FT
7TH FL:	10,000 SQ FT
8TH FL:	10,000 SQ FT
9TH FL:	10,000 SQ FT
10TH FL:	10,000 SQ FT
11TH FL:	10,000 SQ FT
12TH FL:	10,000 SQ FT
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100TH FL:	10,000 SQ FT



SITE KEYNOTES: TO INDICATE EXISTING	
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CONCEPTUAL SITE PLAN

LIDLAW FAMILY RESIDENCE
SAN CLEMENTE, CALIFORNIA

- 1 EXISTING FIRE APPARATUS
- 2 EXISTING WATER METER BOX, 1'-0" X 2'-0"
- 3 EXISTING TELEPHONE BOXES (2)
- 4 EXISTING PAINTING METER
- 5 ST. LIGHTING P.B. 1'-0" X 1'-0"
- 6 1" W.P. GROUND P.B. 1'-0" X 2'-0"
- 7 LOW CURB SIDEWALK
- 8 SLOTTED SLOUT
- 9 EXISTING UTILITY MAIN, 1'-0"
- 10 EXISTING CONCRETE MAIN
- 11 EXISTING CONCRETE MAIN, CONC. PIPE
WITH 1" W.P. GROUND P.B. AND SLOTTED
SLOUT, 1'-0"
- 12 UNLOCATED AREA
- 13 NEW 6" HIGH-CURB SIDE
- 14 1" X 1" PAINTED DRIVE
- 15 TRUNK AREA
- 16 CONCRETE PAVING IN CONTROL JOINTS

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PAGE 2 OF 7

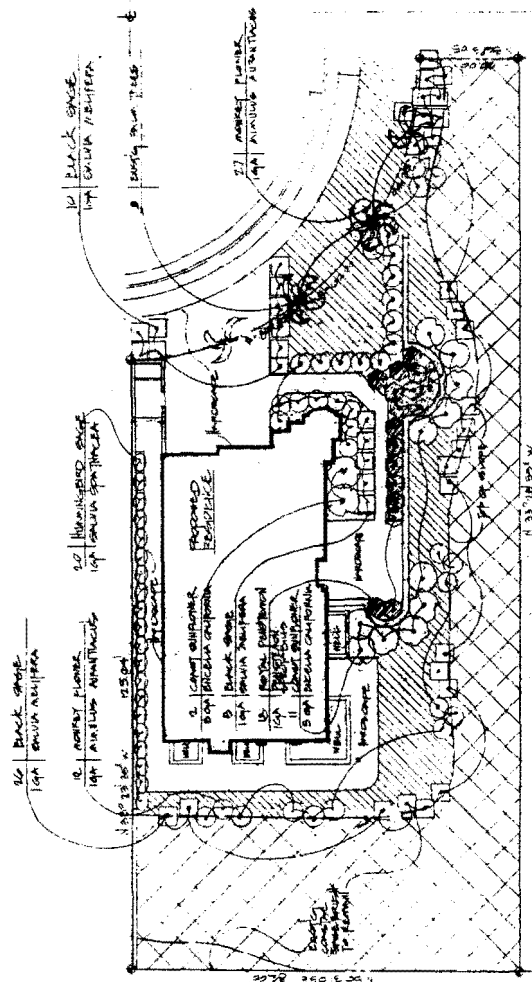
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Fax 1-800-368-7777
Web 1-800-368-7777

2 OF 6

PRELIMINARY GRADING PLAN































LIDLAW FAMILY RESIDENCE

SAN CLEMENTE, CALIFORNIA



Landscape Plan

Address: 354 Paseo de Cristobal, San Clemente
Owner: The Leach Family
Legal Description: Lot 30, Block 10, Tract No. 822, Records of Orange County, California

Landscape Palette					
Symbol	Common Name	Height	Spread	Light Req.	Soil Req.
	English Cedar	10'	10'	Full Sun	Moist
	Eastern Red Cedar	10'	10'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
	Yew	10'	10'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
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	Boxwood	6'	6'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist
	Boxwood	6'	6'	Full Sun	Moist

Irrigation-
There is to be no permanent irrigation system; a temporary surface pond drip irrigation will be installed initially so that the trees planted can take root only and then it will be removed.

Plant Selection Criteria
As plants selected are drought tolerant, non-invasive, and native to south Glades County.

COASTAL COMMISSION
5-00-457 (Laidlaw)
EXHIBIT # 5
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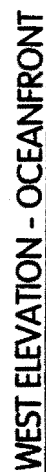
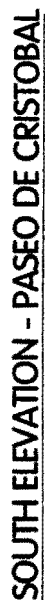


EXHIBIT # 5
PAGE 4 OF 7

LIDLAW FAMILY RESIDENCE
SAN CLEMENTE, CALIFORNIA

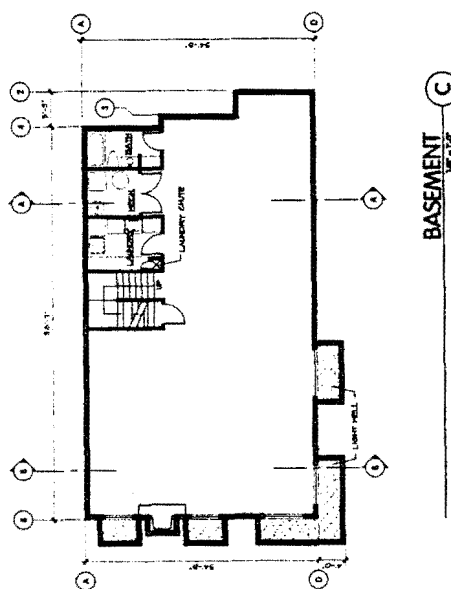
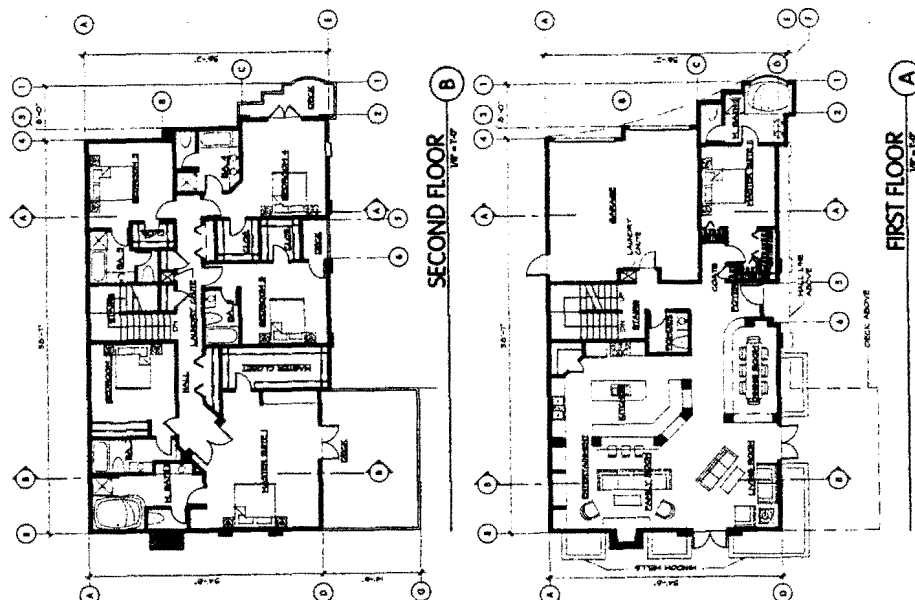
PRELIMINARY ELEVATIONS

SCALE: 1/8" = 1'-0"
JOB NUMBER: 98-152
DATE: 2/19/99
4/21/99
5/19/99

jordan
ARCHITECTS, INC.
1-4
Building Code Institute
Suite 200
San Jose, CA 95131
Telephone 650-852-7357
Facsimile 650-421-7357

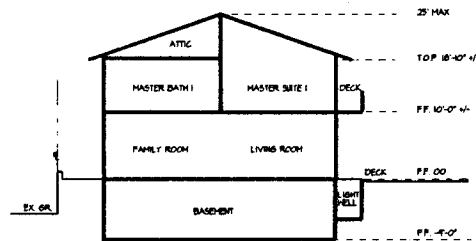
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SCALE: 1/8" = 1'-0"
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CHECKED BY: JORDAN

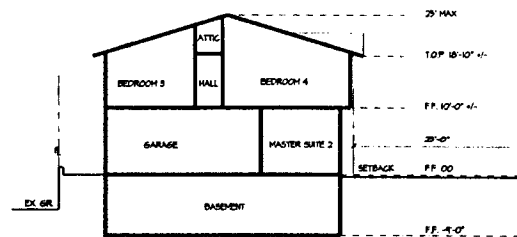


LAIDLAW FAMILY RESIDENCE SAN CLEMENTE, CALIFORNIA

COASTAL COMMISSION
5-00-459 (Laidlaw)
EXHIBIT # 5
PAGE 5 OF 7

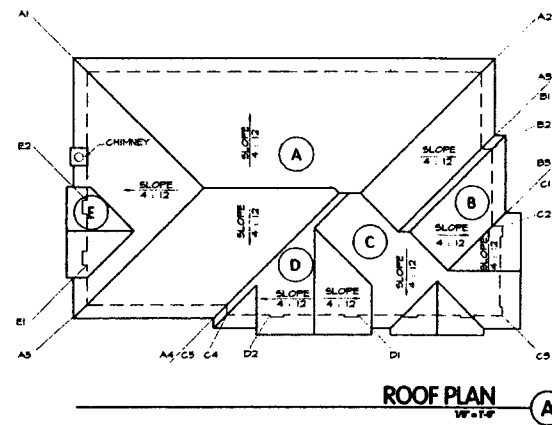


SECTION B
1/8\"/>



SECTION A
1/8\"/>

HEIGHT ANALYSIS						
BLOCK	1	2	3	4	5	AVERAGE
A	RIDGE	88.5'	88.5'	88.5'	88.5'	88.5'
	EXISTING GRADE	44.2'	44.8'	44'	44'	44.5'
B	RIDGE	86.5'	86.5'	86.5'		
	EXISTING GRADE	44'	44'	44'		44'
C	RIDGE	84'	84'	84'	84'	84'
	EXISTING GRADE	44'	44'	44'	44'	44'
D	RIDGE	80'	80'			
	EXISTING GRADE	44'	44'			44'
E	RIDGE	86.4'	86.4'			
	EXISTING GRADE	44.4'	44.4'			44.4'



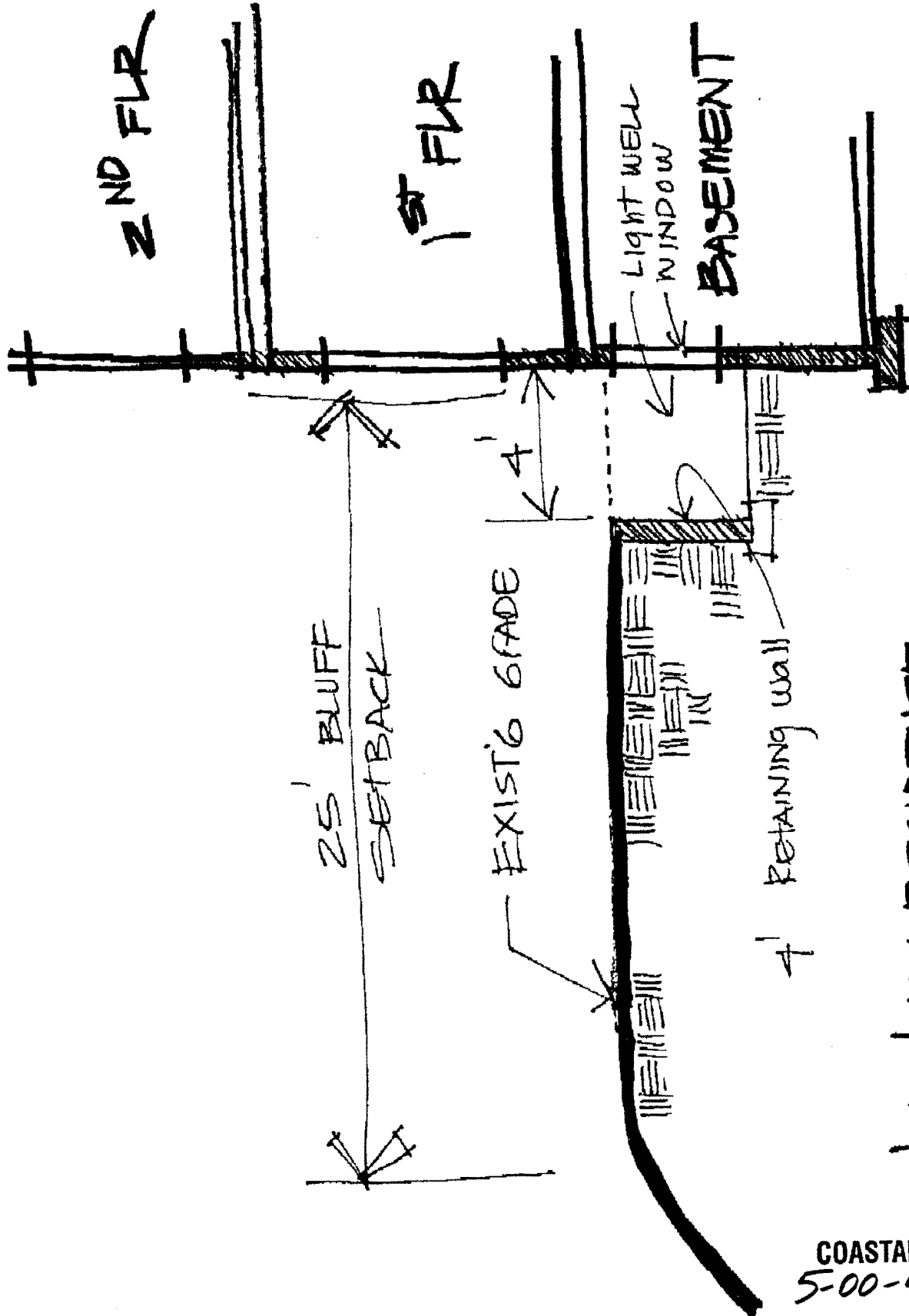
ROOF PLAN
1/8\"/>

LIDLAW FAMILY RESIDENCE PRELIMINARY ROOF PLAN & SECTIONS SAN CLEMENTE, CALIFORNIA

SCALE: 1/8\"/>



COASTAL COMMISSION
5-00-457 (Laidlaw)
EXHIBIT # 5
PAGE 6 OF 7



LAIPLAW RESIDENCE
SAN CLEMENTE, CA.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

245 W. BROADWAY, STE. 380

P.O. BOX 1450

LONG BEACH, CA 90802-4416

(310) 590-5071

Filed: 03-31-93

49th Day: 05-19-93

180th Day: 09-27-93

Staff: RMR-LB

Staff Report: 04-27-93

Hearing Date: May 12-14, 1993

Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-93-035

APPLICANT: Phil Klinkert

AGENT: Lee Riley

PROJECT LOCATION: 354 PASEL DE CRISTOBAL, San Clemente, County of Orange

PROJECT DESCRIPTION: The applicant proposes to construct a 25 foot high, 4,159 sq. ft. single family residence with a 450 sq. ft. two-car garage and spa on a coastal bluff and canyon. The project also includes reconstruction of the existing curb, gutters, sidewalk in a right-of-way to be abandoned by the City of San Clemente and construction of a retaining wall at the rear of the property. No grading is proposed.

Lot Area	12,060 sq. ft.
Building Coverage	2,443 sq. ft. (%)
Pavement Coverage	1,540 sq. ft. (%)
Landscape Coverage	3,300 sq. ft. (%)
Parking Spaces	2
Zoning	R-1
Plan Designation	Medium Low Residential (7du/ac)
Project Density	1 du/12,060 sq. ft.
Ht abv fin grade	25 feet

LOCAL APPROVALS RECEIVED: Approval in concept from the City of San Clemente Community Development Department

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Land Use Plan, City of San Clemente Resolution No. 91-38 abandoning a right of way, Draft Geotechnical Report, Supplemental Geotechnical/Geological Investigation, Coastal Development Permit A5-91-468/5-91-439

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending denial of the proposed development because there is incomplete and insufficient information for the Commission to adopt findings that the project is in conformance with the Chapter 3 policies of the Coastal Act and the certified land use plan regarding access.

COASTAL COMMISSION

5-00-459 (paid law)

EXHIBIT # 6

PAGE 1 OF 13

COMMISSION ACTION ON 5-13-93

- ☐ Approved as Recommended
- ☐ Denied as Recommended
- ☐ Approved with Changes
- ☒ Denied
- ☐ Other

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

Denial

The Commission hereby denies a permit for the proposed development on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is between the sea and the first public road paralleling the sea and can not be found consistent with the access and recreation policies of the Coastal Act, and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

The applicant proposes to construct a 25 foot high, 4,159 sq. ft. single family residence with a 450 sq. ft. two-car garage and spa on a lot which is situated on a coastal bluff to the west and coastal canyon to the north. The project also includes reconstruction of the existing curb, gutters, sidewalk in a cul-de-sac right-of-way to be abandoned by the City of San Clemente and construction of a retaining wall at the rear of the property. No grading is proposed.

The project is located on a coastal blufftop and a coastal canyon (see Exhibit 2), on the southern side of Trafalgar Canyon. Across the canyon is the Beachcomber Hotel. Just south of and adjacent to the site is the "T" St. pedestrian overpass crossing the railroad tracks to the beach. On a strip of land seaward of the public street and south of the project site there is a public bench overlooking the beach. The beach at the "T" St. overpass is a highly frequented surfing spot. The project site is currently vacant and is situated at the terminus of the West Paseo de Christobal cul-de-sac. The San Clemente Pier can be seen from the project site. There are no adjacent structures, and therefore the stringline policy is not applicable. The proposed project includes a 15 foot setback from the coastal canyon and a 25 foot setback from the bluff edge.

Staff has visited the site on several occasions. There is evidence on the blufftop of a beaten trail extending across the site and down into the coastal canyon. In addition, members of the public have testified in hearings on Resolution 91-38 in the City of San Clemente of public use of the site. The applicant's agent has also confirmed public use of the site.

The City of San Clemente LUP calls for a boardwalk to be established between Linda Lane Park and the San Clemente Pier to the North and the "T" St. overpass to the south.

The applicant proposes to incorporate a 20 foot wide lateral strip of land on the blufftop (hereinafter referred to as the "lateral right-of-way") which appears on the Assessor's Parcel map as a public right-of-way. The City did

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not require a lateral pedestrian easement as a condition of approval for this project. The applicant has supplied the City Council Resolution 91-38 for approval of a 1,055 sq. ft. abandonment of a public right-of-way on the cul-de-sac (hereinafter referred to as the cul-de-sac right-of-way). This abandonment has not yet been consummated and has not applied for or received a coastal development permit.

B. Public Access

The following Coastal Act policies are applicable to the proposed development relative to public access and protection of scenic and visual resources:

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act 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 of the Coastal Act states:

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30214 of the Coastal Act states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.

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(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission, regional commissions, and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30251 of the Coastal Act 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, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic area such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, on page II-56 of the certified LUP there are listed several specific improvements for the pier area which include:

A boardwalk connecting the pier parking areas at "T" Street, Linda Lane and North Beach.

The proposed site is a coastal blufftop and coastal canyon lot adjacent to the "T" St. overpass, one of several access points in San Clemente which does not involve access to the beach by walking across the railroad tracks. To the Northwest is the Beachcomber Hotel site, the San Clemente Municipal Pier, and Linda Lane Park. The San Clemente Municipal Pier is the heart of San Clemente's tourist/commercial area. (See Exhibit 5.)

Staff has talked with City planners regarding establishment of a blufftop trail at the Beachcomber Hotel site. There are plans in the EIR stage to replace the existing Beachcomber Hotel with a hotel/restaurant complex.

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Included in the plan would be a blufftop trail accessible to the public. The City planners expressed to staff the hope that a blufftop trail could be established between the Pier, across the Beachcomber site over to the "T" St. pedestrian overpass.

In order to achieve a blufftop trail from Linda Lane Park to the "T" St. overpass a trail would have to cross the applicant's property in the lateral right-of-way indicated on the assessor's parcel map. The City approached the applicant with a proposal for a trail in front of or at the rear of the property of the proposed development. The applicant rejected both proposals. The City did not pursue the matter, and additionally approved a not yet consummated abandonment of the cul-de-sac right-of-way.

In analyzing the proposed project, staff must evaluate two separate right-of-ways on the site. The first right-of-way is a 20 foot strip of land abutting the existing cul-de-sac--the cul-de-sac right-of-way. The City of San Clemente has approved a not yet consummated abandonment of this right-of-way without benefit of a coastal development permit. The second lateral right-of-way is a 20 foot strip of land located on the bluff top trending parallel with the railroad tracks (see Exhibits 2 & 3). Site plans submitted by the applicant show that this lateral right-of-way was abandoned under City action 91-38. However, this is not correct. Resolution 91-38 is for the abandonment of the 1,055 sq. ft. cul-de-sac right-of-way only.

The site plans are also incorrect in that the parcel numbers are mislabeled. On the assessor's parcel map (see Exhibit 3) Parcel 1 is a triangular piece of property located on the canyonward side of the property. Parcel 2 is the rectangular block of property. The 20 foot wide lateral right-of-way is indicated as a dashed line separating parcel 2 from the railroad track property. However, the legal description submitted by the applicant indicates that there are three parcels (see Exhibit 6). Parcel 1 is Lot 30 in Block 10 of Tract No. 822. This is the large rectangular piece of property. Parcel 2 is indicated as the portion of Lot 30 in Block "G" of Tract No. 822. This is the 20 foot wide right-of-way. Parcel 3 is that portion of Lot 29 in Block G of Tract No. 822. This is the triangular piece of property on the canyon side of the property.

The City did not question the ownership of the 20 foot wide lateral right-of-way on the bluff top when it considered the applicant's project. However, a critical question for staff is whether this lateral right-of-way has been abandoned, and if so, was it abandoned prior to the passage of Prop 20 and the Coastal Act of 1976. If the lateral right-of-way was abandoned prior to 1972, then the Coastal Commission would not have jurisdiction over the abandonment. If, however, the lateral right-of-way was abandoned after 1972, then the Coastal Commission has jurisdiction over the abandonment of the right-of-way. If the lateral right-of-way is still public, then staff would recommend denial of the project because it incorporates public land which the applicant does not own and precludes public access. Also, if the lateral right-of-way is still public, then the cul-de-sac right-of-way which the City abandoned in Resolution 91-38 must be considered in light of establishing a potential trail easement along the bluff top.

