

CALIFORNIA COASTAL COMMISSION

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Staff: MS-LB
Staff Report: September 24, 2003
Hearing Date: October 7, 2003
Commission Action:

STAFF REPORT: APPEAL / DENOVO

LOCAL GOVERNMENT: City of Palos Verdes Estates
LOCAL DECISION: Approval with Conditions
APPEAL NUMBER: A-5-PVE-03-087
APPLICANT: Mary Ann Walker & Tim Dupler
AGENT: Pamela S. Schmidt and Doug Leach, A.I.A.
PROJECT LOCATION: 1745 Paseo Del Mar, Palos Verdes Estates, Los Angeles County

PROJECT DESCRIPTION: Construction of a 7,407 square-foot, 30-foot high, 2 ½ story single family residence with an attached, 902 square-foot, 3-car garage and a detached, 445 square-foot pool house and a 6,938 square-foot sports court area on a 45,900 square-foot vacant bluff top lot at 1745 Paseo Del Mar in Palos Verdes Estates, Los Angeles County. The applicants propose approximately 1,932 cubic yards of grading and 6 to 8-foot high retaining walls and fencing around the sports court area. The applicants propose to install a row of fifteen 3-foot in diameter, 135-foot long caissons with tie-backs along a line set back 90 feet from the bluff edge on the seaward side of the proposed home.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends the Commission **APPROVE** the proposed development with special conditions requiring setbacks from possible accessways, conformance to geotechnical engineer and City engineer recommendations, erosion control, non-invasive and low-water use landscape, conformance to City permit conditions of approval, assumption of risk and no future bluff protective device. The subject site is located on a vacant coastal bluff top lot. Primary issues raised by the project include public access and avoidance of geologic hazard. The proposed development conforms to the bluff top setback requirements of the certified LCP, by setting back the proposed structures 90 feet from the bluff edge and installing caissons immediately seaward of the structures. **The motion is on page 3.**

Special Condition 1 requires the applicants to conform with geotechnical recommendations, including those regarding site preparation, caisson and foundation design and placement. Special Condition 2 requires the applicant to submit final plans that conform to the revised plans, dated September 8, 2003, which provide a 10-foot wide open space area along the upcoast property line, up to the bluff edge. The revised plans also show no development between the proposed structures and the bluff edge, which means that construction of the project as proposed will not interfere with the public's ability to access an existing bluff face trail that leads down the bluff face to the ocean in the center of the property. Special Condition 3 requires a landscape plan, which includes non-invasive, low-water use plant species and above ground, efficient irrigation. Special Condition 4 requires an erosion control and drainage plan during and after construction. Special

Condition 5 requires the applicants to assume the risk of development on this site. Special Condition 6 ensures that the applicants and future landowners are aware that future development requires a coastal development permit. Special Condition 7 informs the applicants that the Commission's approval of the project does not constitute a waiver of any public rights that may exist on the property. Special Condition 8 requires the applicants to submit a plan to mitigate for the potential of leakage from the pool. Special Condition 9 requires the applicants to execute a recorded deed restriction to ensure that any future property owners are aware that the terms and conditions of this permit continue to restrict the use and enjoyment of the subject property.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit (CDP) No. 44
2. City of Palos Verdes Estates Certified Local Coastal Program.
3. *Geotechnical Investigation, 1745 Paseo Del Mar – Palos Verdes Estates*, prepared by Dale Hinkle, P.E. Inc., dated June 4, 2002.
4. *City of Palos Verdes Estates Geotechnical Engineering Review Sheet*, dated July 23, 2002.
5. *Response to City of Palos Verdes Estates' Review Letter dated July 23, 2002, Regarding Geotechnical Report dated June 4, 2002*, prepared by Dale Hinkle, P.E. Inc., dated October 29, 2002.
6. *Supplemental Calculations Proposed Single Family Residence 1745 Paseo Del Mar, Rancho Palos Verdes [sic]*, prepared by Dale Hinkle, P.E. Inc., dated November 15, 2002.
7. A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California, WUCOLS III, University of California Cooperative Extension and California Department of Water Resources, <http://www.owue.water.ca.gov/docs/wucols00.pdf>.
8. Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, California Native Plant Society, February 5, 1996.

APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of local government actions on coastal development permit applications. Locally issued coastal development permits may be appealed if the development is located within the appealable areas established in Coastal Act Section 30603. These include areas located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within 100 feet of wetlands. Developments approved by counties may be appealed if they are not designated "principal permitted use" under the certified LCP. Finally, local government action on applications for developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county [Coastal Act Section 30603(a)]. The development approved in Coastal Permit No. 44 is located in an appealable area because it is located within three hundred feet from the inland extent of the beach and between the first public road and the sea. When the Commission found the appeal of the local permit for this development raised a substantial issue, the local coastal permit was nullified, and the Commission now acts on the matter de novo. The standard of review for the de novo permit is the access and recreation policies of the Coastal Act and the policies of the certified Local Coastal Program.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. A-5-PVE-03-087 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion 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 TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified local coastal program of the city of Palos Verdes Estates and the access and recreation policies of Chapter 3 of the Coastal Act. 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 Reports

- 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, 1745 Paseo Del Mar – Palos Verdes Estates*, prepared by Dale Hinkle, P.E. Inc., dated June 4, 2002 and as supplemented by *Response to City of Palos Verdes Estates' Review Letter dated July 23, 2002*, prepared by Dale Hinkle, P.E. Inc., dated October 29, 2002 and November 15, 2002 and the requirements of the City of Palos Verdes Estates Geotechnical Engineering Review Sheet, dated July 23, 2002.
- B. The permittee shall undertake development in accordance with the final plans. Any proposed changes to the final plans shall be reported to the Executive Director. No changes to the final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Final plans

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit final plans for the review and approval of the Executive Director. The final plans shall show:

- 1. The proposed project shall conform to the revised project plans dated September 8, 2003 that demonstrate the following:
 - a) None of the primary development (i.e. any portion of the residence or subterranean stabilization system) shall be constructed within the 10-foot side yard setback from the northern side yard property line as generally depicted in Exhibit 8, Pages 2 & 3, attached to the staff report for Coastal Development Permit No. A-5-PVE-03-087;
 - b) No ancillary development or hardscape features (i.e. patios, decks, fences/walls) shall be constructed within the 10-foot side yard setback from the northern side yard property line as generally depicted in Exhibit 8, Pages 2 & 3, attached to the staff report for Coastal Development Permit No. A-5-PVE-03-087; or
 - c) No development or hardscape features (i.e. patios, decks, fences/walls) shall be constructed within the 25-foot rear yard setback from the bluff edge as defined in the certified LCP.
- 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.
- C. Special condition 2.A. and 2.B. shall not apply if and when the applicants provide evidence of a final ruling in a Quiet Title action that proves that no public rights exist to make any use of any portion of the subject property.

3. Drainage and Landscape Plans

A) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a landscaping plan prepared by a professionally licensed landscape architect or resource specialist, for review and approval by the Executive Director. The plan shall include, at a minimum, the following components: a map showing the type, size, and location of all plant materials that will be installed on the areas disturbed due to construction: the areas around the house, sports court and driveway.

1) Landscape and Drainage Control

(a) The landscape and drainage control plan shall:

- Use efficient irrigation systems to minimize nuisance water runoff and not use in-ground irrigation.
- Direct all rooftop and hardscape drainage to the street.
- The applicants shall employ no invasive, non-indigenous plant species, which tend to supplant native species, as identified on the California Native Plant Society publication "California Native Plant Society, Los Angeles -- Santa Monica Mountains Chapter handbook entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, February 5, 1996, " and/or by the California Exotic Pest Council.
- Vegetation shall be predominantly low water use plants for southern California coastal areas as defined by the University of California Cooperative Extension and the California Department of Water Resources in their joint publication: "*Guide to estimating irrigation water needs of landscape plantings in California*".
- No irrigation, planting or excavation shall occur on the bluff face without an amendment to this coastal development permit.