The agent for the applicant has stated that the applicant's title company has been researching the title, but as of April 29, 1993 has not provided evidence of ownership. In addition, staff consulted with planning staff at the City of

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San Clemente to resolve this issue and also contacted the County Recorder's office to clarify the situation. Neither of these local agencies were able to shed light on the ownership issue. The applicant's agent indicated that he wished to go forward to hearing, despite the fact that, in the absence of the information requested the project can not be found consistent with the public access policies of the Coastal Act.

In the absence of conclusive evidence of ownership of the lateral right-of-way, the Commission cannot find the project in conformance with the Coastal Act. The project also includes the previously mentioned cul-de-sac right-of-way which was an approved but not yet consummated abandonment by the City of San Clemente, without benefit of a coastal development permit. This cul-de-sac right-of-way would have to be analyzed under the Coastal Act for impacts to a potential trail along the blufftop in the lateral right-of-way. Additionally, it is not clear from the existing plans where the cul-de-sac right-of-way is located on the southern boundary of the project.

The 20' wide lateral right-of-way traverses the blufftop in an area which shows evidence of use by the public. If this right-of-way is still public, then the City does not need permission of the applicant to place a trail on the blufftop in the lateral right-of-way. The City could then establish a blufftop trail from the Pier Bowl to the "T" St. pedestrian overpass, in essence, providing a loop trail, as required in the LUP.

Staff requested a postponement of the project until such time as the lateral right-of-way issue is clarified. As mentioned previously, however, the applicant's agent indicated that he wished to go forward to hearing.

Abandoning a public right-of-way is inconsistent with providing maximum access as required by Article X of the California Constitution. Privatizing publicly owned property is restricting access thereto. Using the right-of-way as a trail easement would increase recreational and viewing opportunities in a highly scenic area. Maintaining public ownership is consistent with public needs and does not infringe upon the rights of private property owners.

This lateral right-of-way, if utilized as a walkway, would provide a link between the much-visited Pier Bowl/San Clemente Pier and the "T" St. overpass, thus enhancing public access and recreational opportunities.

Therefore, the Commission finds that there is insufficient information to find that the proposed project does not have significant adverse impacts on public access. Therefore, the Commission cannot adopt findings that the proposed development conforms with Sections 30210, 30211, 30212, and 30214 of the Coastal Act regarding public access, and Section 30251 of the Coastal Act which protects and preserves the visual and scenic resources of the California coast. Therefore, the Commission denies the proposed development.

C. Unpermitted Development

The applicant has submitted an application for development which includes the abandonment of a public right-of-way for which a Coastal Development Permit has not been obtained. Abandonment of a public right-of-way constitutes development as defined by the Coastal Act. Although this development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3

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policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission will act on this application without prejudice and will act on it as if none of the existing development had previously occurred.

D. Local Coastal Program

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

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988. Among the policies contained in the certified LUP are those discussed in the preceding sections regarding access and preservation of visual resources. As proposed, the development will be inconsistent with the policies contained in the LUP. Therefore, the Commission finds that approval of the proposed development will prejudice the City's ability to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a), therefore, the project is denied.

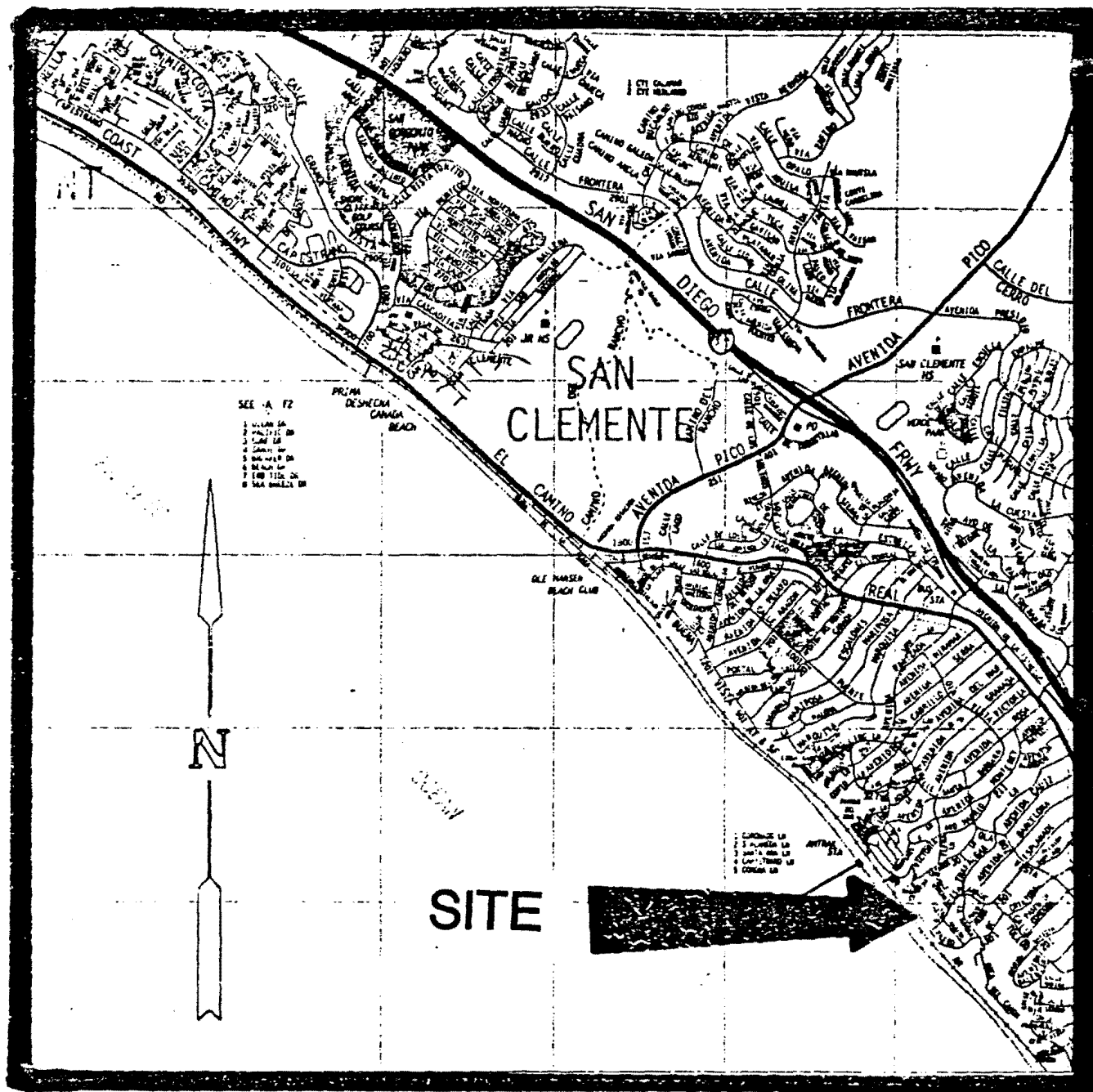
E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application 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)(i) 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 impact which the activity may have on the environment.

The project is located atop a coastal canyon and a coastal bluff in a highly scenic area of coastline. There is incomplete information on the lateral and cul-de-sac right-of-ways which makes it impossible for the Commission to analyze the project and to adopt findings that the project conforms with the Commission's responsibilities under the Coastal Act and CEQA. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act.

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FIGURE 1

SITE LOCATION MAP

354 PASEO DE CRISTOBAL, SAN CLEMENTE

PETER & ASSOCIATES
1519 CALLE VALLE, SAN CLEMENTE, CALIF

(714) 492-3735

EXHIBIT 1 5-93-035

LOCATION

FAX (714) 492-1891

NA

1

1

KLINKERT RESIDENCE
354 PASEO DE CRISTOBAL
SAN CLEMENTE CALIFORNIA

[illegible]

EXHIBIT 2 5-93-035

SITE PLAN

692-26

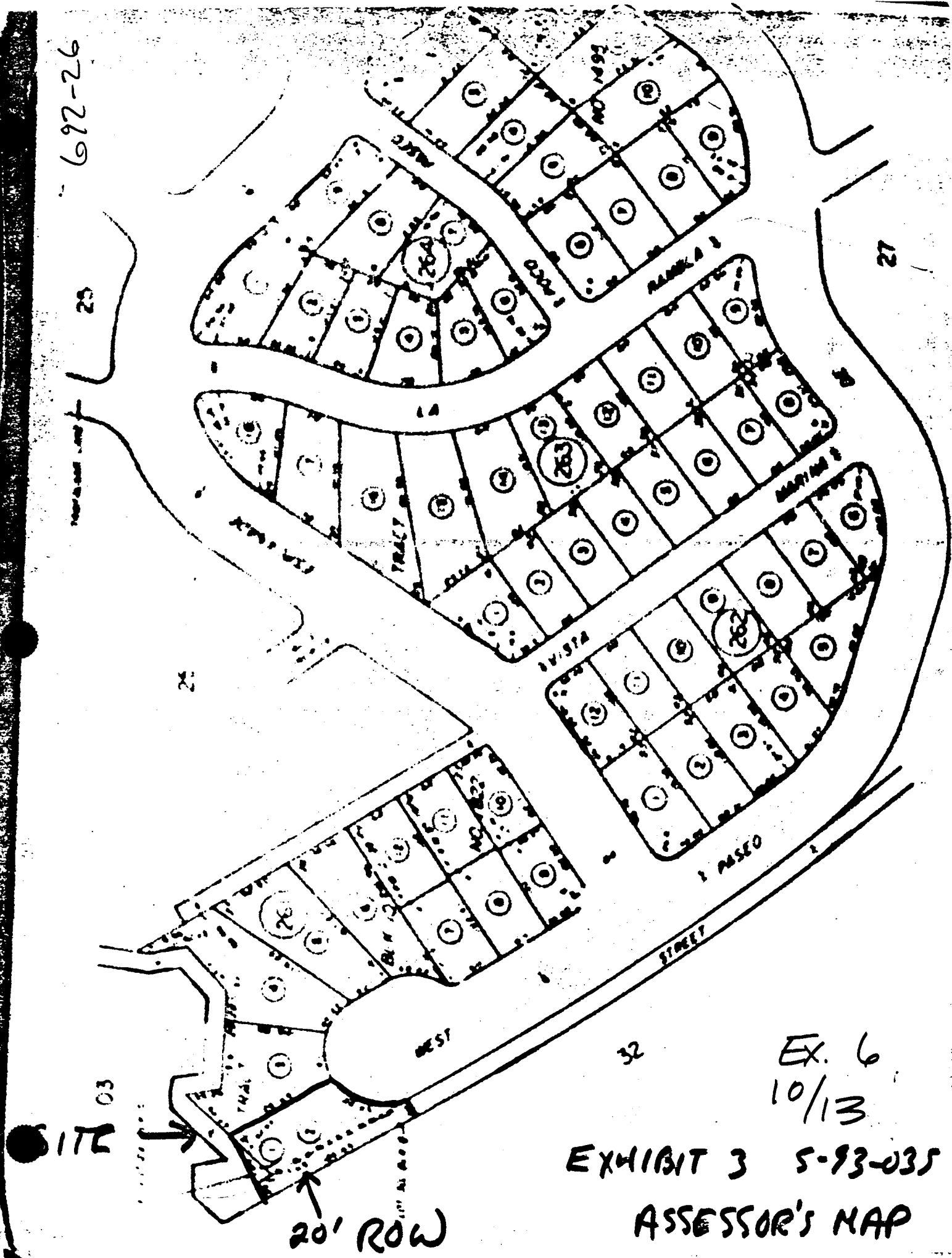


EXHIBIT 3 5-93-035
ASSESSOR'S MAP

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SAN CLEMENTE, CAL. JRNA 92672
(714) 492-8586
FAX (714) 498-8625

CALCULATED BY O.M.

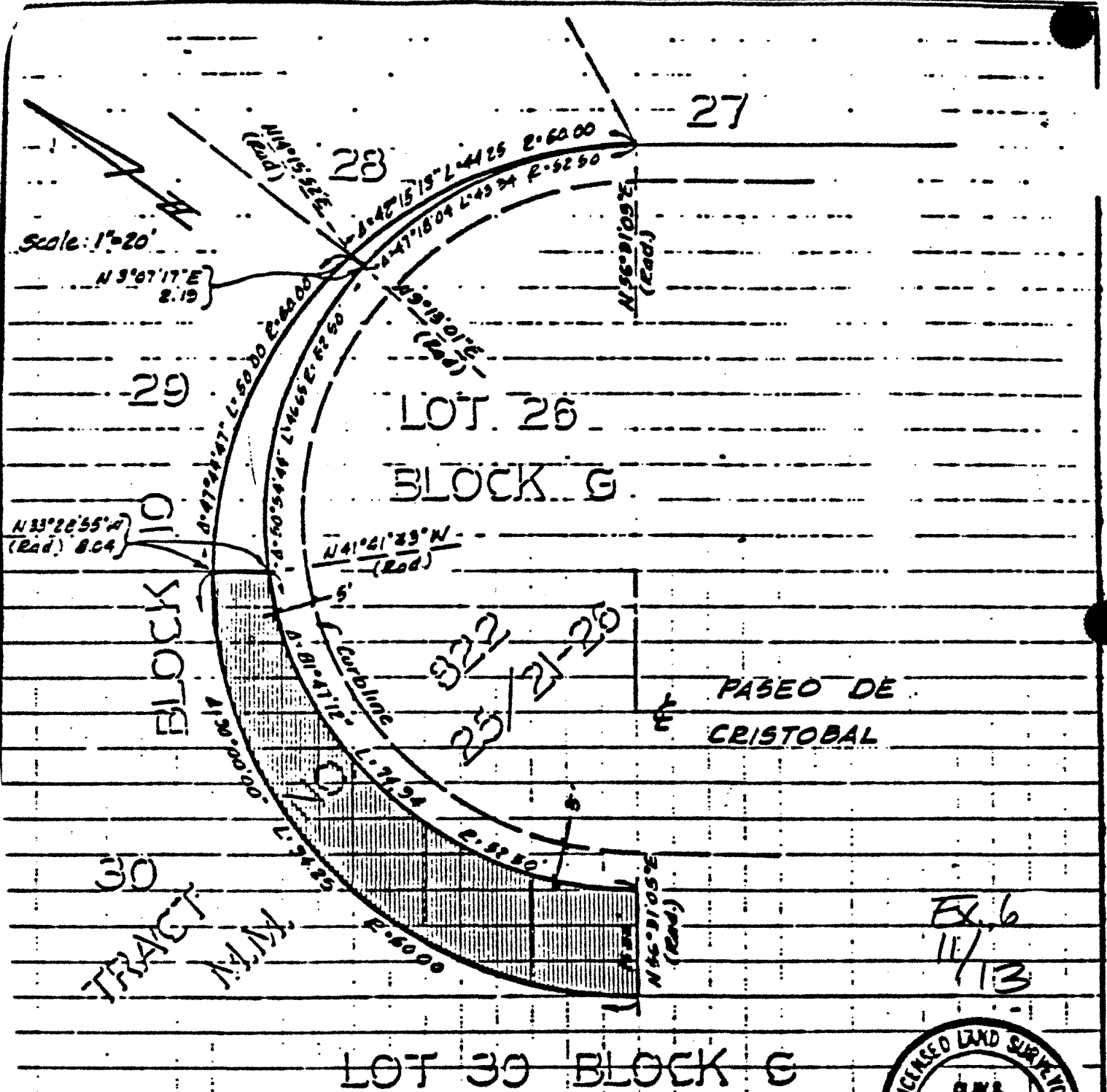
DATE 2-21-91

CHECKED BY _____

DATE _____

SCALE 1"=20'

JN 6580



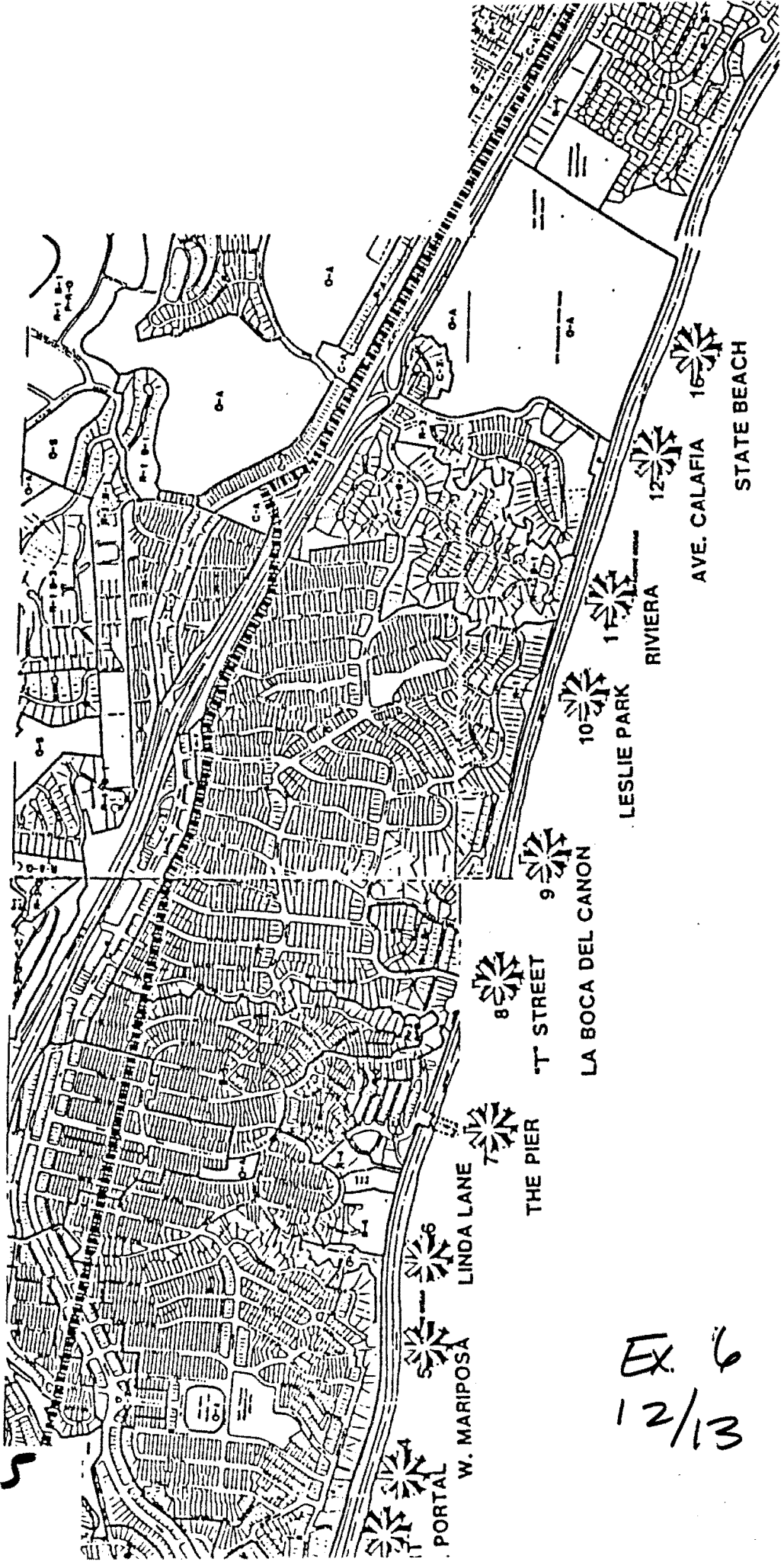
SKETCH TO ACCOMPANY LEGAL DESCRIPTION

Portion of Paseo De Cristobal (lot 26, Block G,
7.822) to be vacated.



EXHIBIT 4 5-93-035
CUL-DE-SAC
ROW

EXHIBIT S S-95-035
ACCESS POINTS



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RECEIVED

JAN 27 1993

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

5-93-035

Order No: 619354 -1

DESCRIPTION

PARCEL 1.

Lot 30 in Block 10 of Tract No. 822, in the City of San Clemente, County of Orange, State of California, as shown on a map Recorded in Book 25, Pages 21 to 26, inclusive of Miscellaneous Maps, records of said Orange County.

PARCEL 2:

That portion of Lot 30 in Block "G" of Tract No. 822 in the City of San Clemente, County of Orange, State of California, as shown on a map Recorded in Book 25, Pages 21 to 26, inclusive of Miscellaneous Maps, records of Orange County, described as follows:

Commencing at the most Northerly corner of said Lot 30, thence along the Northeasterly boundary of said Lot 30 South 33° 28' 55" East a distance of 58.89 feet to the true point of beginning, thence continuing along said Northeasterly boundary South 33° 28' 55" East a distance of 185.64 feet; thence South 56° 31' 05" West a distance of 20.00 feet to the Southwesterly boundary of said Lot 30, thence along said Southwesterly boundary North 33° 28' 55" West a distance of 185.64 feet, thence North 56° 31' 05" East a distance of 20.00 feet to the true point of beginning.

PARCEL 3:

That portion of Lot 29 in Block G of Tract No. 822, in the City of San Clemente, County of Orange, State of California, as per Map Recorded in Book 25, Pages 21 to 26 inclusive of Miscellaneous Maps, records of Orange County, described as follows:

Beginning at the most Northerly corner of Lot 30 in Block 10 of said Tract No. 822; thence South 40° 07' 30" West along the Northwesterly boundary of said Lot 30, 62.54 feet to the most Westerly corner of said Lot 30; thence North 33° 28' 55" West 17.65 feet; thence North 56° 31' 05" East 60.00 feet to the point of beginning.

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EXHIBIT 6 5-93-035

LEGAL

TH 106
CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071

Filed: 03-31-93
49th Day: 05-19-93
180th Day: 09-27-93
Staff: RMR/LB RMR
Staff Report:
Hearing Date: May 13, 1993
Comm. Action on Findings:



July 13-16, 1993
COMMISSION ACTION ON 7-15-93

☒ Approved as Recommended
See Addendum
STAFF REPORT: REVISED FINDINGS ☒ Approved as Recommended

☐ Approved with Changes

☐ Denied

APPLICATION NO.: 5-93-035

APPLICANT: Phil Klinkert

AGENT: Lee Riley

PROJECT LOCATION: 354 Paseo de Christobal, San Clemente, County of Orange

PROJECT DESCRIPTION: Construction of a 25 foot high, 4,159 sq. ft. single family residence with a 450 sq. ft. two-car garage and spa on a coastal bluff and canyon. The project includes reconstruction of the existing curb, gutters, sidewalk and construction of a retaining wall at the rear of the property. The project also involves the abandonment of a 1,055 sq. ft. City of San Clemente right-of-way at the cul-de-sac of Paseo de Christobal, and the incorporation of a 20 foot wide blufftop right-of-way. No grading is proposed.