B) The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Erosion and Construction BMPs

A) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit final drainage and runoff control plans to the Executive Director for his or her review and written approval. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to minimize to the maximum extent practicable the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations, and the submittal shall reflect that review and approval. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

1) Erosion and Drainage Control Plan

(a) The erosion and drainage control plan shall demonstrate that:

- During construction, erosion on the site shall be controlled to avoid adverse impacts on adjacent properties, the beach, and the bluff face.
- The following temporary erosion control measures shall be used during construction: temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing.
- In addition, the applicants shall install geotextiles or mats on all cut or fill slopes, close and stabilize open trenches as soon as possible and stabilize any stockpiled fill with geofabric covers or other appropriate cover.
- Permanent erosion and drainage control measures shall be installed to ensure the stability of the site, adjacent properties, and public streets.
- The erosion and drainage control plans shall show all roof drainage from the house.

(b) The erosion control plan shall include, at a minimum, the following components:

- A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed for permanent erosion control.
- A site plan showing the location of all temporary erosion control measures.
- A schedule for installation and removal of the temporary erosion control measures.
- A written review and approval of all erosion and drainage control measures by the applicants' engineer and/or geologist.
- A written agreement indicating where all excavated material will be disposed and acknowledgement that any construction debris disposed within the coastal zone requires a separate coastal development permit.

(c) The permanent site drainage control plan shall demonstrate that:

- All run-off from the sports court, all roofs, patios, driveways and other impervious surfaces on the site shall be collected and discharged to the street to avoid ponding and/or erosion either on or off the site.
- Overflow drainage from the pool shall be directed to the sanitary sewer. The applicants shall not use chemicals in the spa that are incompatible with the sewer.

(d) The drainage control plan shall include, at a minimum, the following components:

- The location, types and capacity of pipes, drains and/or filters proposed.
- A schedule for installation and maintenance of the devices.
- A site plan showing finished grades at two-foot contour intervals and drainage improvements.

- (e) These erosion and drainage control measures shall be required to be in place and operational on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from the runoff waters during construction. All sediment shall be retained on-site unless removed to an appropriately approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles and/or mats, sand bag barriers, and/or silt fencing; and include temporary drains and swales and sediment basins. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

B. The permittee shall undertake development and shall operate and manage the site 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.

5. Assumption of Risk, Waiver of Liability and Indemnity

- A. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from all applicable specific hazards, such as landslide, bluff retreat, erosion, and earth movement; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

6. Future Development Restriction

- A. This permit is only for the development described in coastal development permit No. A-5-PVE-03-087. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit No. A-5-PVE-03-087. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit No. A-5-PVE-03-087 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

7. 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.

8. Pool Leak Prevention Plan

A) Prior to Issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, a written plan to mitigate for the potential of leakage from the proposed pool. The plan shall, at a minimum:

1. Provide a separate water meter for the pool to allow separate monitoring of the water usage for the pool and the rest of the home;
2. Identify the materials, such as plastic linings or specially treated cement, to be used to waterproof the underside of the pool to prevent leakage into the structure and the adjacent soils. The plan shall include information regarding past success rates of these materials;
3. The pool shall be installed using two layers of such material, with a drain between the layers.
4. Identify methods used to control pool drainage and to prevent infiltration from drainage and maintenance activities into the soils of the applicants' and neighboring properties;
5. Identify normal and expected water consumption by the pool;
6. Provide an automatic cut-off of water to the pool if water use in a three-hour period exceeds the normal and expected flow. The cut-off shall have an override control of up to two hours to allow for the maintenance and cleaning of the pool.
7. The pool shall drain to the sewer and not to the storm drain system
8. The applicants' engineer shall inspect the liner before the concrete is poured and shall inspect the connections before the installation of any decks or coverings.

B) The permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

9. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal

description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicants propose to construct a 7,407 square-foot, 29-foot 8-inch high, 2 ½ - story single family residence with an attached 902 square-foot garage and a detached 445 square-foot pool house on a bluff top lot in Palos Verdes Estates. Also proposed is a 6,938 square-foot sports court to be located between the downcoast adjacent property and the proposed pool house and pool (Exhibit 8, P.1). Up to 8-foot high retaining walls and fences are proposed around the sports court. The project includes 1,932 cubic yards of grading with a maximum cut depth ranging from 3 feet (under garage) to 8 feet (under the pool). The applicants do not propose any new landscaping. According to the project plans that were transmitted to Commission staff by the City after the appeal was lodged, the property line setbacks consist of a thirty-foot front yard setback, an eighteen-foot northern (upcoast) side yard setback, an eight-foot southern (downcoast) side yard setback (from the property line to the sports court) and a rear yard setback that ranges from 46 feet (downcoast) to 99 feet (upcoast) from the property line to the house. According to the applicants, a row of caissons approximately 135 feet deep (with tie-backs) and 3 feet in diameter are proposed at the seaward edge of the home and are located 90 feet inland from the bluff edge (Exhibit 8, P.1). The exact location of the bluff edge is not clear. According to plans submitted by the applicants, the bluff edge is to be determined by the geotechnical engineer prior to the drilling of caissons (Exhibit 8, P. 1).

The project is located at 1745 Paseo Del Mar in Palos Verdes Estates in a zoned R-1 neighborhood (Exhibit 1). The site consists of a 45,900 square-foot lot seaward of Paseo Del Mar, adjacent to existing single family residences on either side of the lot, fronting on an approximately 175 foot high sea bluff. There is a designated parkway (a setback area under the control, management and direction of the City) that abuts the subject property and is adjacent and parallel to the public street (between the front of the property and the street). The site contains various trails from the public street to a trailhead located towards the top of the bluff and then one trail continues from that trailhead down to the ocean.

B. Geological Hazards

The City of Palos Verdes Estates' General Plan was certified as part of the City's certified LCP.

The Safety Element of the General Plan addresses Geologic Hazards stating:

The community is free of known active faults and major slide areas. There have been in the past and probably will occur again in the future ocean bluff erosion and rock falls. All of the

bluff areas are subject to this hazard and therefore prior to development in this area detailed geologic studies are required. If these studies indicate unacceptable risks are avoidable, it is required that the necessary steps be taken to eliminate the unacceptable risk.

Policy D of the certified LCP regarding Geologic and Visual Resources states:

Geologic Stability and Visual Resources

Construction on private land, including but not limited to, buildings, stairways, pools, tennis courts, spas or solid fences, additions to structures, or grading on, or down the bluff face or within 50 feet of the bluff edge requires a coastal development permit and shall be prohibited without a geologic report and a finding that the improvements would minimize alteration of landforms and shall not be visually intrusive upon public view points.

Implementation for the policy listed above states in part:

18.04.160, 18.16.50 and 19.02.020 Coastal Zone Limitations on Development in Bluffs.

- 1. Structures, additions to structures, grading, stairways, pools, tennis courts, spas or solid fences, may be constructed on private property on, or within 50 feet of, the bluff edge in the Coastal Zone with a coastal development permit and only after preparation of a geologic report and findings by the City that the proposed structure, addition(s) to structure, grading, stairway, pool, tennis court, or solid fence (1) poses no threat to the health, safety, and general welfare to persons in the area by reason of identified geologic conditions which cannot be mitigated and (2) the proposed structure, addition, stairway, pool, tennis court or solid fence will minimize alteration of natural landforms and shall not be visually intrusive from public view points in the Coastal Zone.*

The City of Palos Verdes Estates Shoreline Preserve Master Plan was certified as part of the City's certified LCP.

Section IV. A. 7. of the Shoreline Preserve Master Plan states in part:

7. Control Erosion - ... the City should assure that future residential developments and street construction does not involve the massive dumping of rock and soil off the cliffsides as occurred since the Tideland Grant in the construction of Resort Point improvements.