COMMISSION ACTION: Denial

DATE OF COMMISSION ACTION: May 13, 1993

COMMISSIONERS ON PREVAILING SIDE: Cervantes, Doo, Giacomini, Glickfeld, Moulton-Patterson, Neely, Rick, Wright, Yokoyama and Gwyn

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on 5-13-93 denying the permit for 5-93-035 (Klinkert).

I. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

The applicant proposes to construct a 25 foot high, 4,159 sq. ft. single family residence with a 450 sq. ft. two-car garage and spa on a lot which is situated on a coastal bluff to the west and coastal canyon to the north. The

COASTAL COMMISSION

5-00-457 (Laidlaw)

EXHIBIT # 7

PAGE 1 OF 7

project also includes reconstruction of the existing curb, gutters, sidewalk, and retaining wall in the coastal canyon. The project involves two right-of-ways. One right-of-way is located on the cul-de-sac of Paseo de Christobal (hereinafter referred to as the cul-de-sac right-of-way), and the applicant has reached agreement with the City on abandoning this right-of-way, but has not obtained a coastal development permit for the abandonment. The second easement or right-of-way is a 20 foot wide strip of property located on the coastal bluff (hereinafter referred to as the blufftop right-of-way). This right-of-way which is alleged to have been abandoned leads from the shoreline and navigable waters back to other public rights-of-way. No grading is proposed.

The project is located on a coastal bluff and a coastal canyon (see Exhibit 2), on the southern side of Trafalgar Canyon. The project site is currently vacant and is situated at the terminus of the West Paseo de Christobal cul-de-sac. Across the canyon, to the north, is the Driftwood Condominium complex and the Beachcomber Hotel. Just south of and adjacent to the site is the "T" St. pedestrian overpass, which provides access from Paseo de Christobal over the railroad tracks to the beach. On a strip of land seaward of the public street between the overpass and the project site there are public benches overlooking the beach. The beach at the "T" St. overpass is a highly frequented surfing spot. The project site affords excellent views of the overpass, the surfers, and the San Clemente Pier. Since there are no adjacent structures on either side of the property, a stringline has not been established. There is a residence behind the project site to the east. The proposed project includes a 15 foot setback from the coastal canyon and a 25 foot setback from the coastal bluff edge.

Staff has visited the site on several occasions. These site visits and site topo provided by the applicant show that the blufftop right-of-way includes portions of an existing trail. This trail extends across the project site and down into the coastal canyon. Access to navigable waters using the existing trail within the blufftop right-of-way can be accomplished in several ways. Members of the public have testified in hearings on Resolution 91-38 in the City of San Clemente and in letters and telephone conversations with Commission staff of public use of the site. The applicant's agent has also mentioned public use of the site. The City of San Clemente LUP calls for a boardwalk to be established between Linda Lane Park and the San Clemente Pier to the North and the "T" St. overpass to the south.

The County of Orange Assessor's Parcel Map shows a linear strip of land seaward of West Paseo de Christobal. This linear strip is owned by the City of San Clemente and includes improvements such as park benches for public use. The linear strip extends from south of the "T" St. overpass right up to the Klinkert site. At the property boundary of the Klinkert site this linear strip becomes a dashed line as opposed to a solid line. This indicates that at one point this linear strip of property (blufftop right-of-way) was incorporated into the project site. The applicant has provided grant deeds showing ownership of the property, but has not provided documentation on how this public property was ever transferred to private ownership.

The applicant proposes to incorporate a 20 foot wide lateral strip of land on the blufftop (the blufftop right-of-way) which appears to be an abandoned. There is incomplete and insufficient information on if or how the abandonment legally occurred. In addition, the applicant City Council Resolution 91-38

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for approval of a 1,055 sq. ft. abandonment of a public right-of-way on the cul-de-sac (cul-de-sac right-of-way). This abandonment has not yet been consummated and has not received a coastal development permit.

B. Project Background

In this case, there are two pieces of property which at one time or another have been public property. The first is a 1,500 sq. ft. piece of property at the cul-de-sac of Paseo de Christobal, the cul-de-sac right-of-way. The City of San Clemente has reached an agreement with Mr. Klinkert to abandon this property. This right-of-way abandonment is shown on the site plans submitted by the applicant in his application. A coastal development permit was not issued for this abandonment. Additionally, even though an agreement has been reached, the property does not get transferred until the conditions of the abandonment agreement are met.

The second piece of property in question is a 20 foot wide strip of property on the coastal bluff side of the property, the blufftop right-of-way. This right-of-way was not considered an issue by the City in granting conceptual approval of this project. This blufftop right-of-way is indicated on the assessor's parcel map as a dashed line (see exhibit 3). The plans submitted to the staff by the applicant indicated that both right-of-ways were abandoned by the City under resolution 91-38. In addition, the letter from the applicant submitting the City resolution of abandonment states:

If you take away the portion of the abandonment which lies within the 25 foot blufftop setback, there's not much left. The purpose of the applicant wanting the abandonment was to have control over landscaping and maintenance of this strip of "no mans land". Right now it is used as a spot for people to take their dogs to do their thing.

Staff interpreted the plans and the letter to mean that both the cul-de-sac and blufftop right-of-way were included in City resolution 91-38. However, this is incorrect, because the resolution only applies to the cul-de-sac right-of-way. Upon discovering this fact, in the second week of mail-out of staff reports, staff requested that the applicant supply proof of legal ownership of the blufftop right-of-way, in particular the date when the right-of-way came into private ownership. The agent for the applicant could not supply this evidence prior to staff report mail-out. Staff did suggest that the agent postpone the hearing until proof of legal ownership was provided, however, the agent refused.

At the May, 1993 hearing for this application, Chief Counsel for the Commission provided a legal interpretation of the basis for the finding of denial as regards this project. Following the vote on the item, Commissioner Glickfeld requested and District Director Damm concurred that the findings be revised to incorporate the comments of Commission Counsel.

C. Proof of Legal Ownership

The applicant is proposing development on what is asserted to be an abandoned public right-of-way. This 20 foot wide right-of-way does impact the development, in that the applicant is establishing a 25 foot coastal bluff setback line based upon the seaward limit of the right-of-way. There is, however, incomplete and insufficient information on if or how the abandonment legally occurred.

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Section 30601.5 of the Coastal Act states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Thus, section 30601.5 of the Coastal Act provides that if an applicant is not the owner of a fee interest in property, the applicant must demonstrate a legal right, interest or entitlement to use the property in the manner proposed. Therefore, if there are questions with regard to ownership of the property, the applicant is required to provide evidence that they have the legal right to use the property for the purpose for which it is proposed.

The applicant has submitted a grant deed which shows that the 20 foot blufftop right-of-way is a part of the property. However, what staff is requesting is proof that this strip of property was, in fact, legally abandoned by the City of San Clemente to the private property owner. The applicant has not been able to supply this proof, and therefore, the question of ownership of this 20 foot wide lateral strip is still in doubt.

In this case, the right-of-way which is alleged to have been abandoned leads from the shoreline and navigable waters back to other public rights-of-way. The legislature, in enacting Government Code Section 39933, provided that public rights-of-way shall remain open for the unobstructed use of the public from navigable waters to the public streets and highways.

At the public hearing for this item staff legal counsel advised that even if the blufftop right-of-way had been abandoned by the City of San Clemente, this abandonment may not be legal under Section 39933 of the California Government Code, which states:

All navigable waters situated within or adjacent to city shall remain open to the free and unobstructed navigation of the public. Such waters and the water front of such waters shall remain open to free and unobstructed access by the people from the public streets and highways within the city. Public streets, highways, and other public rights of way shall remain open to the free and unobstructed use of the public from such waters and water front to the public streets and highways.

The blufftop right-of-way extends laterally across the entire lot. At the northeastern property boundary there is an existing County of Orange flood control easement terminating in a concrete underpass under the railroad. Access to the beach in this area can be accomplished by several ways. First, people can park in the cul-de-sac area and walk on the "T" St. pedestrian overpass to the beach. Second, people can park in the cul-de-sac and walk across the Klinkert site down into the canyon and through the railroad

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underpass to the beach. Third, a person can walk along the Klinkert property down into the canyon and up and over to the Beachcomber site and thence to the San Clemente Pier, and vice versa.

In addition, many of the condominiums and single-family residences inland up the canyon have staircases down into the canyon leading to the beach. Pedestrians using the canyon bottom can then either go up and across the Klinkert site to the "T" St. overpass, under the railroad crossing, or up and over north across the Beachcomber site.

The blufftop right-of-way on the Klinkert property is horizontal and does not provide direct access to the beach. However, the blufftop right-of-way does provide a link to the "T" St. overpass from the north, and it does provide access from the "T" St. overpass down into the canyon and thence to the beach or over to the San Clemente Pier. Additionally, in the event that the "T" St. overpass is closed for some reason, the blufftop right-of-way on the Klinkert property would provide direct access to the beach and navigable waters.

During the hearing Commission Counsel stated:

The applicant apparently believes and may well have facts behind the belief that at some point that right-of-way was abandoned and came into private ownership. It appears as if the abandonment of that right-of-way is contrary to California law, and as a consequence there is a significant question as to whether or not they have the legal ability to develop. Until that question is resolved, the Commission should not approve the development on the site.

The options for the Commission are either to deny or to continue and allow the applicant's representative to come up with sufficient information to justify it [the development].

As has been previously stated, the applicant's representative did not request a continuance prior to the Commission vote on the item and instead chose to go forward to hearing. Because the applicant has not supplied proof of when and how the blufftop right-of-way had been abandoned, there is incomplete and insufficient information and the legal ownership of the blufftop right-of-way is in question. Therefore, the Commission can not consider a project which includes this blufftop right-of-way until such time as information is supplied as to the nature of how the abandonment of this blufftop right-of-way occurred.

What staff does not have--what they've been asking the applicant for--is some evidence that the applicant has come into possession of property, of the right to use this property without violating that government code provision [39933]. Absent that, this Commission is not empowered to approve the development that is proposed.

Therefore, the Commission finds that the applicant has not been able to demonstrate proof of legal ownership of a portion of the project site. Because the applicant cannot demonstrate legal ownership over the blufftop right-of-way, the applicant can not comply with Coastal Act Section 30601.5. Therefore, any proposed development including the blufftop right-of-way must be denied.

Ex. 7
5/7

C. Public Access

There was some discussion at the hearing over whether public access across the site was an issue or not. At the public hearing the Commission Counsel stressed that the primary issue before the Commission was legal ownership of the blufftop right-of-way. As was stated by Commission Counsel:

The issue is not access at this time. Before you can get to the access issue, before you can decide whether or not access is appropriate in relation to development, you must first come to the issue of whether or not it's possible to have development at the site at all. Until the applicant shows that they have the legal ability to develop on the property, you can't reach the access issue because the applicant doesn't have the right to develop at all.

Although public access is not an issue at this time because the applicant has not been able to adequately provide the chain of title for the blufftop right-of-way, the Commission also wants to inform the applicant that public access will be an issue for any later submittal, given the provisions of Government Code 39933. Therefore, the Commission is not adopting specific findings on the public access issue at this time, and basing its denial on Section 30601.5 of the Coastal Act. .

C. Unpermitted Development

The applicant has submitted an application for development which includes the abandonment of a public right-of-way for which a Coastal Development Permit has not been obtained. Abandonment of a public right-of-way constitutes development as defined by the Coastal Act. Although this development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission will act on this application without prejudice and will act on it as if none of the existing development had previously occurred.

D. Local Coastal Program

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

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988. There is incomplete information on the legal ownership of the blufftop right-of-way which makes it impossible for the Commission to analyze the project and to adopt findings that the project conforms with the Commission's responsibilities under the Coastal Act. Therefore, the Commission finds that approval of the proposed development will prejudice the City's ability to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a), therefore, the project is denied.

EX. 7
6/7

E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application 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)(i) 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 impact which the activity may have on the environment.

The project is located atop a coastal canyon and a coastal bluff in a highly scenic area of coastline. There is incomplete information on the legal ownership of the blufftop right-of-way which makes it impossible for the Commission to analyze the project and to adopt findings that the project conforms with the Commission's responsibilities under the Coastal Act and CEQA. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act.

8868E

Ex. 7
7/7

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071

ADDENDUM

Date: July 9, 1993
To: Commissioners and Interested Persons
From: South Coast District Staff
Subject: Commission Meeting of July 14-16, 1993, Page 11, Item 10b,
Application No. 5-93-035 (Klinkert) Revised Findings,
San Clemente, County of Orange

Please note the following changes:

1. A letter from Mr. Lee Riley has been received and is attached to the staff report as exhibit 7.
2. The finding for unpermitted development on page 6 is removed.

On page 2 of the staff report the 6th line should read: "but the City has not obtained a coastal development permit for the abandonment. The"

3. Staff Note:

The original staff report and the revised findings included a finding for unpermitted development. This finding has been removed from the staff report by number 2, above.

The abandonment of the cul-de-sac right-of-way is an action taken by the City of San Clemente concerning property owned by the City of San Clemente. It is clear that until the final transfer of property (cul-de-sac) takes place, the City is the legal owner of the property and not Mr. Klinkert, the applicant. For this reason, the applicant is not the owner of record of the property under Section 30601.5 of the Coastal Act and therefore cannot be held liable for a violation of the Coastal Act concerning that property. However, if the applicant is not the legal owner of the cul-de-sac right-of-way, then the project description for the proposed development cannot include that cul-de-sac, until such time as a coastal development permit is obtained by the City for the abandonment.

Staff will send a letter to the City of San Clemente informing them that abandonment of rights-of-way is considered development under Section 30106 of the Coastal Act, and that a coastal development permit is required for this particular abandonment.

9058E

COASTAL COMMISSION

5-00-459 (Laidlaw)

EXHIBIT # 8

PAGE 1 OF 7

LEE RILEY
Government Relations
Development Consultant

EXHIBIT NO. 7

APPLICATION NO.

5-93-035

California Coastal Commission

July 5, 1993

Mr. Charles Damm
District Director
California Coastal Commission
245 W. Broadway, Suite 380
Long Beach, CA 90802-4416

JUL 7 1993
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Re: Application No. 5-93-035 (Klinkert).

Dear Mr. Damm:

On Saturday, July 3, 1993, I received the Staff Report: Revised Findings for the above referenced application. I am concerned because this document seems to be as flawed as the original staff report. I am puzzled as to why documents which are provided to the Commission and are used by the Commission in making decisions cannot be accurate.

In both the original staff report and now in the revised findings staff makes the allegation that the proposed project involves two rights-of-way. For purposes of clarification I will separate the two portions of the property which are called rights-of-way in the staff reports.

The "cul-de-sac right-of-way" is the least complicated so I will discuss it first. Staff states that the applicant has reached an agreement with the City regarding an abandonment of this 1,055 square foot piece of land but goes on further to state that a coastal development permit has not been obtained for this abandonment. The implication here is that the applicant has undertaken "development" absent a coastal development permit. In fact on page 6, SC of the revised findings staff makes the statement "Although this development has taken place prior to submission of this permit application consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act." The revised findings further state "The Commission will act on this application without prejudice and will act on it as if none of the existing development had previously occurred".

Will you or a member of your staff please demonstrate to me what development has occurred on the project site? The abandonment of this cul-de-sac right-of-way cannot be consummated without an coastal development permit. Part of the application was for approval of the abandonment. This is no different than if an applicant submitted a Tentative Subdivision Map for Commission approval. Nothing can be final until a coastal

EX. 8
2/7

Mr. Charles Damm
July 5, 1993
page two

development permit is issued. I am frustrated that the Commission is being presented inaccurate information to make a decision on. Even the hint that unpermitted development has taken place puts an applicant in a defensive posture unfairly.

The simple facts of the matter are: (a) the applicant applied to the City for an abandonment of a portion of a right-of-way and received approval with conditions, (b) the applicant then applied for a coastal development permit for development on his property including approval of the abandonment and (c) was denied approval of that application. So the project is dead in the water at this time. NO DEVELOPMENT HAS OCCURRED.

Now I would like to discuss the so called "blufftop right-of-way." The original staff report and the revised findings both make mention of this alleged right-of-way. In the revised findings staff states that the agent for the applicant could not supply proof of legal ownership of the "blufftop right-of-way." I would ask you to refer back to my letter to you dated May 4, 1993, in which I describe in detail how the proof of ownership issue was handled. It causes me concern when in the revised findings staff makes comments inferring that I was less than cooperative in obtaining the information asked for. The clear facts of the matter are that staff asked for proof that the 20 foot wide strip of land was in private hands prior to the existence of the Coastal Commission in 1972. Within a few short days of that request and well before the public hearing I provided staff with a copy of a Grant Deed dated September 18, 1969. I gave staff exactly what they asked for. To read the revised findings you would assume that I balked and still insisted on moving forward. Only during the public hearing was the issue of how the property allegedly went from public ownership to private ownership brought up. Of course it was impossible to provide that information instantaneously. Because I felt that we had provided the staff with what they asked for prior to the hearing I think the real issues disappeared and the Commission, based on comments by the Commission Counsel, denied the application.

Subsequent to the public hearing I have been in close contact with Chicago Title Company in Santa Ana. I requested them to perform a chain of title search for me going back as far as they can. The request proved to be quite complicated

EX. 8
3/7

Mr. Charles Damm
July 5, 1993
page three

for them but they finally provided me with copies of grant deeds dating back to 1927. I wanted to make sure that the grant deeds provided me were accurate so I took them to Toal Engineering and had one of their professionals compare the legal descriptions on the deeds with the legal description on the so called blufftop right-of-way. The alleged right-of-way is known as Lot 30, Block G, Tract 822. From 1927, when the area was subdivided, until 1950 this parcel was held in private hands. Specifically, Merchants National Trust and Savings Bank of Los Angeles and then to its successor the Bank of America. On October 10, 1950, Bank of America executed a Deed in favor of the City of San Clemente for all of Lot 30, Block G, Tract 822, **WITH THE EXCEPTION OF THAT PORTION WHICH IS NOW A PART OF THE APPLICANTS PROPERTY.** On April 4, 1951 the City of San Clemente adopted Resolution No. 502, accepting all but the excepted portion which remained in the name of the Bank of America. On September 4, 1951, Bank of America executed a deed in favor of The Steves Corporation for the property in question. The property has undergone several changes in ownership from 1951 to the present but was never in public ownership.

If I was given adequate notice I could have had all this information prior to the hearing but that was not the case. I provided exactly what was asked for.

I am somewhat confused by comments on page 4 of the Revised Findings. Why would staff still want proof of private ownership of the mis-named "blufftop right-of-way" when the Commission has made its decision to deny the application. It is my understanding the the issue is closed and only revised findings need to be adopted. If that is the case you can see my concern that the revised findings be factual in their entirety and that the Commission is adopting the revised findings on the basis that they are correct. If I am wrong please let me know.

I have spoken with Theresa Henry regarding this project and expressed my thoughts as to how the hearing went. Ms. Henry agreed that once ownership of the parcel in question is settled to everyone's satisfaction that a site visit with you, Ms. Henry, the permit analyst as well as the applicant, myself and the

EX. 8
4/7

Mr. Charles Damm
July 5, 1993
page four

applicant's attorney be arranged. I don't know of any other way to ferret out the misunderstandings which have taken place with this application. I would assume that after that site visit, the applicant will decide whether or not to re-apply for a coastal development permit.

I would appreciate hearing from you or Ms. Henry prior to the revised findings hearing so that an accurate portrayal may be presented to the Commission. Thank you for taking the time to read this letter. If you have questions or comments please call.

Respectfully,



Lee Riley
Agent for the Applicant

cc: Phil Klinkert
Roger Saevig, Esq.

Ex. 8
5/7

TOAL ENGINEERING
CIVIL ENGINEERS, LAND PLANNERS AND LAND SURVEYORS
139 AVENIDA NAVARRO
SAN CLEMENTE, CALIFORNIA 92672
PHONE (714) 492-8586
FAX (714) 498-8625

RICHARD J. TOAL, RCE 14505
RAYMOND R. TOAL, RCE 16889
OLAV S. MEUM L.S. 4384

MAILING ADDRESS
P.O. BOX 3878
SAN CLEMENTE, CALIFORNIA 92674

June 9, 1993

Mr. Lee Riley
125 Valencia
San Clemente, CA 92672

Subject: Chain of Title
Por. Lot 30, Block G, Tr. 822,
next to Lot 30, Block 10, Tr. 827
San Clemente

Dear Lee,

At your request, we have put together a list of all conveyances on subject property in chronological order, since the property was subdivided in 1927. Documentation was provided by Chicago Title Company, Order No. 000619354-1, dated June 3, 1993. Title Officer: Patty Hartley.

1. Property subdivided by The Merchants National Trust and Savings Bank in 1927. Bank of America National Trust and Savings Association is successor in interest to the Merchant National Trust and Savings Bank.

On September 4, 1951, Bank of America quitclaims property to The Steves Corporation, a California Corporation per Instrument recorded in Book 2242/222 O.R.

2. On October 1, 1951, The Steves Corporation grants property to C.D. Steves per 2242/223 O.R.
3. On February , 1954, C.D. Steves grants the Northerly ± 58 of property to City of San Clemente per 2673/311 O.R.
4. On December 20, 1960, C.D. Steves grants property to C.D. Steves and Marianne Steves per 5587/49 O.R.
5. On December 15, 1965, C.D. Steves and Marianne Steves grant property to Richard S. Preble and Sandra Preble per 7774/419 O.R.
6. On January 25, 1967, Richard S. Preble and Sandra Preble grant property to Albert R. Preble per 8161-65 O.R.

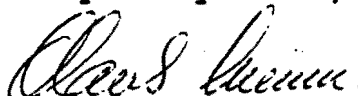
EX. 8
6/7

7. On November 9, 1967, Albert R. Preble grants property to Richard S. Preble and Sandra Preble per 8431-665 O.R.
8. On Dec. 6, 1967, Richard S. Preble and Sandra Preble grant property to Reuben M. Preble per 8457/495 O.R.
9. On September 18, 1969, Reuben M. Preble grants property to W. Robert Laidlaw per 9083/139 O.R.
10. On _____, 1976, W. Robert Laidlaw grants property to Reuben M. Preble per 11892-1241 O.R.
11. On _____, 1976, Reuben M. Preble grants property to Reuben M. Preble Trust Number One per 11892-1242 O.R.
12. On May 23, 1978, Reuben M. Preble, Trustee of the Reuben M. Preble Trust Number One, and Reuben M. Preble Trust Number One grant property to Walter Robert Laidlaw and Frances Evon Laidlaw per 12686/1515 O.R.
13. On July 8, 1978, Orange County Superior Court, File No. 25-46-24, Judgement 12744/1852 O.R., Orders title to be vested in Walter Robert Laidlaw and Frances Evon Laidlaw.
14. On November 9, 1988, the Laidlaws grant property to the Johnsons per Trust No. 88-577902.
15. On November 9, 1988, the Johnsons grant property to the Hausers per Trust No. 88-577904.
16. On November 27, 1990, the Hausers grant the property to the Klinkerts per Inst. No. 90-624091.

As you can see from the foregoing, the City of San Clemente has not had any title interest in this property since the property was subdivided in April, 1927.

If you have any questions concerning the foregoing, or if we can be of further assistance, call us at your convenience.

Very Truly Yours,


Olav S. Meum

OSM:alt

***Responses to
Prescriptive Rights Survey
and Correspondence***

COASTAL COMMISSION

5-00-459

EXHIBIT # 9

PAGE 1 OF 101

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865

RECEIVED
South Coast Region

AUG 22 2001

CALIFORNIA
COASTAL COMMISSIONPREScriptive RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATIONTRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) MIRIAM BARNARD
Address: 8343 CYPRESS FONTANA, CA 92335
Telephone (Home): (909) 822-4925 (Office): N/A
Email Address: N/A
Occupation: RETIRED Age: 80

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? 1952
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
Collecting Fossils, looking for family
on beach, access to beach, watching
dolphins/pelicans, etc.
4. Approximately how many times have you used this area?
50 ~~15~~ + ? (1952 - present) actual # unknown

5. Did you ever ask for and receive permission to use the area? no, never had to. (public access)

6. Did anyone ever interfere in any way with your use? no

7. Have you observed others using this area? yes

If so, for what purposes? fireworks, access to beach

How often have you seen other members of the public using this area?

Whenever I was there: _____ Frequently: X

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 4-10 people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

n/a

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? Is so, please describe the items and list the name of parties or locations where such items can be found:

yes, photographs. My granddaughter, Summer, owns photographs of access to beach.

10. Did you make use of this area as you would public property? If so, please explain yes, access to beach

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? no If so, when and where?

12. Have you ever lived or worked in this vicinity? yes If so, when and where?

during the summer months (Paseo de Cristobal)

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, Ca on 8-18-01
City and State Date

Signature: Miriam Barnard

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

322

707-273-1111

2026
CIVIL
JAN 14 1964

CALIFORNIA
COASTAL COMMISSION

NOV 15 2000

Subject Property

CLARENCE

EXHIBIT 1

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

Signature

Date 8-18-01



EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865


RECEIVED
 South Coast Region

AUG 23 2001

PRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

 CALIFORNIA
 COASTAL COMMISSION

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) DR/MRS. RAYMOND T. IRWIN
 Address: 408 PASADENA CT. UNIT 2
 Telephone (Home): 949) 361-1199 (Office): _____
 Email Address: rtirwin@earthlink.net
 Occupation: dentist Age: 60

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? 1987

2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

Mainly access to water. Also used for ocean viewing, as it is the only flat land available south of the pier for miles

4. Approximately how many times have you used this area?

dozens of times - used by us our children and grandchildren

5. Did you ever ask for and receive permission to use the area? no. It was unfenced for years.

6. Did anyone ever interfere in any way with your use? Just recently a fence was placed across street side of property

7. Have you observed others using this area? Over the last 13 yrs - hundreds of residents + visitors have used this as a major scenic and access
If so, for what purposes? area to beach

How often have you seen other members of the public using this area? hundreds!
Our home looks directly onto this property, so we watch the public
Whenever I was there: _____ Frequently: _____
use of this property constantly
Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately _____ people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

Mr. & Mrs. Donald Downs
333 W Paseo de Cristobal (949) 498-7918

Mr. & Mrs. Tom Gaffney
W Paseo de Cristobal - Block 10 lot # 9 (p. 692-32)

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? Is so, please describe the items and list the name of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? If so, please explain On weekends this property is used by 20-30 people per day for beach access. Also, about 10-15 people per day use the property for viewing. During the weekdays, it is slightly less. Also, the recently-placed fence + no trespassing sign has further restricted use

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? yes If so, when and where?

This property has been without fencing & signs until the last 3-4 yrs - when both fencing & signs were placed by recent owners

12. Have you ever lived or worked in this vicinity? _____ If so, when and where?

Our home is located on the same canyon - immediately adjacent to this property

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

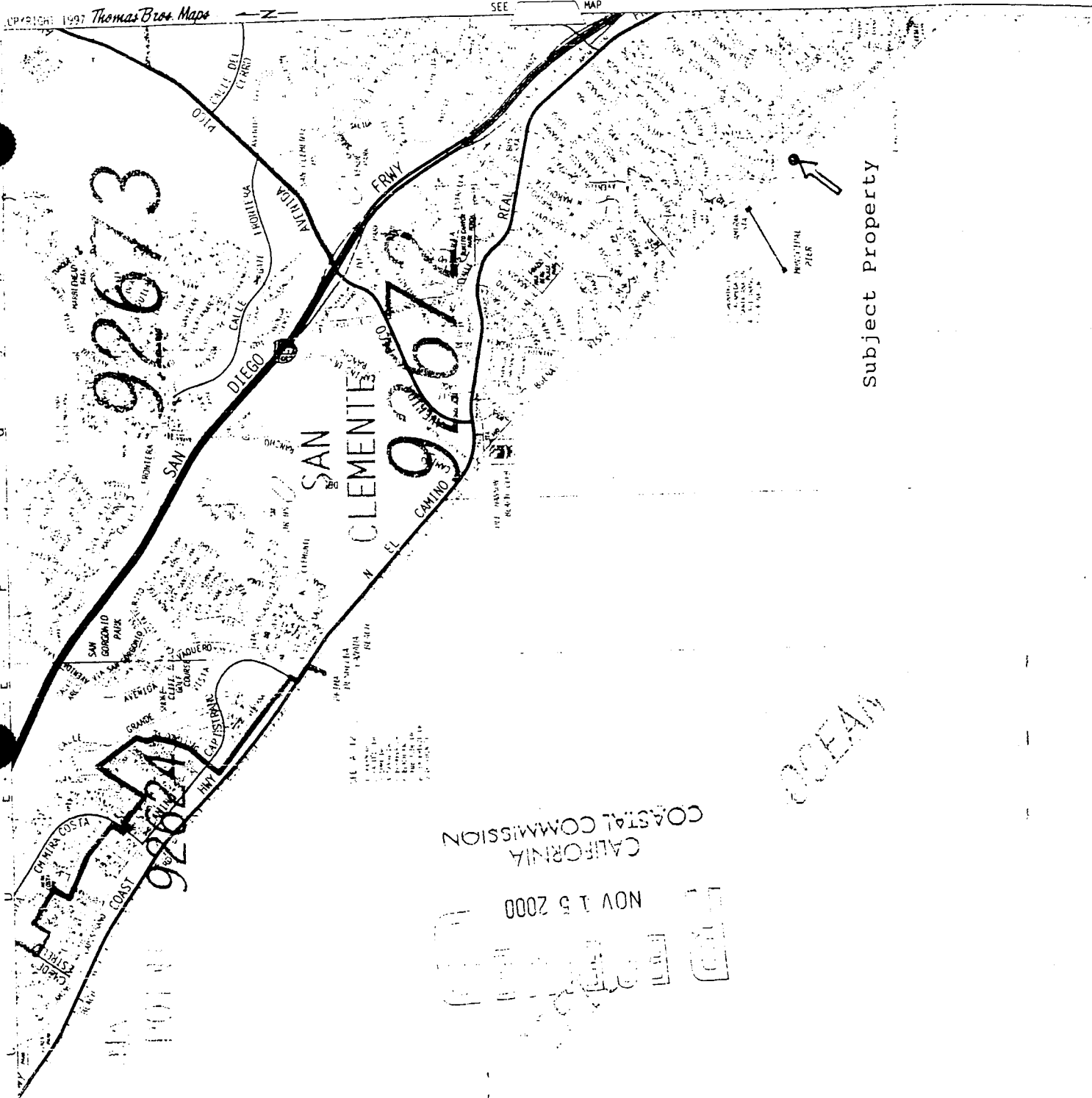
Dated at San Clemente Ca on Aug 20, 2001
City and State Date

Signature: Raymond T. Inury

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.



Subject Property

CALIFORNIA
COASTAL COMMISSION

NOV 15 2000

EXHIBIT 1

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

Many times since 1987

Signature *R. T. Duym*

Date *8-20-01*



EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865



PRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) LARRY MAKINSON SANDERS
Address: 408-K PASADENA CT
Telephone (Home): 949-458-5024 (Office): _____
Email Address: KMAKSON@GATLINK.NET
Occupation: HOUSEWIFE Age: 53

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? OFTEN TO GET BEACH ACCESS SINCE 1998
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
ACCESS TO BEACH & OCEAN
4. Approximately how many times have you used this area?
3 x's WEEKLY FOR THE USE OF THE BEACH SINCE 1998

5. Did you ever ask for and receive permission to use the area? NO

6. Did anyone ever interfere in any way with your use? NO

7. Have you observed others using this area? yes

If so, for what purposes? Beach Access, picnicking, Dog Run
Sunset Views

How often have you seen other members of the public using this area?

Whenever I was there: _____ Frequently: ☒

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 3 or more
people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

NO -

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? If so, please describe the items and list the name of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? If so, please explain THERE IS A PATH TO THE BEACH

ON THIS PROPERTY

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? YES If so, when and where?

- THIS SIGN JUST WENT UP ONLY 2 mos. AGO - BEFORE THAT THERE WERE NO SIGNS - PLUS THERE WAS AN OPEN GATE ON THE PROPERTY THAT IS NOW LOCKED -

12. Have you ever lived or worked in this vicinity? YES If so, when and where?

I LIVE JUST ACROSS FROM THIS PROPERTY ON THE OTHER SIDE OF THE CANYON & I OBSERVE DAILY USE OF THE PUBLIC USING THIS LAND TO SIT & WATCH SUNSETS, WALK THEIR DOGS ETC.

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

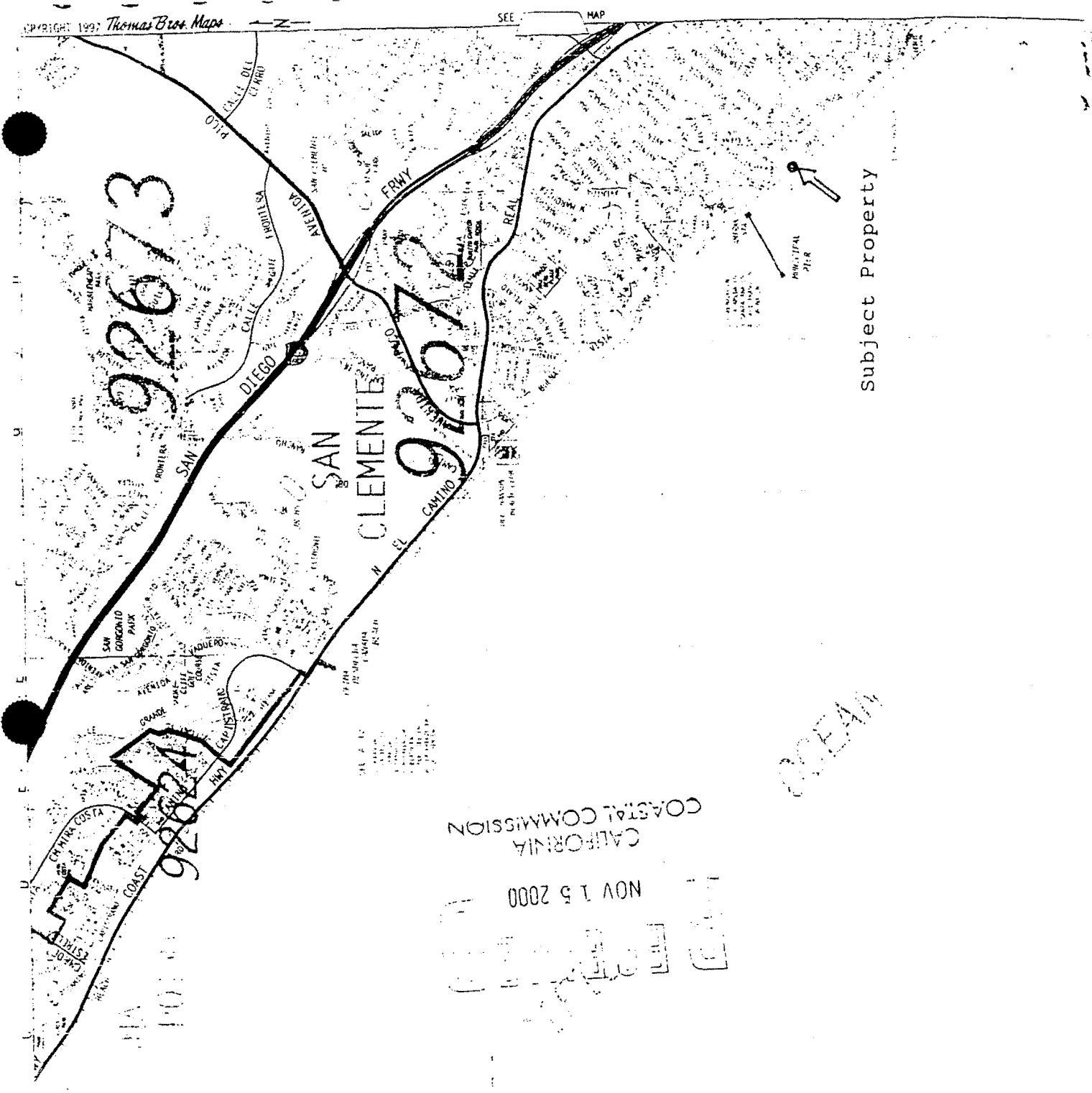
Dated at: 8/18/2001 San Clemente, CA on 8/18/2001
City and State Date

Signature: [Handwritten Signature]

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.



Subject Property

CALIFORNIA
COASTAL COMMISSION

NOV 15 2000

EXHIBIT 1

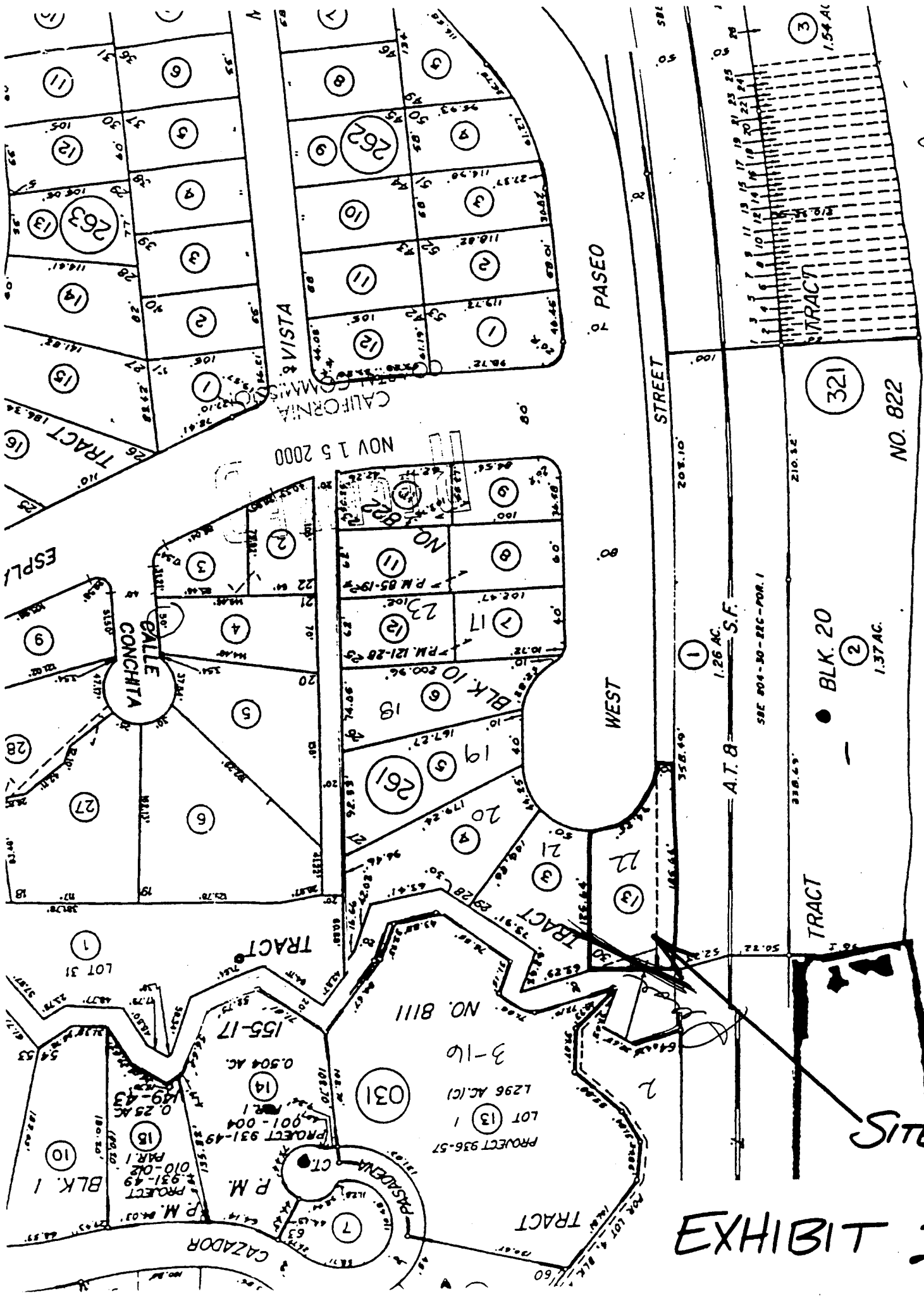


EXHIBIT 2

1.01

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

Signature

Date



EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865



PRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

RECEIVED
 South Coast Region
 AUG 20 2001

CALIFORNIA
 COASTAL COMMISSION

The State of California is investigating public uses made of lands that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) JOHN B. BENNET
 Address: 352 PASEO DE CRISTOBAL
 Telephone (Home): 909-797-7281 (Office): 909-748-0102
 Email Address: NONE
 Occupation: SERVICE MANAGER Age: 50

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? from late 50's to date
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
BEACH ACCESS SINCE I STARTED
going to beach
4. Approximately how many times have you used this area?
EVERY SUMMER LAST 40 YEARS

5. Did you ever ask for and receive permission to use the area? No

6. Did anyone ever interfere in any way with your use? No

7. Have you observed others using this area? yes

If so, for what purposes? BEACH ACCESS

How often have you seen other members of the public using this area?

Whenever I was there: DAILY Frequently: _____

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 1 or more people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

TAMI BENNETT 17196 JOY FONTANA, Ca 92355
JOHN GREEN SAWDY GREEN
RICK KAUFMAN
WENDY WINFELD
LAWRE DAVIS
JOANN WHITE

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? Is so, please describe the items and list the name of parties or locations where such items can be found:

No

10. Did you make use of this area as you would public property? If so, please explain JUST to GET to BEACH

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? Yes If so, when and where?

in the last year ONE sign from beach
SIDE of LOT.

12. Have you ever lived or worked in this vicinity? Yes If so, when and where?

GRANDDAD AND FATHER BUILT HOUSE
AT 352 AND OVER the years (EVERY SUMMER)
SOME WINTERS

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

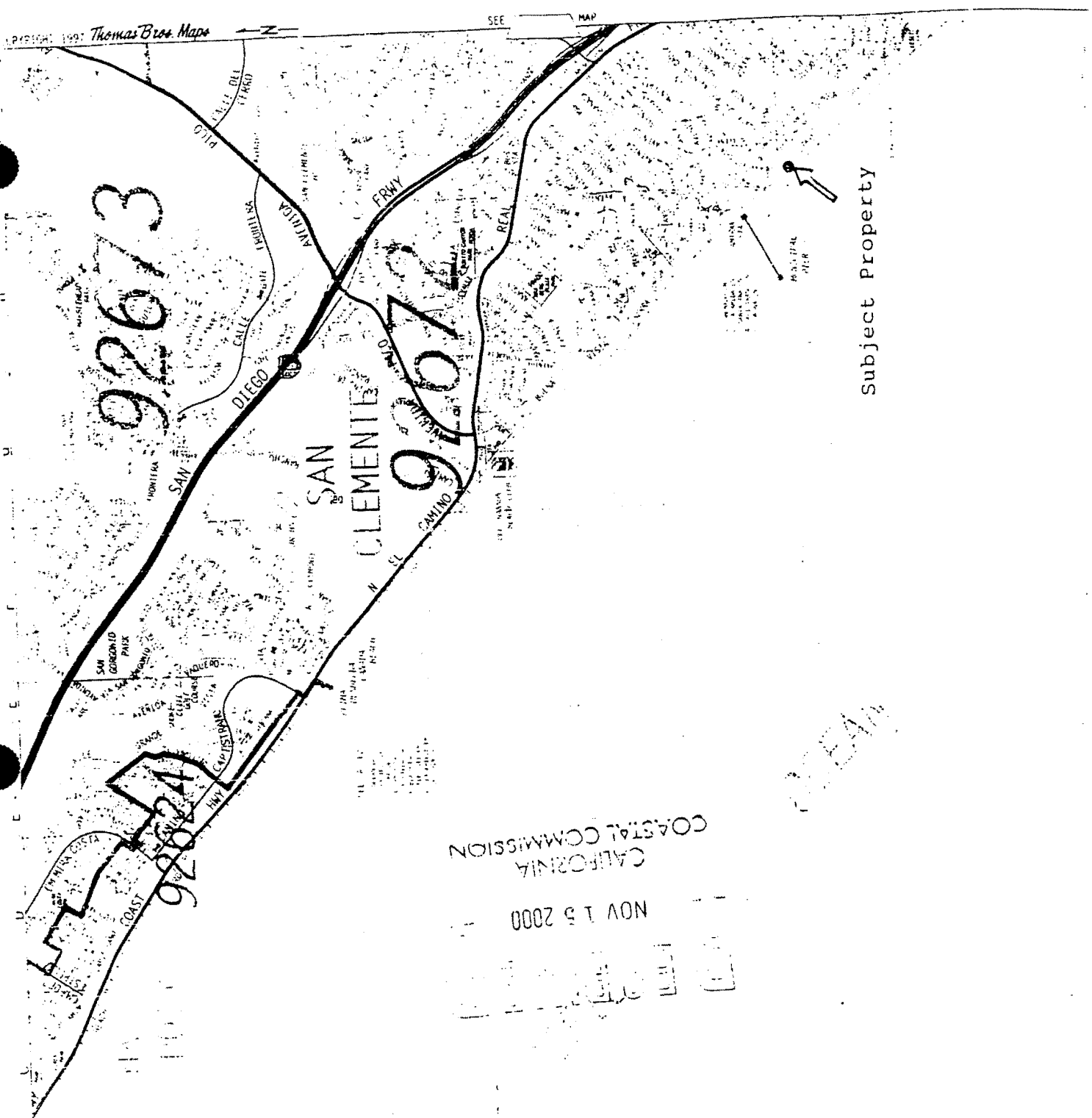
Dated at: Yucaipa CALIFORNIA on 8-14-01
City and State Date

Signature: John B. Bennett

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.