The applicants are proposing a 2 ½ -story single family structure with an attached garage, a pool house and sports court on a vacant, bluff top lot that slopes down from the street at a fairly consistent slope to the rear property line that adjoins the bluff. 1932 cubic yards of grading is proposed with cuts no deeper than 8 feet under the proposed pool. The applicants have submitted a Geotechnical Investigation Report with supplemental letters for the site (See Substantive Documents Section). According to the June 4, 2002 Geotechnical Investigation Report for the subject site, the maximum fall in elevation is approximately 15 feet from the southeast corner to the northwest corner. The site geology includes a small landslide (seaward of the proposed structures) and a 175-foot tall ocean bluff that is at a gradient of 1:1 and exposes bedrock the entire height. The June 4th report indicates that the upper 45 feet of soil on the site has a factor of safety of between 1.0 and 1.1 and below 45 feet, a 1.5 safety factor exists. The report explains that there is a "small fold near the south side which has caused a landslide on the southeast portion of the site". The June 4th report discussed two

recommended options for stabilizing the site: 1) placing a row of 10-12 tied-back caissons (3 feet in diameter and 9 feet on center) on the bluff side of the house; or 2) a caisson foundation under the house. The report also established a 50 to 70-foot setback from the top of slope (bluff). The analysis of the June 4th report relied on data from previous geotechnical reports for this site (K. Ehler dated August 18, 1999 and Lockwood-Singh & Associates dated July 6, 1982) and on data collected specifically for this report (including a 151-foot deep boring). The June 4, 2002 geotechnical report concluded that the site requires drilled caissons to provide stability against soil creep and landsliding.

In response to the June 4th report, the City of Palos Verdes Estates provided a Geotechnical Engineering Review Sheet (Exhibit 7, P. 3-5). The City requested revised factor of safety calculations assuming a 14 degree out-of-slope component of bedding. It was previously designed for an eight degree out-of-slope component, which was the average, measured. In a supplemental letter to the applicants, the geotechnical engineer, Dale Hinkle responded to the City's request with supplemental calculations (November 15, 2002). According to the November letter using the worst-case measurements (14 degree out-of-slope component), the caissons must extend 134-feet deep to have the site reach a factor of safety of 1.5 using the same number of caissons and anchors (15 proposed) as described above in the first option. In an earlier letter responding to the City review (October 29, 2002) sheet, the geotechnical engineer recommends that a "no development zone" be set at 90 feet wide from the top of slope to the proposed house. The letter states in part:

There will be no development zone from the existing top of slope to the proposed house. This will be a 90-foot wide zone where no permanent habitable structures are allowed. The area can have a pool or tennis court, but no guesthouse. The area can be lawn, but if it is irrigated, it must have a 20 mil PVC membrane and subdrain collection system to prevent all irrigation water from infiltrating into the ground. (Dale Hinkle, P.E. Inc. October 29, 2002)

The November 15th letter reiterates the requirement for a 90-foot setback from the top of slope for the caissons and other development. The City of Palos Verdes Estates approved the applicants' project, which includes a row of fifteen (15), 36" diameter, 135-foot long tied-back caissons located at the seaward edge of the proposed house, 90 feet inland from the top of slope (Exhibit 8, P.1). No caissons are proposed in the southwestern portion of the site where the proposed sports court and pool house are located. No special development standards for the pool were imposed by the City, even though the lawn, if any, is required to be underlain by an impervious membrane. For this reason, staff is recommending that the applicants construct the pool with a double bottom to prevent infusion of moisture into the soils from the pool.

The applicants' consultant and the City agree that with construction of the foundations as recommended, with a tied-back caisson system, the development will be stable and within the generally accepted factor of safety of 1.5. The geotechnical report and updates state that there will be no danger of landslide, slippage or settlement exceeding one inch on this or adjacent properties if constructed and designed as recommended. Therefore, the foundation system should assure stability of the site consistent with the certified LCP, if the project is carried out in accordance with the recommendations set forth in the geotechnical reports, and with a double bottom construction of the pool.