Subject Property

CALIFORNIA
COASTAL COMMISSION
NOV 15 2000

EXHIBIT 1

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

Signature

J. Barnett

Date

8-14-01



EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865



PRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

RECEIVED
 South Coast Region

AUG 20 2001

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

CALIFORNIA
 COASTAL COMMISSION

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) CYNTHIA F. GARCIA
 Address: PO BOX 985 BLUE JAY CA 92317
 Telephone (Home): 909-337-0518 (Office): 909-357-6503
 Email Address: GARCIA@SCC.COM
 Occupation: ACCOUNT MGR. Age: 47

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? JUNE 1960 - present
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
Access to beach when Canyon Underpass
Not Accessible.
4. Approximately how many times have you used this area?
hundreds 100+

5. Did you ever ask for and receive permission to use the area? no

6. Did anyone ever interfere in any way with your use? no

7. Have you observed others using this area? yes

If so, for what purposes? 4th of July Firework presentation
off SAN CLEMENTE PIER - 100+ use bluff for
How often have you seen other members of the public using this area? viewing

Whenever I was there: 47 Summers Frequently: _____
June-Sept from 1960 forward
Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 1-100+
people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If
so, please list them with their addresses and telephone numbers, if known.

9. Do you possess or know of the existence and/or whereabouts of items such
as photographs, logs, diaries, notebooks, letters, etc. relating to your use
of the area or the uses of other people? If so, please describe the items
and list the name of parties or locations where such items can be found:

can provide 4th of July personal photographs
which include lot and background
loaded with public.

10. Did you make use of this area as you would public property? If so,
please explain Entire city of San Clemente
uses lot as access to beach

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? NO If so, when and where?

12. Have you ever lived or worked in this vicinity? Yes If so, when and where?

1953-present

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: Lake Arrowhead, Calif. on August 17, 2001
City and State Date

Signature: Cynthia F Garcia

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

Subject Property

NOV 15 2000
CALIFORNIA
COASTAL COMMISSION

EXHIBIT 1

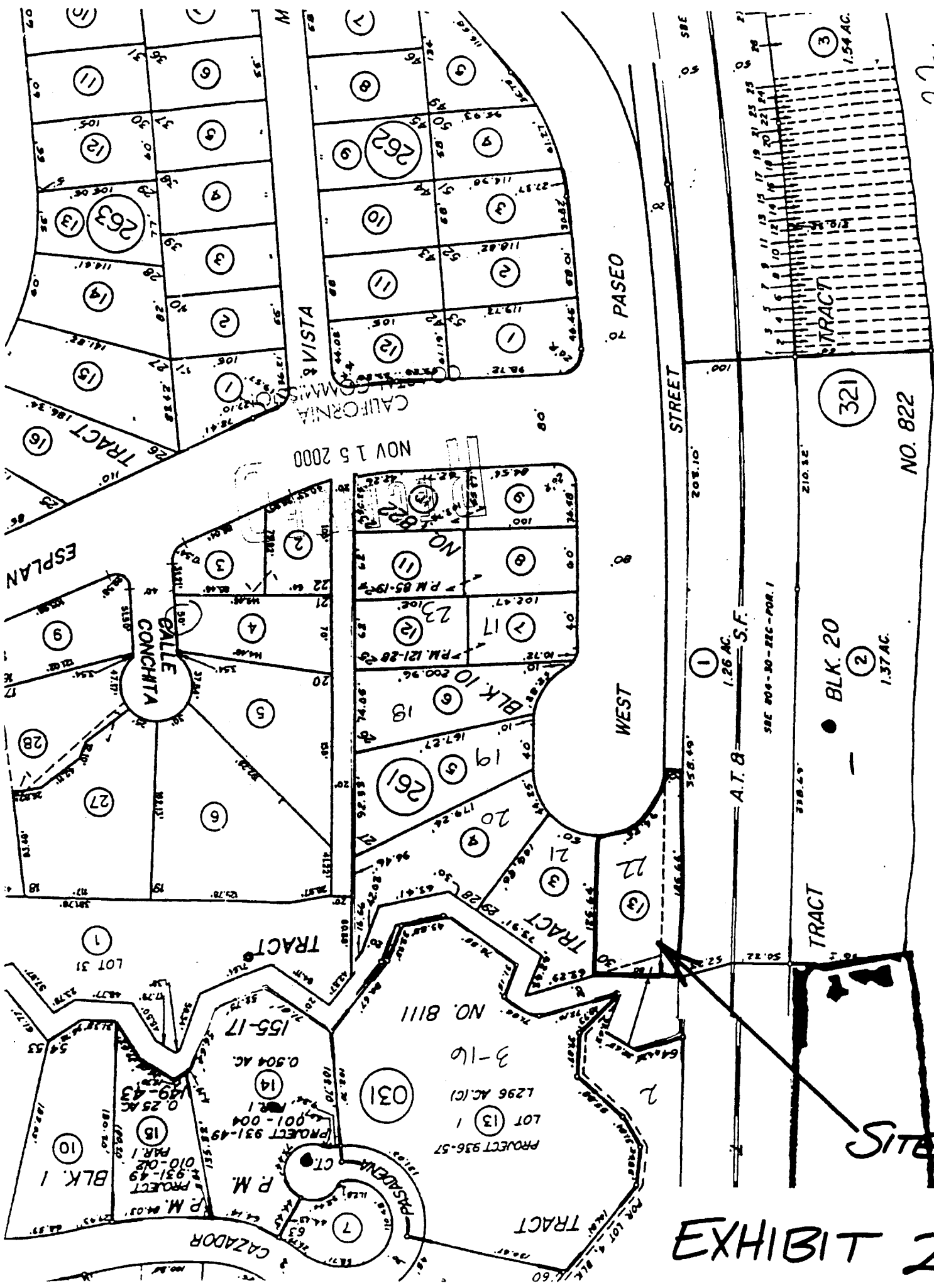


EXHIBIT 2

199 372

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

corner path
to beach -
used by all
surfers beach goes in

area
Have you personally and openly
used any of the area shown
within the white dashes of this
exhibit? Please mark your areas
of use on this graphic. The
dashed line only approximates
the investigation area so please
mark trails used outside the area
as well. What are the
approximate dates you used
these areas? Indicate the types
of use (beach access, whale
watching, surfing, sunning, etc.)
Indicate where you parked.

Please sign and date below.

Summer Beach access
from 1954 - present

Signature Cynthia F. Garcia

Date Aug 17, 2001



EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865

RECEIVED
South Coast Region

AUG 14 2001

PRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATIONCALIFORNIA
COASTAL COMMISSION
TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) Samuel Salen
 Address: 410 Pasadena Court UNIT "D"
 Telephone (Home): 749-361-2466 (Office): 909-620-8180
 Email Address: SAMSALEN@AOL.COM
 Occupation: Physician Age: 60

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? MARCH 1988
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
Access to Beach, Access to Water, Access to AND FROM Trafalgar Canyon to Paseo De Cristobal
4. Approximately how many times have you used this area?
Very Many times over past 13 years

5. Did you ever ask for and receive permission to use the area? No

6. Did anyone ever interfere in any way with your use? No

7. Have you observed others using this area? YES

If so, for what purposes? Access to beach AND Canyon

How often have you seen other members of the public using this area?

Whenever I was there: Frequently?

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 2-5 at a time
people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

Tom McCrosson - 410 PASADENA COURT San Clemente

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? Is so, please describe the items and list the name of parties or locations where such items can be found:

NO

10. Did you make use of this area as you would public property? If so, please explain YES - UNRESTRICTED Access to Canyon or Paseo de Cristobal

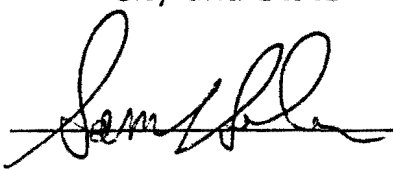
11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? NO If so, when and where?

12. Have you ever lived or worked in this vicinity? YES If so, when and where?

410 PASADENA COURT UNIT "O"

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente Calif on 8/11/01
City and State Date

Signature: 

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

392

100

SAN CLEMEN

CALIFORNIA
COASTAL COMMISSION

NOV 15 2000

NOV 15 2000

Subject Property

OCEANOGRAPHY

EXHIBIT 1

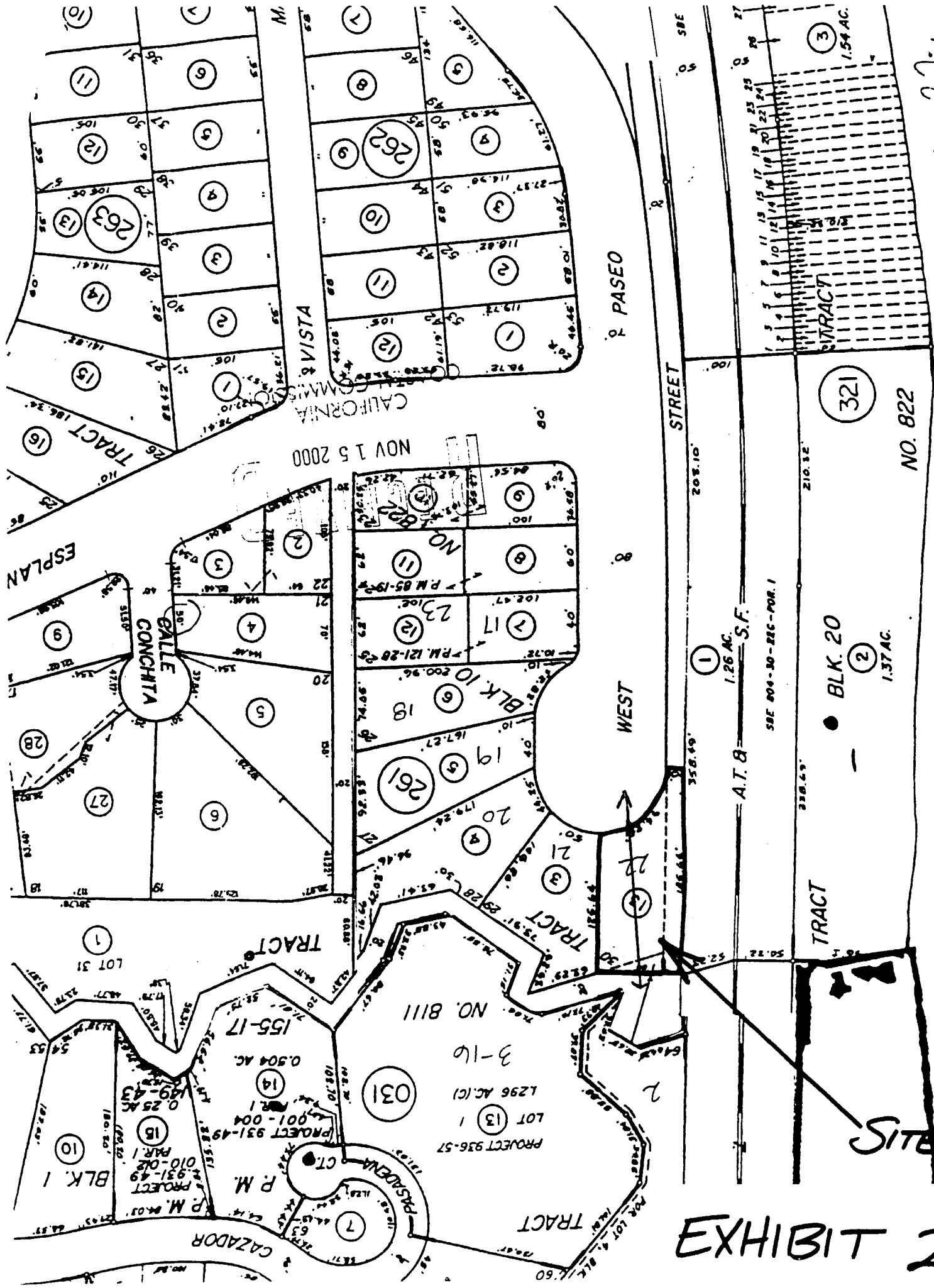


EXHIBIT 2

SITE

1933

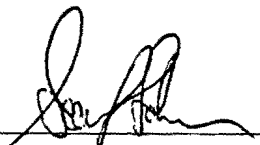
TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

Signature



Date

8/10/01

3/1988 - Present
Access to Paseo De Cristobal
to beach, to Trafalgar
Canyon

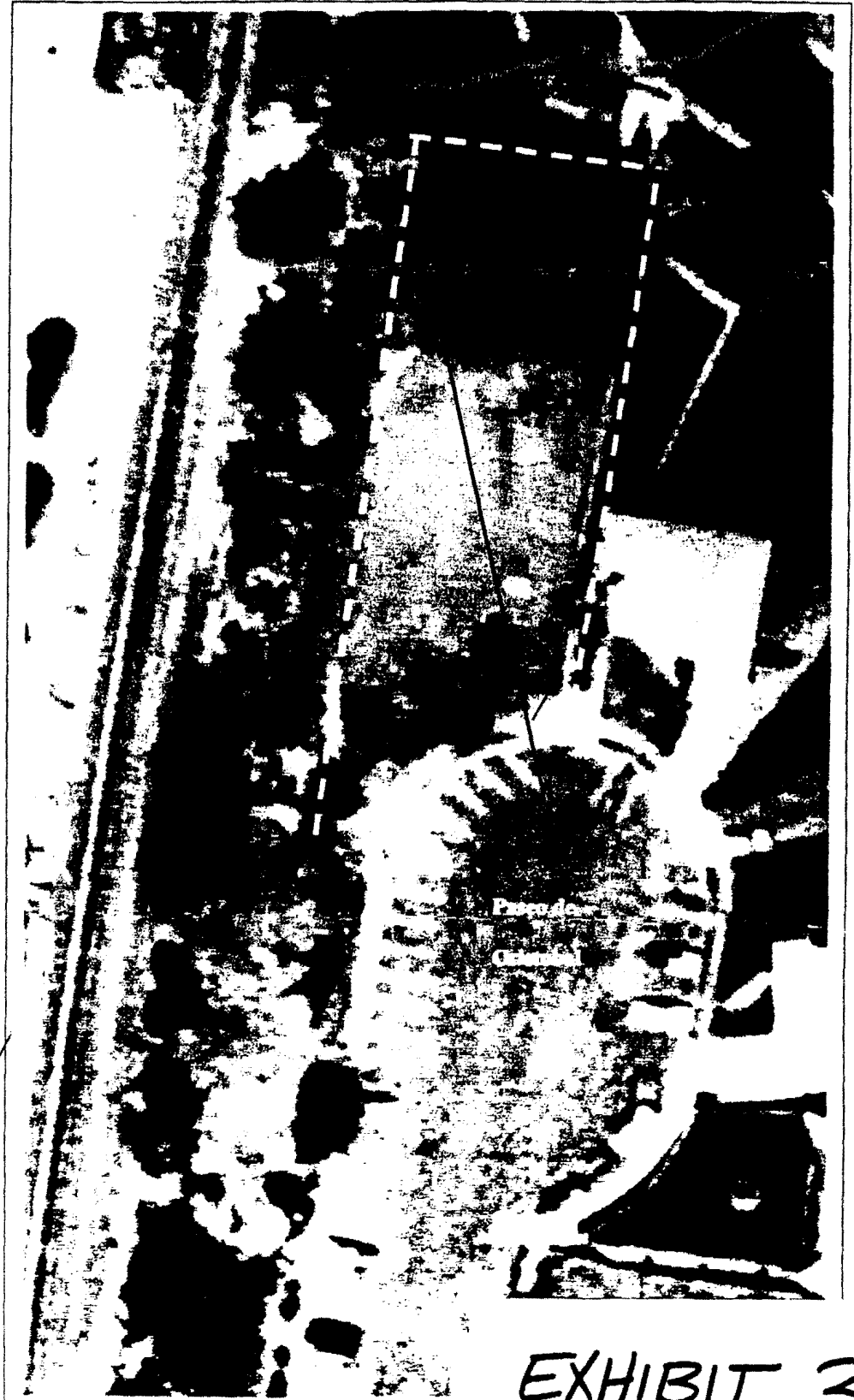


EXHIBIT 3

CALIFORNIA COASTAL COMMISSION
PUBLIC ACCESS PROGRAM
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4865

PRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

RECEIVED
South Coast Region

AUG 21 2001

CALIFORNIA
COASTAL COMMISSION

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) ALEX ALACCHÉ
Address: 406 F PASADENA CT
Telephone (Home): 949-498-1575 (Office): 714-672-3132
Email Address: _____
Occupation: MINISTER Age: —

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? Dec 1985
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

ACCESS TO THE BEACH - I HAVE SAT THERE
JUST TO LISTEN TO THE OCEAN - I CROSS THE BRIDGE
ON MY WAY TO "T" STREET OVERPASS TO THE BEACH

4. Approximately how many times have you used this area?

TWICE DAILY - FOR ACCESS MAYBE 200 DAYS A YEAR
FOR 16 YEARS

400
16
6400

6400 TIMES

5. Did you ever ask for and receive permission to use the area? No

6. Did anyone ever interfere in any way with your use? No

7. Have you observed others using this area? YES - MANY people

If so, for what purposes? SURFERS GOING TO & FROM BEACH

How often have you seen other members of the public using this area?

Whenever I was there: ✓ Frequently: ✓

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 4-5 people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

<u>RICHARD TOTTA</u>	<u>4935 GREEN CREST DR YONAH LINDA</u>
<u>MARCELLA ANAKIAN</u>	<u>127 W CRYSTAL SAN CLEMENTE</u>
<u>JEAN ANALE</u>	<u>280 HIGH ST LAGUNA BEACH</u>
<u>GENIEVE HARVEY</u>	<u>609 VIA PAVON SAN CLEMENTE</u>

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? Is so, please describe the items and list the name of parties or locations where such items can be found:

I HAVE PICTURES I've TAKEN ON THAT LOCATION

10. Did you make use of this area as you would public property? If so, please explain YES -

IT IS A PARK AREA - I ALWAYS THOUGHT IT WAS PART OF PARK & CREEK ACCESS - NOW FIRST CAN WE GET TO "T" STREET OVERPASS - FROM

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? No If so, when and where?

12. Have you ever lived or worked in this vicinity? yes If so, when and where?

Home - NOW - FOR THE LAST 16 YEARS

It is the one and only way for me to get to the "T" street
I declare under penalty of perjury that any answers to the foregoing *map to*
Questionnaire and Declaration are true and correct to the best of my *act to the*
recollection. *Beach*

Dated at:

San Clemente, CA

City and State

on

8/16/01

Date

Signature:

Al S. Alvarado

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

Subject Property

CALIFORNIA
COASTAL COMMISSION

NOV 15 2000

EXHIBIT 1

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

*I walk down/up the
canyon cross the
property IN QUESTION
THEN OVER TO "T"
STREET OVERPASS TO
BEACH ACCESS*

Have you personally and openly
used any of the area shown
within the white dashes of this
exhibit? Please mark your areas
of use on this graphic. The
dashed line only approximates
the investigation area so please
mark trails used outside the area
as well. What are the
approximate dates you used
these areas? Indicate the types
of use (beach access, whale
watching, surfing, sunning, etc.)
Indicate where you parked.

Please sign and date below.

Signature Al S. Alarcon

Date 8/16/01

*I walk -
use it as beach
access. It is my
only access to the T
street overpass to
get to the Beach*
Al Alarcon



EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865

RECEIVED
South Coast RegionPRESCRIPTIVE RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION JUN 20 2001TRAFALGAR CANYON AND BEACH ACCESS CALIFORNIA
FROM PASEO DE CRISTOBAL (LAIDLAW TRUST) COASTAL COMMISSION
CITY OF SAN CLEMENTE, ORANGE COUNTY

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) PAMELA MEADOWS
Address: 13012 CALIFORNIA ST UOCLIPA LG 92399
Telephone (Home): 909-792-7281 (Office): 909-794-5059
Email Address: NONE
Occupation: CARE GIVER Age: 42

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? 1990 to DATE
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
BEACH ACCESS

4. Approximately how many times have you used this area?
100'S

5. Did you ever ask for and receive permission to use the area? No

6. Did anyone ever interfere in any way with your use? No

7. Have you observed others using this area? yes

If so, for what purposes? ACCESS to BEACH WATCH
COAST or FIRE WORKS SHOW

How often have you seen other members of the public using this area?

Whenever I was there: Daily Frequently: _____

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 2 to 3 going
people present on any one occasion (Indicate number or range.) to beach

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

JASON MEADOWS
BO MEADOWS
JAMIE MEADOWS
MATTHEW MEADOWS
DELCIE MEADOWS

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? If so, please describe the items and list the name of parties or locations where such items can be found:

No

10. Did you make use of this area as you would public property? If so, please explain Just to beach

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? No If so, when and where?