Conformance with Geotechnical Recommendations

Recommendations regarding the design and installation of the 8,309 square-foot single family home (includes garage), pool house and sports court, foundation system, retaining walls, and grading have been provided in several reports and letters submitted by the applicants, as referenced in the above noted final reports. Adherence to the recommendations contained in these reports is necessary to ensure that the proposed single family home caisson foundation system assures that threats to the general health, safety, and welfare of people in the area are removed, or destruction of the site or surrounding area or in any way requires the construction of protective devices that would substantially alter natural landforms.

Therefore, Special Condition 1 requires the applicants to conform to the geotechnical recommendations by Dale Hinkle, P.E. Inc., in their reports dated 6/4/02, 10/29/02 and 11/15/02. The applicants shall also comply with the recommendations by the City of Palos Verdes Estates Geotechnical Engineering Review Sheet dated 7/23/02.

Assumption of Risk Deed Restriction

Under The Safety Element of the General Plan of the certified LCP, new development in bluff areas, which are subject to geologic hazards, may occur as long as unacceptable risks are eliminated. However, as the use of the phrase "unacceptable" risk implies, new development may proceed even if it involves the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site, as well as the individual's right to use his/her property.

The proposed single-family home and 1932 cubic yards of grading are situated on a sloping vacant bluff top lot that contains up to 45 feet deep of unstable earth materials and a small landslide in the southwestern portion of the site. In addition to a landslide on the southern side of the site, the upper 45-feet of material has a factor of safety between 1.0 and 1.1. The Geotechnical analysis reports by Dale Hinkle, P.E. Inc. initially stated that new construction will be founded into competent bedrock behind/below the geologic/geotechnical setbacks identified in the submitted reports. The applicants propose to stabilize the soils beneath the house by installation of a row of caissons seaward of the house. The City is requiring and the applicants propose to construct caissons so that the new house is brought to a factor of safety of 1.5, which is the factor of safety generally considered adequate. By complying with the geotechnical recommendations and City conditions of approval, the site will be suited for the proposed development. However, the geotechnical and geologic reports are commissioned by the applicants and ultimately the conclusion of the report and the decision to construct the project relying on the report is the responsibility of the applicants. The proposed project may still be subject to natural hazards such as slope failure and erosion. The geotechnical evaluations do not guarantee that future erosion, instability for this or adjacent property movement will not affect the stability of the proposed project.

Because of the inherent risks to development situated on a potentially unstable, sloping lot, the Commission cannot absolutely acknowledge that the design of the proposed home, pool, sports court and foundation system will protect the proposed development during future storms, erosion, and/or slope failure on the site. Therefore, the Commission finds that the proposed project is subject to risk from landslides and/or erosion and that the applicants should assume the liability of such risk.

The applicants may decide that the economic benefits of development outweigh the risk of harm, which may occur from the identified hazards. However, neither the Commission nor any other public agency that permits development should be held liable for the applicants' decision to develop. Therefore, the applicants are required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. By acceptance of this permit with the assumption of risk condition, the applicants acknowledge that they are aware of and appreciate the nature of the hazards which may exist on the site and which may adversely affect the stability or safety of the proposed development.

In case an unexpected event occurs on the subject property, the Commission attaches Special Condition 5, whereby the landowner assumes the risk of extraordinary erosion and/or geologic hazards of the property and accepts sole responsibility for the removal of any structural or other debris resulting from landslides, slope failures, or erosion on and from the site. Special Condition 9 requires the applicants to execute a recorded deed restriction. The deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely in the future.

Therefore, prior to issuance of the Coastal Development Permit, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects all of the restrictions on development imposed by this permit. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

Erosion Control Measures

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion via rain or wind could result in possible acceleration of slope erosion and landslide activity. Special Condition 4 requires the applicants to dispose of all demolition and construction debris at an appropriate location outside of the coastal zone and informs the applicants that use of a disposal site within the coastal zone will require an amendment or new coastal development permit. As described previously, the applicants are proposing to construct a home, pool and sports court area on a bluff top lot that consists of both unstable earth materials and a landslide located seaward of the proposed home. For these reasons, it is critical to minimize the rate of erosion in an effort to increase the stability of this site. Therefore, the applicants must also follow both temporary and permanent erosion control measures in order to ensure that the project area is not susceptible to excessive erosion.

The applicants have not submitted a drainage plan for the site. The Commission requires a complete erosion control plan for both permanent and temporary measures. Therefore, prior to issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, a temporary and permanent erosion control plan that includes a written report describing all temporary and permanent erosion control and run-off measures to be installed and a site plan and schedule showing the location and time of all temporary and permanent erosion control measures (more specifically defined in Special Condition 4).

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of the bluff. To address these concerns, the development, as conditioned, incorporates design features to minimize the infiltration of water and the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive low-water use vegetation, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the geologic stability and erosion control provisions of the certified LCP.

Drainage and Landscape

The applicants are not proposing any new landscaping and has not submitted a drainage plan for the site. As discussed previously, the applicants are proposing to develop an unstable sloping piece of land with a residential structure, a pool, pool house and a sports court. The geology on this site is complex and because of the known instability on the site, it is critical to limit the amount of water that percolates into the ground. In order to eliminate risks such as erosion and slope failure accelerated or triggered by water that ponds on the site, the Commission is requiring limited irrigation by prohibiting in-ground irrigation (Special Condition 3) and requiring low-water use plants. While the bluff top in this area is not sensitive habitat, nearby parks and habitat areas have suffered invasion by invasive plants that displace native plants. For this reason the permit is conditioned to preclude installation of plants identified by the California Native Plant Society or the California Exotic Pest Plant Council as invasive. Only as conditioned is the project consistent with the geologic stability policies of the certified LCP.

C. 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

The City of Palos Verdes Estates Shoreline Preserve Master Plan was certified as part of the City's certified LCP. Section IV. B. *Recommendations* of the Shoreline Preserve Master Plan states in part:

1. Improve Access Trails – Access trails should be delineated so as to direct the public to those areas where appropriate activities are to be encouraged while at the same time promote public safety and reduce the assistance required of police, Coast Guard and the fire

department. To encourage attentiveness on the part of those using trails, they should all be appropriately posted as to risk. Exhibits II and III identify most existing trails. Existing and future trails may be discussed in three categories:

a. Existing Improved Trails:

Malaga Cove – Swim Club Road

Bluff Cove – path to Flat Rock Point

These trails are the most heavily used. No immediate improvements are recommended.

b. Existing Improvable Trails:

"Haggarty's"

Margate Canyon

Chiswick Road

Via Neve

Lunada Bay

c. Dangerous Trails:

Via Chino

Cloyden Road

Others less commonly used

Future use of very dangerous trails should be discouraged by fencing camouflaged with barrier type shrubbery.

Section 30604(C) of the Coastal Act requires that permits for development between the nearest public road and the shoreline of any body of water within the coastal zone shall include a finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the first public road and the sea on a coastal bluff top lot. The nearest vertical coastal access, as depicted in the City's certified LCP as the Cloyden Road trail, is available on the subject site on the western edge (bluff edge) of the property. This trail is accessed from Paseo Del Mar and extends across the flat pad on the landward side of the property to the top of the bluff where it extends laterally, at an angle, down the bluff face to approximately 45 feet up from the toe of the bluff where the trail joins a city cement storm drain (described below) that continues down to the ocean.