12. Have you ever lived or worked in this vicinity? yes If so, when and where?

Weekends during the Summer

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: Mucipa CALIFORNIA on 3-15-01
City and State Date

Signature: Beneh Meadows

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

Subject Property

CALIFORNIA
COASTAL COMMISSION

NOV 15 2000

EXHIBIT 1

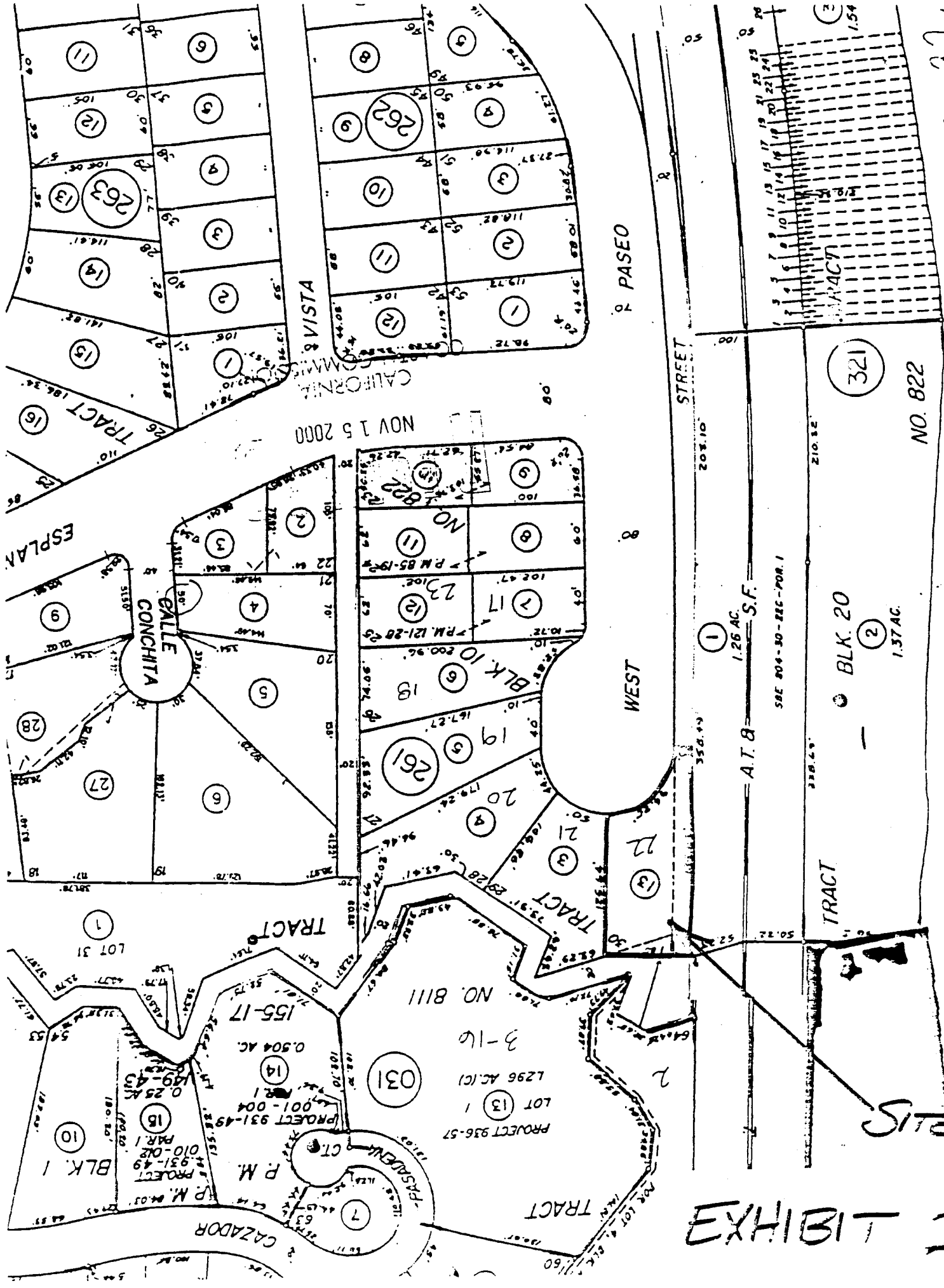


EXHIBIT 2

PLS

10-37

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

Signature

Reneh Meadows

Date

8-15-01



EXHIBIT 3

**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: _____

Laid Law 5-00-459

STATEMENT NO. _____ **RECEIVED**

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

South Coast Region

AUG 21 2001

CALIFORNIA
COASTAL COMMISSION

Name (Print): Tami Campbell

Address: 1551 W. RIALTO AVE. FONTANA CA 92335

Telephone (Home): (909) 356-8896 (Office): (909) 796-7514

Occupation: State Insurance Rep. Age: 30

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? Yes If so, since what date? 1973 to date
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

to access beach - my entire life
approx from 1973 - to date

4. Approximately how many times have you used the area? 250+

5. Did you ever ask for and receive permission to use the area?

No - from who?

5. Did anyone ever interfere in any way with your use? NO, Never

7. Have you observed others using this area? Yes

If so, for what purposes? Same - to access

beach

I have seen such members of the general public:

Whenever I was there: ☒ Frequently ☒
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 50 or more People present on any one occasion. (Indicate number or range)

2. Do you know the names of other people who have used this area? NO If so, please list them with their addresses and telephone numbers, if known:

unknown - unknown public
persons to access beach.

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? NO
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? yes If so, please explain: everyone

Does to access beach.

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? no never before
If so, when? now. Where? now.

Now I notice there is a No Trespassing Sign

12. Have you ever lived or worked in this vicinity? yes If so, when and where? I spend June to Sept every year
at 352 Cristobal, San Clemente.

PAGE DE

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, CA on 7/27/93
(City and State) (Date)

Jammi Campbell
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

L. J. Campbell

1943
have residence
at all night

AERIAL PHOTO
DURING CONSTRUCTION



**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: _____

STATEMENT NO. _____

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

RECEIVED
South Coast Region

AUG 21 2001

Name (Print): Kathy Graham

CALIFORNIA
COASTAL COMMISSION

Address: 362 So. Ashford, Redondo, Ca

Telephone (Home): 909-350-3926 (Office): _____

Occupation: Secretary Age: 46

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? 1952
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

Access to Beach and view ocean, Beach
and pier -

4. Approximately how many times have you used the area? often
5. Did you ever ask for and receive permission to use the area?

no

5. Did anyone ever interfere in any way with your use? no

7. Have you observed others using this area? yes

If so, for what purposes? Access to Beach

I have seen such members of the general public:

Whenever I was there: ☒ Frequently ☒
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 4+
People present on any one occasion. (Indicate number or range)

3. Do you know the names of other people who have used this area? yes If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people?
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property?
yes If so, please explain: See #3

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? yes

If so, when? 1/50 on for 5 years Where? _____

on torn down fence

12. Have you ever lived or worked in this vicinity? yes If so, when and where? Loma Lane

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, Ca on 7-10-93
(City and State) (Date)

[Signature]
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

AERIAL PHOTO
DURING CONSTRUCTION



**QUESTIONNAIRE
AND
DECLARATION**

PROJECT:

Grid Law

S-00-459

STATEMENT NO. _____

RECEIVED

South Coast Region

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

CALIFORNIA
COASTAL COMMISSION

Name (Print): Campbell, James

Address: 17196 Ivy Fontana, CA 92335

Telephone (Home): (909) 822-8990 (Office): 800 228 2803 X1300

Occupation: Gen. Meech Age: 39

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? SINCE 1968 TO DATE
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
- Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

Access to beach

Approximately how many times have you used the area? 1000+

Did you ever ask for and receive permission to use the area?

NO; NO ONE TO ASK PERMISSION.

Did anyone ever interfere in any way with your use? NO

Have you observed others using this area? YES, MANY 1000+

If so, for what purposes? to Access beach &

public viewing/recreation

I have seen such members of the general public:

Whenever I was there: ☒ Frequently _____

Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 1000+ People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? Yes If so, please list them with their addresses and telephone numbers, if known:

to follow

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? to follow
If so, please describe the items and list the names of parties or locations where such items can be found:

to follow

10. Did you make use of this area as you would public property? Yes If so, please explain: ALWAYS HAVE, SINCE

I was born

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? Yes

If so, when? IN the last year Where? on fence

12. Have you ever lived or worked in this vicinity? Yes If so, when and where? Seasonal home, spend summer here. June to Sept.

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, CA on 8/10/01
(City and State) (Date)

Jamara Campbell
(Signature)

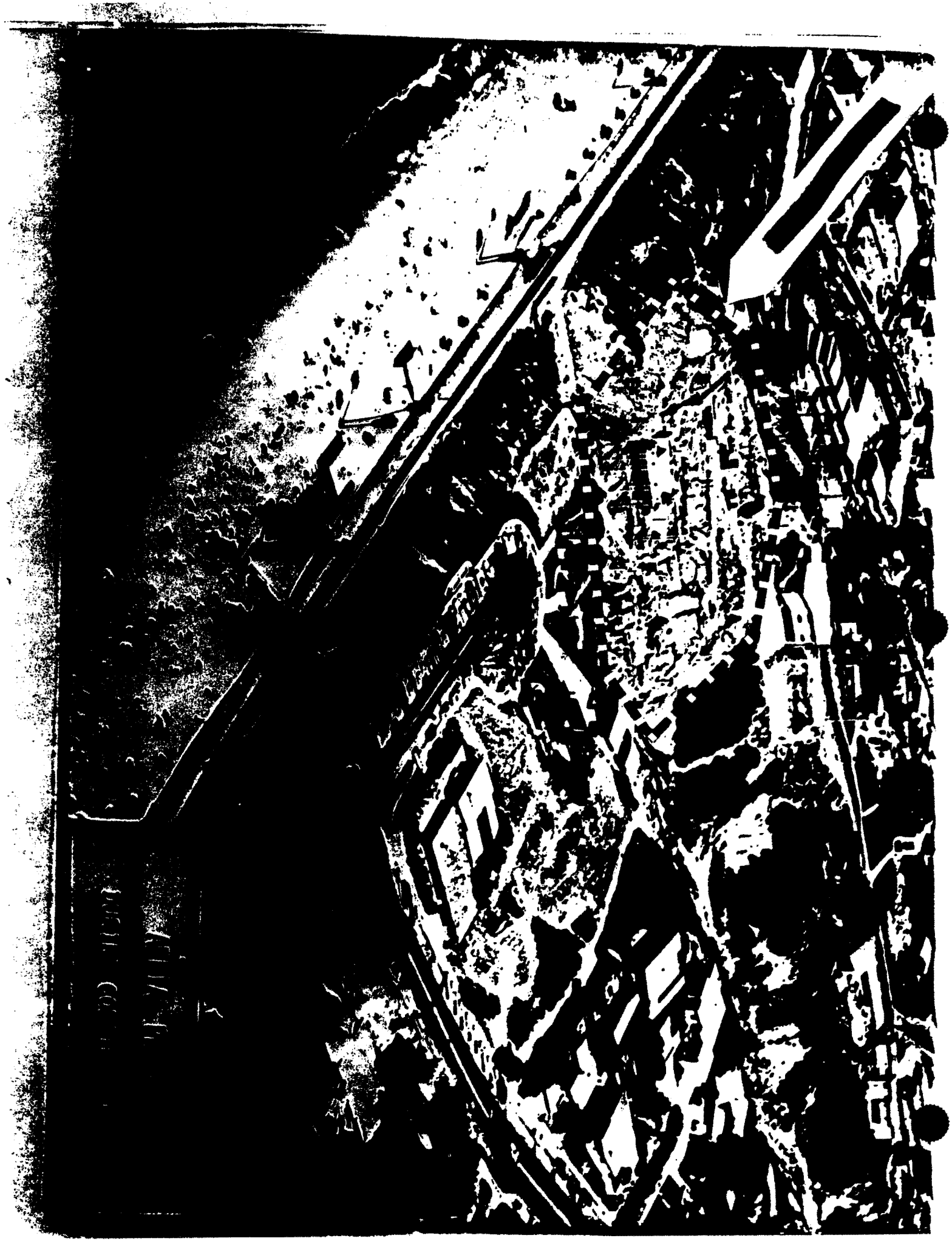
INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____



**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: LAIDLAW S-60-459

STATEMENT NO. _____

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

AUG 21 2001

Name (Print): CHASE MITCHELL

Address: 24392 VISTA POINT

SOUTH COAST REGION
CALIFORNIA
COASTAL COMMISSION

Telephone (Home): 389-4726 (Office): _____

Occupation: STUDENT Age: 24

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? AUG. 13, 1993
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

ACCESS TO BEACH AND VIEW FOR FIREWORKS
ON 4th OF JULY

Approximately how many times have you used the area? 50+

Did you ever ask for and receive permission to use the area?

NEVER WAS TOLD NOT TO USE PROPERTY

Did anyone ever interfere in any way with your use? NO

Have you observed others using this area? YES

If so, for what purposes? PICNICS GREAT VIEW
OF SHORE

I have seen such members of the general public:

Whenever I was there: Frequently X
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 2
People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? _____ If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? 0
If so, please describe the items and list the names of parties or locations where such items can be found:
- 0

10. Did you make use of this area as you would public property? YES If so, please explain: ONE PROPERTY (WA)

NOT MARKED FOR YEARS

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? YES
If so, when? RECENTLY Where? _____
- _____

12. Have you ever lived or worked in this vicinity? YES If so, when and where? STATE PARK BLUFF MONTALVO AVE
- _____

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: SAN CLEMENTE, CA on AUG 13
(City and State) (Date)

M. J. [Signature]
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

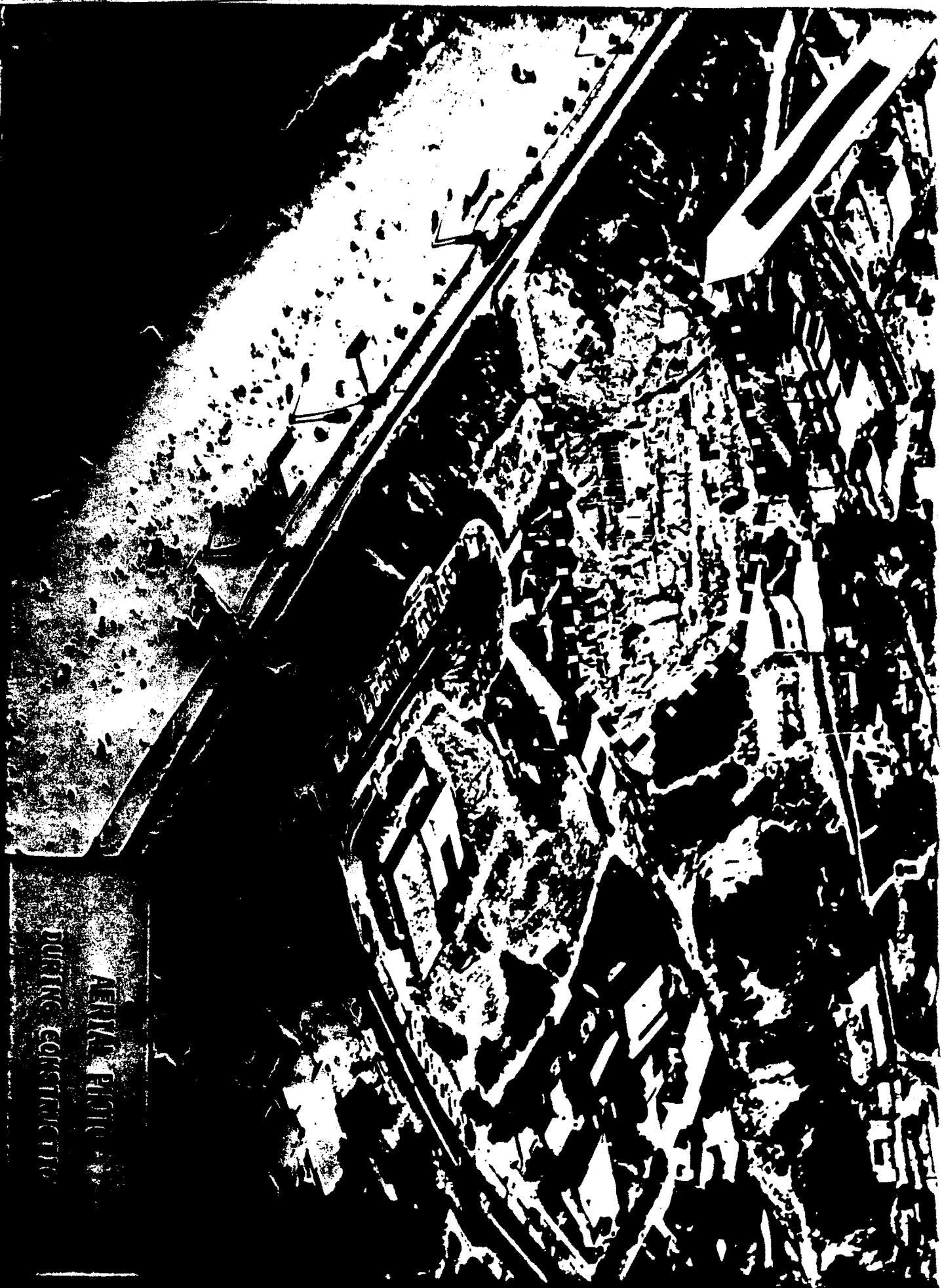
Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

AERIAL PHOTO
DURING CONSTRUCTION



**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: Laidlaw 5-00-459

STATEMENT NO. _____

The State of California is investigating uses made of the property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this questionnaire and Declaration will be appreciated.

AUG 21 2001

Name (Print): Wanda K Godinez

Address: 9250 Beazley Lane Corona **CALIFORNIA COASTAL COMMISSION**

Telephone (Home): 909-277-4044 (Office): 0

Occupation: housewife Age: 60

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? Yes If so, since what date? 1979 - 2001
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
- Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

access to Beach

Approximately how many times have you used the area? Numerous

Did you ever ask for and receive permission to use the area?

No

Did anyone ever interfere in any way with your use? No

Have you observed others using this area? Yes

If so, for what purposes? access to Beach

I have seen such members of the general public:

Whenever I was there: ✓ Frequently _____
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 6
People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? yes If so, please list them with their addresses and telephone numbers, if known:

filling this form out

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? No
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? yes If so, please explain:

used as Beach access

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? N/A
If so, when? _____ Where? _____

12. Have you ever lived or worked in this vicinity? No If so, when and where? _____

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente Ca.
8-13-01
(City and State)

on 8-13-01
(Date)

Wanda K. Godwin
(Signature)

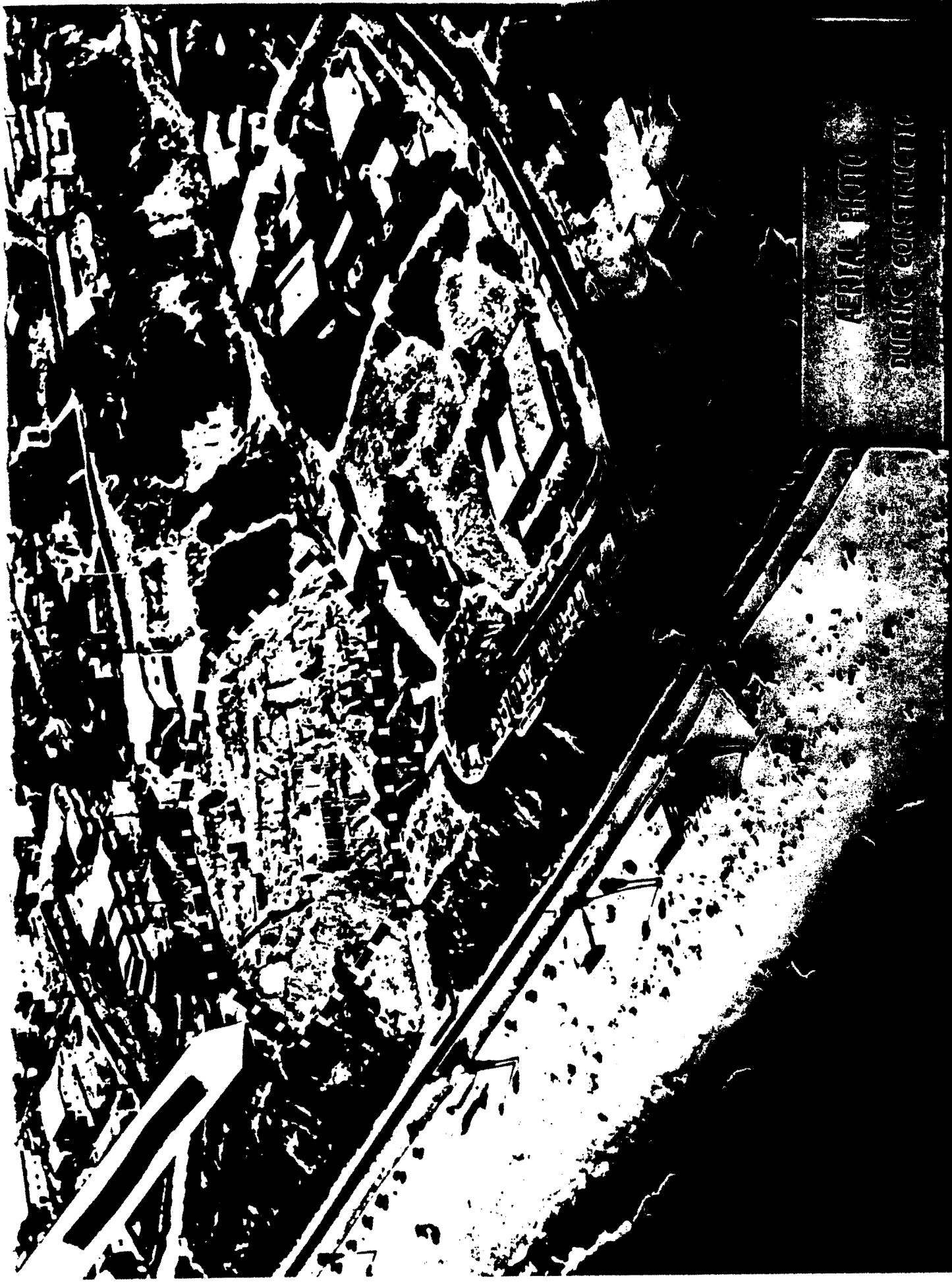
INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____



AERIAL PHOTO
DURING CONSTRUCTION

QUESTIONNAIRE
AND
DECLARATION

LAIDLAW 5-00-459
PROJECT: _____

STATEMENT NO. _____

RECEIVED
South Coast Region

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this questionnaire and Declaration will be appreciated.

AUG 21 2001
CALIFORNIA
COASTAL COMMISSION

Name (Print): Elsewani OMAR Robert

Address: 114 E AVE JUNIPERO

Telephone (Home): 949-369-5417 (Office): 949 361-9127

Occupation: Listing Video Director Age: 30

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? AUG 94 -
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

USE FOR 4th OF JULY 3 BEACH ACCESS
3 DOGS WALKS

Approximately how many times have you used the area? ALot - Numerous

Did you ever ask for and receive permission to use the area?

NO

Did anyone ever interfere in any way with your use? NO

Have you observed others using this area? Yes

If so, for what purposes? BEACH ACCESS

I have seen such members of the general public:

Whenever I was there: _____ Frequently X
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 4
People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? _____ If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? NO
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? yes If so, please explain: AS A NICE OPEN
Lot For Access to Peir

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? yes
If so, when? JULY 2000 Where? _____

12. Have you ever lived or worked in this vicinity? X If so, when and where? BARCELONA 98'

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: SAN CLEMENTE
(City and State)

on

Aug 13 2001
(Date)

[Signature]
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

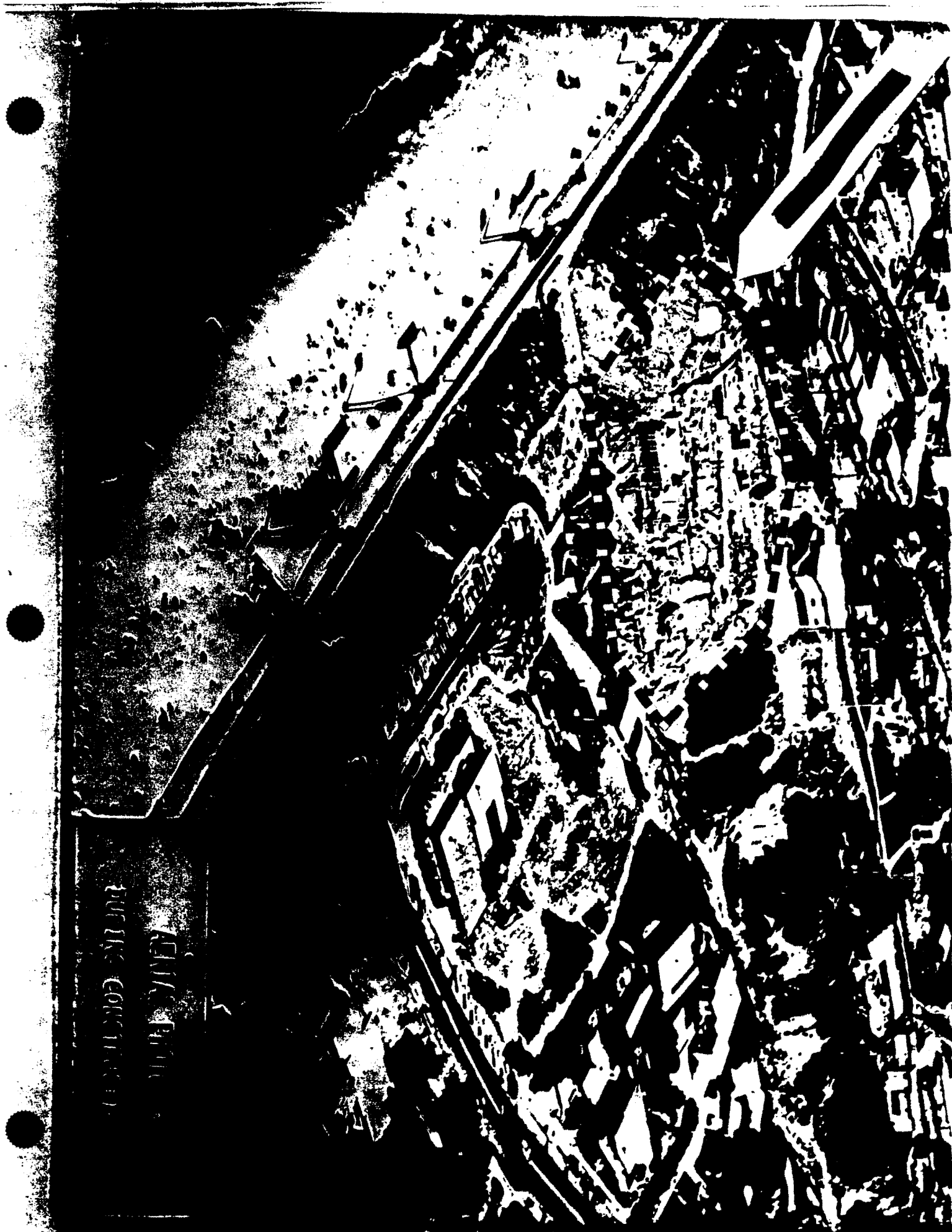
Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

ACQUA ERI
PULKE GORCHHO



**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: Laid Law 5-00-549

RECEIVED
South Coast Region

STATEMENT NO. _____

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. AUG 21 2001
CALIFORNIA
COASTAL COMMISSION

Name (Print): Nancy Fields

Address: 321 E Grand Blvd

Telephone (Home): _____ (Office): 909-371-6533

Occupation: _____ Age: 54

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? Yes If so, since what date? From 1952 - 2001
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

access to beach + Viewing fireworks on Pier. This lot should be park for all to use.

Approximately how many times have you used the area? thousands

Did you ever ask for and receive permission to use the area?

no

Did anyone ever interfere in any way with your use? no

Have you observed others using this area? Yes, many, many

If so, for what purposes? Viewing beach, water, Pier + fireworks. also as access to beach

I have seen such members of the general public:

Whenever I was there: ✓ Frequently ✓
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 1-100
People present on any one occasion. (Indicate number or range)

Do you know the names of other people who have used this area? Not all If so, please list them with their addresses and telephone numbers, if known:

Some filling out this form.

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? Yes
If so, please describe the items and list the names of parties or locations where such items can be found:

Pic of people using lot to view ocean & fireworks

10. Did you make use of this area as you would public property?

Yes If so, please explain: this was always a public access to beach

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? Yes

If so, when? recently Where? on falling down fence on property

12. Have you ever lived or worked in this vicinity? Yes If so, when and where? on & off since 1952

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, Calif on Aug 12 2001
(City and State), (Date)

Nancy Fuler
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

AFRICAN PEOPLE
PUBLIC CORPORATION



**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: _____

Laidlaw 5-00-459

STATEMENT NO. **RECEIVED**

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this questionnaire and Declaration will be appreciated.

South Coast Region

21 2001

CALIFORNIA
COASTAL COMMISSION

Name (Print): FRANK CHAVES

Address: 1220 S. Bellhaven

Telephone (Home): 991-5646 (Office): 835-5502

Occupation: Prop Mgr Age: 49

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? 1970
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

Access to Beach

Approximately how many times have you used the area? 50

Did you ever ask for and receive permission to use the area?

NO

Did anyone ever interfere in any way with your use? NO

Have you observed others using this area? YES

If so, for what purposes? View and Access

I have seen such members of the general public:

Whenever I was there: _____ Frequently ✓
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 5-6
People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? NO If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? NO
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? Yes If so, please explain:

View - Access to beach

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? NO
If so, when? _____ Where? _____

12. Have you ever lived or worked in this vicinity? Yes If so, when and where?

Public Parking Lots

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: 8/13/01 San Clemente Ca.
(City and State) on (Date)

J. J. Chong
(Signature)

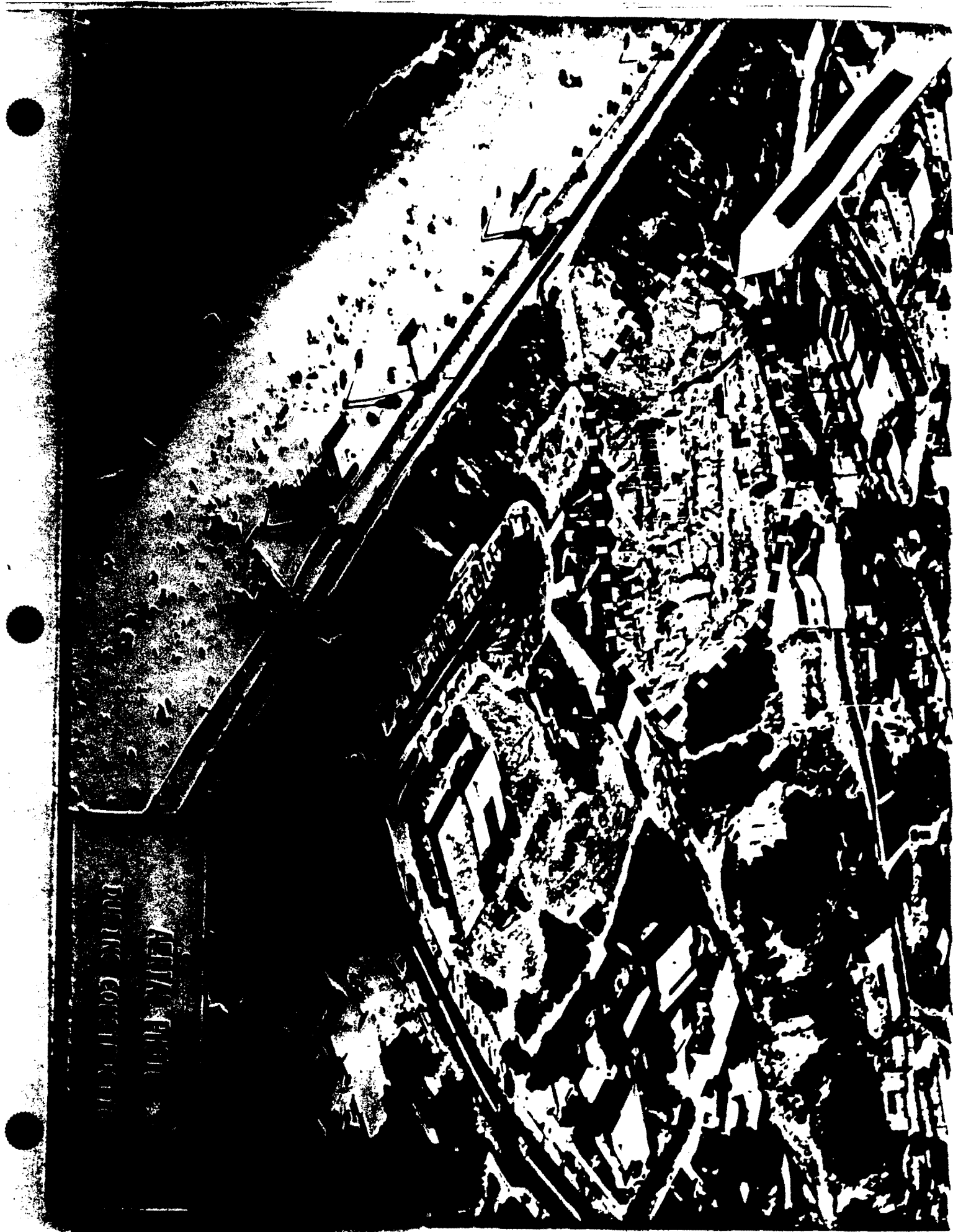
INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____



NEW YORK CITY

1940

**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: _____

Laid Law 5-00-459

STATEMENT NO. _____

Beach access - Cristobal
Sanctuary

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

RECEIVED

South Coast Region

AUG 21 2001

CALIFORNIA
COASTAL COMMISSION

Name (Print): Katie R. Fields

Address: 1809 Baywood Dr. #202

Telephone (Home): 909 371-2089 (Office): _____

Occupation: teacher Age: 24

Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? May 1997

Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

picnicking, fireworks viewing, beach
access

Approximately how many times have you used the area? many, hundred

Did you ever ask for and receive permission to use the area?

no

Did anyone ever interfere in any way with your use? no

Have you observed others using this area? yes

If so, for what purposes? beach view, fireworks
view

I have seen such members of the general public:

Whenever I was there: ☒ Frequently ☒
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 1-150
People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? If so, please list them with their addresses and telephone numbers, if known:

UNKNOWN

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? no
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? yes If so, please explain: used as beach access & mex & fireworks viewing.

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? no
If so, when? Where?

12. Have you ever lived or worked in this vicinity? no If so, when and where?

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, CA on Aug. 17, 2001
(City and State) (Date)

Katie Fields
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: Date: Time:
In Person: Telephone: Other:
Interviewer:
Interviewer's Comments:

PUBLIC GOOD

ALICE B.

1914

410 Pasadena Court, Unit M
San Clemente, CA 92672
August 19, 2001

RECEIVED
South Coast Region

AUG 22 2001

CALIFORNIA
COASTAL COMMISSION

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P. O. Box 1450
Long Beach, CA 90802-43235

Prescriptive Rights Study
Public Use Questionnaire
and Declaration
Trafalgar Canyon and Beach Access from
Paseo de Cristobal (Laidlaw 5-00-459)
City of San Clemente, Orange County

Dear Ms. Kramer:

We would like to bring to your attention some major issues regarding the above Coastal Commission pending action:

1. Public Access-Walking/Hiking—The pad in question has been and remains a public access corridor to the beach from Trafalgar Canyon and Paseo de Cristobal Street. See attached questionnaire.
2. Public Access-Scenic View Corridor—The proposed home would severely restrict one of the few remaining major public scenic corridors (north and south) in San Clemente. Additionally, many activities centered around the Trafalgar Street Beach and the San Clemente Pier are either viewed or accessed via this pad.
3. Geological Slippage—Geological slippage is easily observed on the bluff facing Trafalgar Canyon. The properties illustrated on the attached Exhibit 2, Tracts 3 (21) and 4(20), have slippage problems on the Trafalgar Canyon side. Property 3(21) has a back fence which was standing erect as little as three years ago, and which now lies parallel to the ground. The home on Tract 4(20) has a bottom floor that has been uninhabitable due to slippage problems since May 1998, when we took occupancy of our residence.
4. Drainage—The presentation given at the recent Coastal commission meeting on August 7, 2001, did not fully answer questions regarding drainage issues that would arise from the construction of an almost 6,000 square foot home on such a small pad. Excessive ground water from home landscaping would only add an adverse cumulative effect to present observable slippage referred to above, and could further compromise adjacent properties. Also, the bluff below Tract 13(3-16) has measured evidence of slippage not uncommon to the San Clemente.

With the preponderance of evidence and issued regarding construction of this home on the pad in question, we anticipate a "No" vote. However, we respectfully request a continuance of this action until a scheduled Coastal commission meeting is held in Southern California, as it is a hardship for the public in this area to travel to Northern California for the scheduled September meeting.

Thank you for your consideration.

Sincerely,


Thomas G. & Sherry McCrossen

Attachments

CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865



PREScriptive RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/prc-access.html>.

Name (Print) THOMAS G. & SHERRY MCCROSSEN
Address: 410 PASADENA CT., UNIT M, SAN CLEMENTE, CA
Telephone (Home): 949 366-6118 (Office): 949 366-6221 92672
Email Address: sherrymccrossen@home.com
Occupation: SALES MANAGEMENT Age: 55

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? MAY 1998
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

WEEKLY WALKING/HIKING TO ACCESS WATER AND
BEACH.

4. Approximately how many times have you used this area?

BI-WEEKLY SINCE MAY 1998, UNTIL 3 MONTHS AGO (APPROX.)
WHEN FENCE WAS REPAIRED.

5. Did you ever ask for and receive permission to use the area? NO

6. Did anyone ever interfere in any way with your use? NO

7. Have you observed others using this area? YES, HUNDREDS OF TIMES.

If so, for what purposes? (1) BEACH ACCESS; (2) WAVE WATCHING;
(3) HIKING/WALKING; (4) PICNICKING; JULY 4TH FIREWORKS.

How often have you seen other members of the public using this area?

NOTE: WE HAVE CLEAR VIEW OF PAD FROM OUR RESIDENCE,
Whenever I was there: _____ Frequently: HUNDREDS OF TIMES

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 1 TO 100
people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If
so, please list them with their addresses and telephone numbers, if known.

NO. HOWEVER, WE HAVE A PHOTO FROM 8/15/01
SHOWING 2 PEOPLE VIEWING AND ACCESSING BEACH.
WILL MAIL COPY OF PHOTO ON REQUEST.

9. Do you possess or know of the existence and/or whereabouts of items such
as photographs, logs, diaries, notebooks, letters, etc. relating to your use
of the area or the uses of other people? Is so, please describe the items
and list the name of parties or locations where such items can be found:

SEE ABOVE.

10. Did you make use of this area as you would public property? If so,
please explain YES. WE USED IT AS PUBLIC ACCESS
TO BEACH.

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? YES If so, when and where?

APPROXIMATELY 3 MONTHS AGO.

12. Have you ever lived or worked in this vicinity? YES If so, when and where?

410 PASADENA CT., UNIT M, SAN CLEMENTE, CA. 92672
(MAY 1998). WE HAVE A DIRECT VIEW OF THIS PAD FROM
OUR LIVING ROOM, DEN, KITCHEN, BEDROOM AND PATIO.

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: SAN CLEMENTE, CA on 8/19/01
City and State Date

Signature: Sherry McCrossen

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 3

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.
WE WALK.
Please sign and date below.

Signature *Sherry McCrosser*

Date *8/19/01*



EXHIBIT 3

Sunday, August 19, 2001

Subject: Public Access Laidlaw5-00-459
Date: Sun, 19 Aug 2001 09:06:24 -0700
From: Kathy <kmaksan@earthlink.net>
Organization: California home
To: jchase@coastal.ca.gov.

RECEIVED
South Coast Region

AUG 21 2001

CALIFORNIA
COASTAL COMMISSION

Dear Miss Chase,

1. Please delay your decision on the Tranfalgar Canyon and Beach Access Laidlaw 5-00-459 and move the hearing to Orange County so those of us whom this affects can be fully represented. This is a major concern for the people in this community and South Orange County. It would only be right to have the hearing down here and not in Ureka come Sept.
2. There was limited mailing on this notice and a good portion of my neighbors did not get this questionnaire concerning this issue.
3. This is a major public scenic corridor and one of only a few areas with coastal access.
4. This approval has not come from San Clemente's planning commission.
5. The owner of this lot Laidlaw also owns the property known as the Beachcomer Hotel. This gives him access on both sides of the Canyon thus cutting off access to the beach at both ends.
6. Neighboring properties to his right lot 3 and 4 on exhibit 2 have major slippage. The house on lot 4 no longer has use of his basement because of this.
7. I have used this land for beach access since 1998 and use it at least 3 times a week to have walks on the beach. If he builds on this land the the drainage from his backyard will run into the canyon and close all available access to the beach. Right now I walk the path that cuts through or near his property to get to the beach.

I have filled out my questionnaire and hope more will be sent out to my neighbors.

Hope to have a response,

Sincerely,

Kathy Makinson-Sanders

408k Pasadena Ct.

San Clemente, Ca. 92672

Aug. 19, 2001

RECEIVED
South Coast Region

AUG 21 2001

California Coastal Commission
Public Access Program
725 Front Street, Suite 300
Santa Cruz, Calif. 95060

CALIFORNIA
COASTAL COMMISSION

RE: Laidlaw 5-00-459

Dear Ms Chase:

I am an owner of Lot 29, Tract 822, in San Clemente, Calif. My property is immediately to the east of Mr. Laidlaw and his proposed development. Members of my family and I have been asked to fill out forms regarding the public access by prescription that has occurred on this property.

First please let me explain that this property at 352 West Paseo de Cristobal has been in our family since 1951 when my grandfather purchased the lot and built a home. This home has been in our family for five generations.

Mr. Laidlaw's property has been used as a public access at least since 1951, perhaps even longer. His property was once a rolling hill, which sloped down toward the canyon and had many footpaths, which the public used to access the beach. In the late 1950's, the owner of the property filled the lot but still the public used this area as an access to the beach or just to view the water, the surfers, the pier, the sunsets, porpoises, whales and the fireworks on the 4th of July.

Because I am not a full time resident of our house at 352 West Paseo de Cristobal, I cannot tell you how many people use this all the time. I was there this last week and saw at least 40 people using it. I did manage to get some pictures and get some people to fill out the forms requested but some were afraid of repercussions. I believe there is an increase in the usage of this lot by the public for several reasons. The main one is that the city has planted bushes along the public bluff area abutting Mr. Laidlaw's property and the public can no longer park at the public parking in this area and view the ocean without getting out of their cars and standing.

This cul-de-sac street where the lot in question is, has been known at T-Street for many years. It has become world famous as a surfing area and a boogie board area of Southern Calif. It has always been the second largest and most popular public area of San Clemente. There should be more parking and more public access in this area not less.

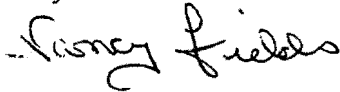
By looking at Mr. Laidlaws plans, it appears the public will lose at 3 if not more parking spaces. Parking at this area is insufficient now.

There is one more thing that concerns me. On the northwest area of this lot, there is a small hill, which runs down to the canyon and the train trestle. In this hill there are petrified seashells. As a child I used to collect them and once a year I look to see if there are still shells there. There are still many shells imbedded in the hill. I think if Mr. Laidlaw is allowed to destroy this area, these will be lost forever.

Thank you for your time.

Sincerely,

Nancy Fields

A handwritten signature in cursive script that reads "Nancy Fields".

321 E. Grand Blvd.
Corona, Calif. 92879

909-371-6533 Work
909-277-1682 home

QUESTIONNAIRE
AND
DECLARATION

PROJECT: _____

STATEMENT NO. _____

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

RECEIVED

South Coast Region

AUG 21 2001

Name (Print): JON GARCIA

CALIFORNIA
COASTAL COMMISSION

Address: 1445 N EL CAMINO REAL

Telephone (Home): 949 369 0296 (Office): 714 932 4710

Occupation: WINDOW CLEANER Age: 28

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? quite often
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

ACCESS TO WATER

4. Approximately how many times have you used the area? Several
5. Did you ever ask for and receive permission to use the area?
no
6. Did anyone ever interfere in any way with your use? no
7. Have you observed others using this area? yes
If so, for what purposes? _____

I have seen such members of the general public:

Whenever I was there: X Frequently _____,
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately _____
People present on any one occasion. (Indicate number or range)

3. Do you know the names of other people who have used this area? yes If so, please list them with their addresses and telephone numbers, if known:
- _____
- _____
- _____
9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? no If so, please describe the items and list the names of parties or locations where such items can be found:
- _____
- _____
10. Did you make use of this area as you would public property? yes If so, please explain: _____
- _____
11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? no If so, when? _____ Where? _____
- _____
12. Have you ever lived or worked in this vicinity? _____ If so, when and where? _____
- _____


I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: 8/10/01 SAN CLAY on 8/10/01
(City and State) (Date)

[Signature]
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____
In Person: _____ Telephone: _____ Other: _____
Interviewer: _____
Interviewer's Comments: _____

An aerial photograph showing a large-scale construction project. A long, rectangular building is under construction, with its roof structure visible. To the right of the building, a road or railway line runs diagonally across the frame. The surrounding area is a mix of cleared land and vegetation. The image is high-contrast, with deep blacks and bright whites.

AERIAL PHOTO
DURING CONSTRUCTION

**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: Laid Law 5-00-459

STATEMENT NO. _____

The State of California is investigating uses made **RECEIVED** property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. **Coast Region**

AUG 21 2001

Name (Print): Char Simmons

Address: 1521 Camfield Ln #4

CALIFORNIA
COASTAL COMMISSION

Telephone (Home): 714-991-3304 (Office): N/A

Occupation: Sales & Rep Age: 51

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? Yes If so, since what date? 1960-2001
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

access to Beach, Fireworks, the view
walks, should become park for all use!

Approximately how many times have you used the area? 100

Did you ever ask for and receive permission to use the area?

No

Did anyone ever interfere in any way with your use? No

Have you observed others using this area? Yes

If so, for what purposes? viewing the beach,

fireworks from the beach

I have seen such members of the general public:

Whenever I was there: ☒ Frequently ☒
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 1-?
People present on any one occasion. (Indicate number or range)

3 Do you know the names of other people who have used this area? No If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? No
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? yes If so, please explain: walking down

to the beach

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? No

If so, when? _____ Where? _____

12. Have you ever lived or worked in this vicinity? No If so, when and where?

But I drove from LA just to see the beach

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, Calif on Aug 13, 2001
(City and State) (Date)

Vivian C Simmons
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

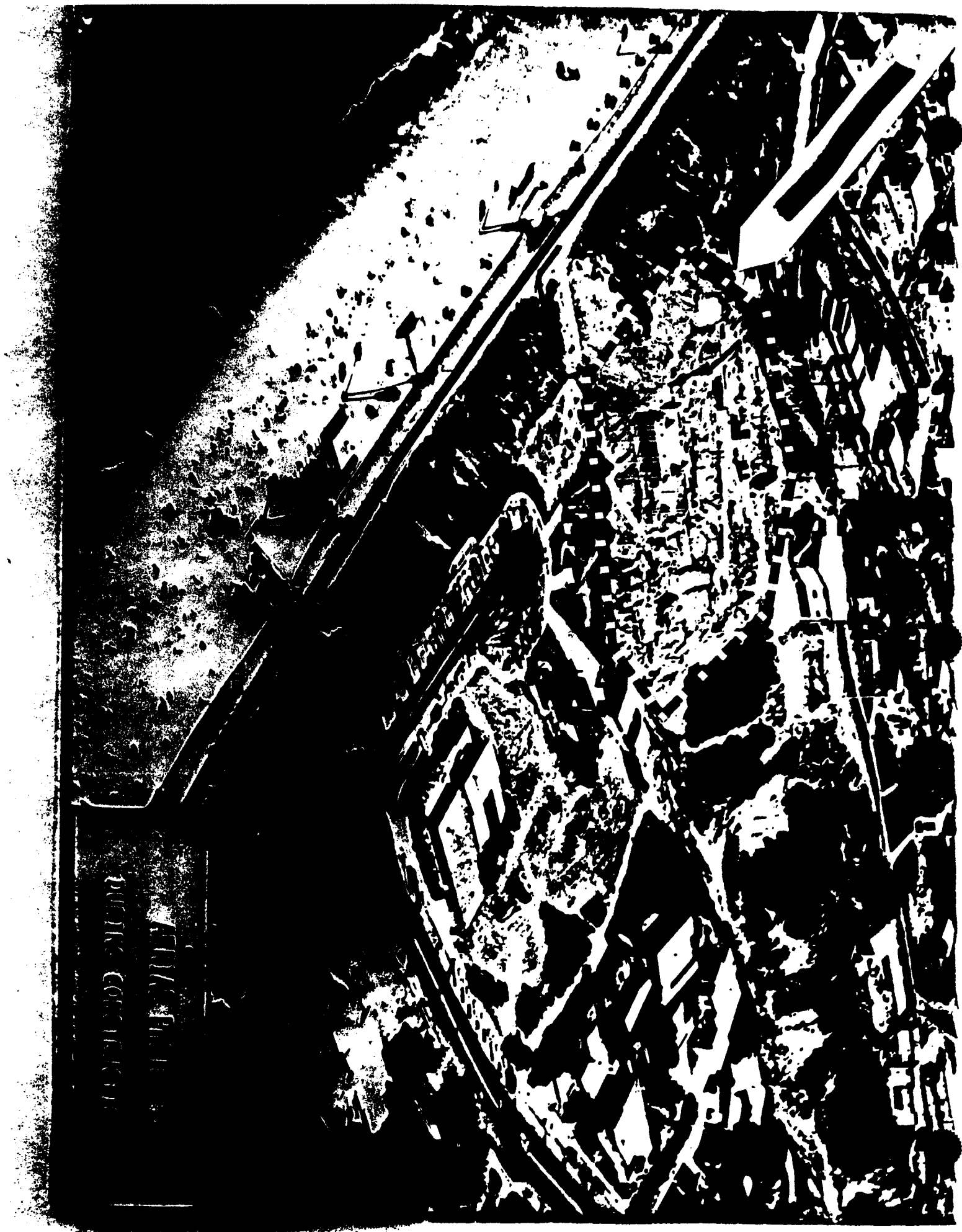
Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

ATLAS
PUBLIC COLLECTION



RECEIVED
South Coast Region

AUG 22 2001

CALIFORNIA
COASTAL COMMISSION

8/20/01

ATTEN ANN KRAMER.

SUBJECT LAIDIAN 5-00 459
NEXT HEARING

REQUEST THE NEXT HEARING BE MOVED
TO A LOCAL (SOUTHERN CALIF) LOCATION.

REQUEST THAT THE CCC DEMAND THE
APPLICANT PROVIDE NOTICE TO ALL
NEIGHBORS AND ALL THE PEOPLE WHO
USE THE "T" ACCESS.

I, THE NEIGHBOR ON THE NORTH SIDE
OF "T" CANYON DID NOT RECEIVE
NOTICE.

PLEASE SEE BACK of PL 2.

THANK YOU

GERALD KOLAN

Shelley 8/20/01

TRAFALGAR CANYON AND BEACH ACCESS TRAIL(S)
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
SAN CLEMENTE, ORANGE COUNTY
AERIAL PHOTOMAP OF SITE EXHIBIT 2

Please mark your areas of use on this photomap.

Have you personally and openly used any of the area shown within the white dashes of this exhibit? Please mark your areas of use on this graphic. The dashed line only approximates the investigation area so please mark trails used outside the area as well. What are the approximate dates you used these areas? Indicate the types of use (beach access, whale watching, surfing, sunning, etc.) Indicate where you parked.

Please sign and date below.

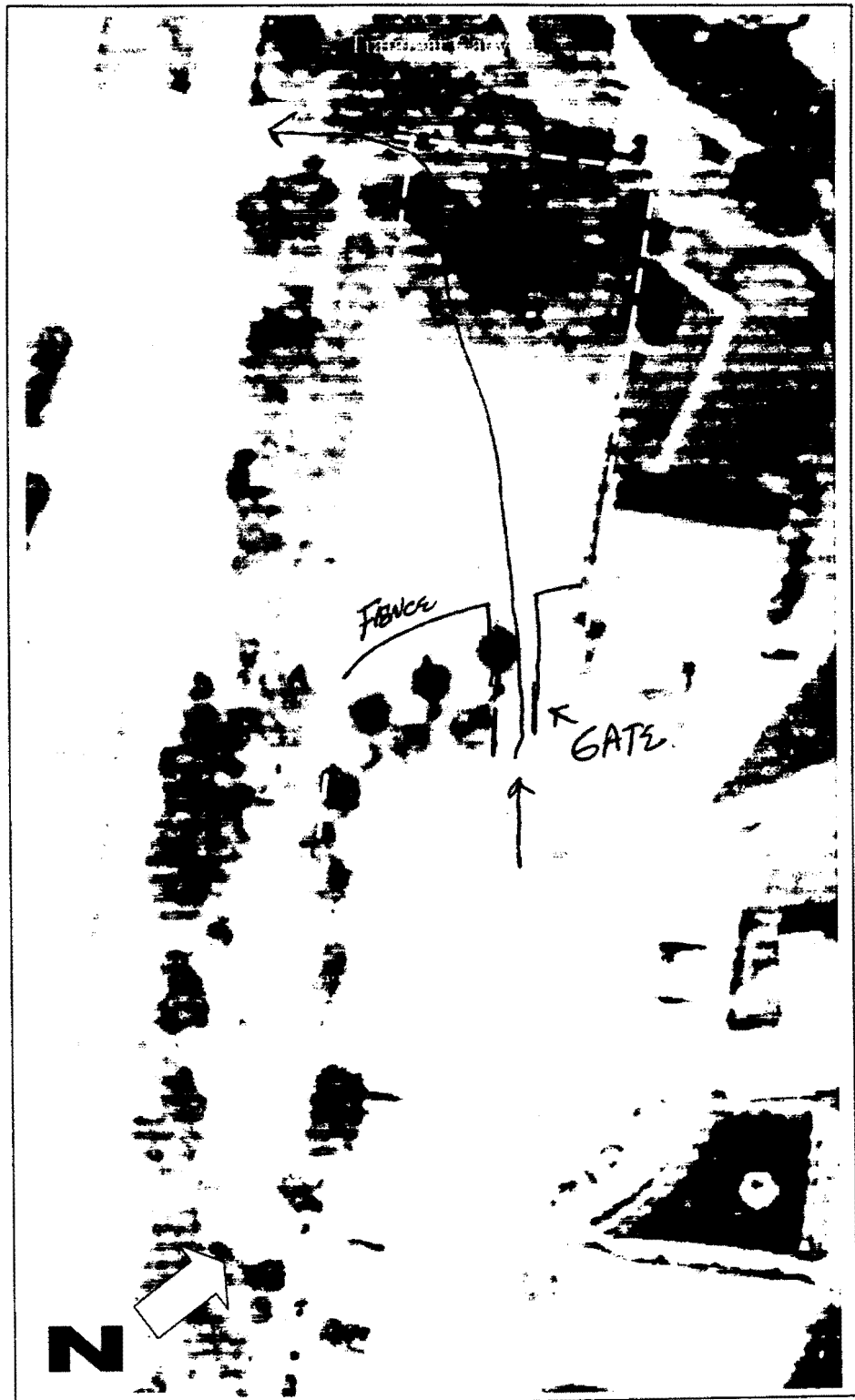
Signature

Date

[Handwritten Signature]

8/20/01

BEACH ACCESS



CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4865



PREScriptive RIGHTS STUDY
PUBLIC USE QUESTIONNAIRE AND DECLARATION

TRAFALGAR CANYON AND BEACH ACCESS
FROM PASEO DE CRISTOBAL (LAIDLAW 5-00-459)
CITY OF SAN CLEMENTE, ORANGE COUNTY

The State of California is investigating public uses made of trails that cross the Laidlaw Trust parcel, 354 Paseo de Cristobal on the cul-de-sac that fronts Trafalgar Canyon at its intersection with the beach. See the attached graphics for location. The investigation is for the purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated. For an electronic version of this questionnaire, go to <http://www.coastal.ca.gov/access/or-access.html>.

Name (Print) KOBER, GERALD
Address: 406 B PASADENA CT SAN CLEMENTE
Telephone (Home): 949-498 3515 (Office): 818 341 3344
Email Address: GERALD K817 at AOL.COM
Occupation: COO Age: 59

1. Have you personally and openly used any of the area shown on the attached photograph, map or diagram? YES If so, since what date? MARCH ~~1996~~ 1996
2. Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.
3. Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)
WALK DOWN "T" STREET, DOWN CRISTOBAL
ACROSS LOT, DOWN TO OCEAN FOR BEACH
ACCESS
4. Approximately how many times have you used this area?
2-3 TIMES PER WEEK

5. Did you ever ask for and receive permission to use the area? NO

6. Did anyone ever interfere in any way with your use? NO

7. Have you observed others using this area? YES

If so, for what purposes? ACCESS TO BEACH

How often have you seen other members of the public using this area?

Whenever I was there: _____ Frequently: X

Occasionally: _____ Rarely: _____ Never: _____

On these occasions, usually there were approximately 2 or 3 AGE 12/40
people present on any one occasion (Indicate number or range.)

8. Do you know the names of the other people who have used this area? If so, please list them with their addresses and telephone numbers, if known.

NO

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc. relating to your use of the area or the uses of other people? If so, please describe the items and list the name of parties or locations where such items can be found:

I THINK I HAVE SOME PHOTOS

10. Did you make use of this area as you would public property? If so, please explain SEE OVER

11. Have you ever observed any no trespassing signs or equivalent signs, or signs giving permission to utilize the property? yes If so, when and where

GATE ~~WAS~~ WAS LOCKED AND SIGNS WERE
INSTALLED ABOUT 3 MONTHS AGO.

12. Have you ever lived or worked in this vicinity? yes If so, when and where?

SEE ADDRESS - ACROSS "T" CANYON TO
NORTH, MOVED TO S/C MARCIT 1996

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: SAN CLEMENTE CA on 8/20/01
City and State Date

Signature: [Signature]

Return completed questionnaire to:

Attn: Anne Kramer, Coastal Planner
California Coastal Commission
South Coast District
P.O. Box 1450
Long Beach, CA 90802-43235

The information contained in this questionnaire is subject to public disclosure and will not be kept confidential unless requested by the signatory in writing.

**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: _____

Laidlaw 5-00-459

RECEIVED
South Coast Region

STATEMENT NO. AUG 22 2001

The State of California is investigating uses made of this property for purpose of determining whether any public uses exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

Name (Print): GUNNER D. GRAHAM

Address: 1660 KENDALL DR. #125 SAN BERNARDINO, CA 92407

Telephone (Home): 909-473-0684 (Office): (909) 334-6496

Occupation: SALES / STUDENT Age: 23

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? 1977
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

The view of ocean, dolphins, birds,
fireworks, sunsets and access to the Beach

Approximately how many times have you used the area? 20+

Did you ever ask for and receive permission to use the area?

no - it was always open to the public

Did anyone ever interfere in any way with your use? no

Have you observed others using this area? yes

If so, for what purposes? access to the beach,

fireworks, view of the ocean, etc. (same as above)

I have seen such members of the general public:

Whenever I was there: _____ Frequently X
Occasionally: _____; Rarely: _____ Never: _____

On these occasions, usually there were approximately 2-20
People present on any one occasion. (Indicate number or range)

23.

more than 20 during 4th
of July.

Do you know the names of other people who have used this area? no If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? yes, photographs
If so, please describe the items and list the names of parties or locations where such items can be found:

Myself - I have photographs from 4th of July, 2000 with a large crowd on property, and probably other pictures as well

10. Did you make use of this area as you would public property? yes If so, please explain: access to beach,

looking over edge for family members on beach

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? no
If so, when? _____ Where? _____

12. Have you ever lived or worked in this vicinity? yes If so, when and where? Barcelona (as a child) and on Paseo de Cristobal (all the summers of my whole life)

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, Ca on 8-18-01
(City and State) (Date)

Summer D. Graham
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

**QUESTIONNAIRE
AND
DECLARATION**

PROJECT: Land Law 5-00-459

RECEIVED

South Coast Region

STATEMENT NO. AUG 22 2001

The State of California is investigating uses made of this property for purpose of determining whether any public rights exist therein by reason of public use. Your answers to this Questionnaire and Declaration will be appreciated.

Name (Print): KATHRYN A. GRAHAM

Address: 8343 Cypress Ave, Fontana, Ca 92335

Telephone (Home): (909) 355-5996 (Office): (909) 421-2807

Occupation: OFFICE mgr. Age: 54

- Have you personally and openly used any of the area shown on the attached photograph, map or diagram? yes If so, since what date? 1952
- Please mark the areas of your use on the enclosed photograph, map or diagram and date and sign the same. In marking the photograph, map or diagram, please try to pinpoint the locations and indicate the types of use and approximate dates.

Please describe the uses you have made of this area (for example: boating, fishing, swimming, hiking, picnicking, parking, skin diving, access to water or beach, etc.)

View of ocean, dolphins, fireworks (4th of July)

Access to Beach.

Approximately how many times have you used the area? 50

Did you ever ask for and receive permission to use the area?

no

Did anyone ever interfere in any way with your use? no

Have you observed others using this area? yes

If so, for what purposes? Same as above

I have seen such members of the general public:

Whenever I was there: Frequently X
Occasionally: ; Rarely: Never:

On these occasions, usually there were approximately 4-6
People present on any one occasion. (Indicate number or range)

3. Do you know the names of other people who have used this area? no If so, please list them with their addresses and telephone numbers, if known:

9. Do you possess or know of the existence and/or whereabouts of items such as photographs, logs, diaries, notebooks, letters, etc., relating to your use of the area or the uses of other people? Photos
If so, please describe the items and list the names of parties or locations where such items can be found:

10. Did you make use of this area as you would public property? yes If so, please explain: Access to Beach.

Common Knowledge to use.

11. Have you ever observed any no trespassing or equivalent signs, or signs giving permission to utilize the property? no

If so, when? _____ Where? _____

12. Have you ever lived or worked in this vicinity? yes If so, when and where? Barcelona 1977

Cristobal 1978 - 1987

I declare under penalty of perjury that any answers to the foregoing Questionnaire and Declaration are true and correct to the best of my recollection.

Dated at: San Clemente, Ca on 8-18-01
(City and State) (Date)

[Signature]
(Signature)

INVESTIGATOR'S NOTATIONS REGARDING INTERVIEW

Location: _____ Date: _____ Time: _____

In Person: _____ Telephone: _____ Other: _____

Interviewer: _____

Interviewer's Comments: _____

See Highlighted Area



ADDITIONAL
PAGES CONTAINED

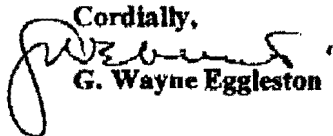
**G. Wayne Eggleston
317 Cazador Lane A
San Clemente, California 92672
Tel: 949-498-4958**

**PLEASE FORWARD TO ANN KRAMER
ONE PAGE**

**ATTENTION: ANN KRAMER
Re: 5-00-459, Latdlaw
Date: 8-20-01**

Please be advised that the beach trail on the above subject property has been in existence, at least since I moved to San Clemente, which was in 1984. It has been a very well worn pathway and has been used, not only by myself, but also many surfers who walk from the on-street parking to the beach. This has provided coastal access for many years.

Cordially,


G. Wayne Eggleston

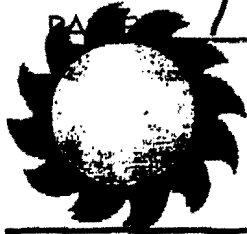
COASTAL COMMISSION

5-00-459

EXHIBIT # 10

PAGE 1 OF 1

SAN CLEMENTE'S HOMETOWN NEWS



SUN POST N

OUR TOWN

* Beach access?

Have you ever used a vacant lot at the end of Paseo de Cristobal as an access to the beach?

If so, the California Coastal Commission wants to hear from you.

Robert Laidlaw is seeking a coastal permit to build a house at 354 Paseo de Cristobal on the end of a cul-de-sac at T-Street beach. Coastal commissioners held a public hearing last week in Redondo Beach but postponed action, after neighbors raised the possibility that past public use of the property may have established public rights.

For more information, call Joy Chase at (831) 427-4865. The Laidlaw hearing is expected to resume at a Coastal Commission meeting the week of Sept. 10-14 in Eureka.

Still at it

Did you know that even today, more than 150 years after the Gold Rush, miners annually extract \$157 million worth of gold in California?

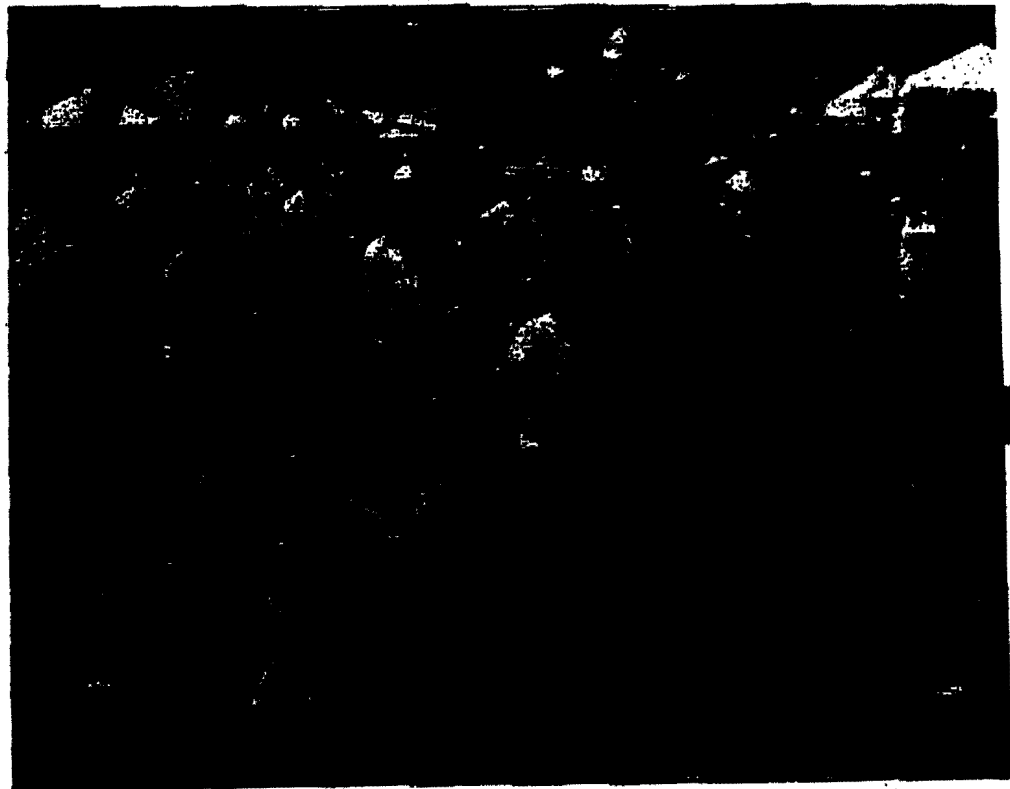
Once a month, the Capistrano Valley Rock and Mineral Club meets at the Community Center, corner of Avenida Del Mar and Calle Seville. The group invites the public to attend this Wednesday's 7:30 p.m. meeting to learn about gold in California.

In the works

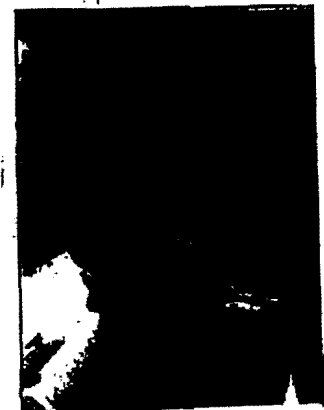
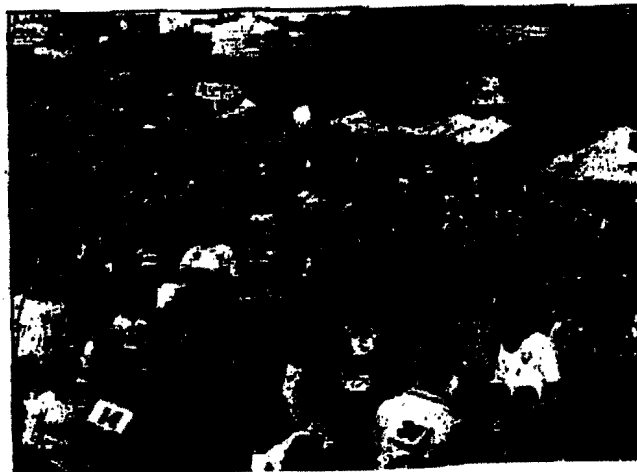
Here are some public works projects that can be seen around town this week:

ROADS:

STREET FESTIVAL SOA



MEDINA PHOTOGRAPHIC DeMARTINO, SPT



** TOTAL PAGE.02 **