According to the coastal trail map included with the Shoreline Preserve Master Plan of the LCP, this particular trail is the Cloyden Road Trail (Exhibit 6, P. 2-4), identified as a "dangerous trail". There are other trails nearby. Approximately 250 feet downcoast of the subject site, a separate vertical coastal access is available (Exhibit 6, P.4 and Exhibit 9). While this downcoast path is not listed in the City's Shoreline Preserve Master Plan, the downcoast trail is a cement storm drain that, according to the City, is possible to traverse. The downcoast trail along the cement storm drain is accessible at a City parkland area adjacent to Paseo Del Mar and located between two residential lots to the south of the subject property. The cement storm drain extends down the bluff face to the ocean. Previously, the City was keeping the cement storm drain trail closed off from the public and only allowing access to utility workers when needing to do work. The City contends that this access way is now open and will remain open to the public (Planning Commission Minutes, January 21-22, 2003). Staff visited the site on September 17, 2003 and confirms that the gate to the cement storm drain access is open. According to the City of Palos Verdes Estates certified LCP, there is also a public trail that is located approximately 300 feet upcoast from the project site. This upcoast designated public trail is named the Chiswick Road Trail and is listed as an existing improvable trail in the Shoreline Preserve Master Plan of the certified LCP. Some of those who have objected to the Cloyden Trail being blocked contend that the Chiswick Road Trail is too steep and dangerous to use.

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 both of these policies is described below.

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 requirement to provide new access imposed by Section 30212 does not pertain to Section 30211. If public prescriptive rights of access have accrued over trails in areas near other public access, Section 30211 still 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, and the Commission's duty to ensure that any development it approves does not interfere with any such rights continues to exist.

The nearest vertical coastal access, other than the Cloyden Trail (subject site), is available approximately 250 feet downcoast of the subject site via the city cement storm drain (Exhibit 9). A second vertical coastal access is available approximately 300 feet upcoast of the subject site. Both trails are accessed from City property adjacent to Paseo Del Mar. Therefore, public access exists nearby. Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

Notwithstanding the existence of alternative trails, the standard of review in approving a permit is the development's consistency with Coastal Act Section 30211, as the prohibition listed in that section ("Development shall not interfere with the public's right of access to the sea where acquired through use") applies regardless of whether there is an alternative access path nearby that is safer than the subject path would be. Whether there are alternate trails is ultimately irrelevant to the question of whether approval of this project is consistent with Section 30211.

The project appellant provided photos of the trail on the subject property and twenty-five (25) signatures by people who attest that they have used the existing trail to access the coastline. Twenty-nine additional declarations were also signed by people explaining how long and for what purpose they used the trail. According to the declarations, the trail has been used as far back as the 1950s and 60s. The coastal trail provides public access to the coastline for activities that primarily include beach recreation, swimming, scuba diving and surfing. The signatures and declarations are by residents of Palos Verdes Estates and neighboring cities including Redondo Beach, Rancho Palos Verdes, Torrance and San Pedro.

The Cloyden Road Trail is evident in 1972, 1986 and 2001 aerial photos and in the LCP Shoreline Preserve Master Plan trail map. It is unknown exactly what degree of use has taken place on the trail and over what period of time, but use is suggested because the trail is defined on the pictures and not overgrown with vegetation. It is certainly conceivable, given the evidence before the Commission at this time, that use of the trail would be sufficiently significant and longstanding as to give rise to an implied dedication of the area for public passage. The standard of review for

coastal development permit analysis is not only the certified Local Coastal Program but also the Chapter Three public access policies of the Coastal Act.

In order to more fully investigate potential public use of the subject site, Commission staff provided a number of "Prescriptive Rights Study Public Use Questionnaire and Declarations" to the appellant for distribution and questionnaires were sent to members of the Fathomiers Dive Club. 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 10.) In addition, aerial photographs from the years 1972-2001 were reviewed to determine if trails were present historically.

Consistency with Section 30211

Section 30211 of the Coastal Act 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." In implementing this policy, the Commission must consider both (1) whether the public has obtained rights of access to the sea (and if so, the nature and location of those rights), and (2) whether the proposed development would interfere with, or otherwise adversely affect, any such rights. As the statutory language indicates, the public can obtain rights of access either through legislative authorization or through use. Since there is no claim of statutory authorization here, the first issue requires the Commission to determine whether the public has obtained rights of access through use - i.e., whether there has been such use as would support the conclusion that an area has been impliedly dedicated to public use.

Because the authority to make a 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 use the same analysis as the courts. In essence, this requires the Commission to consider whether there is substantial evidence indicating that the requisite elements of an implied dedication are present. In addition, there are provisions within the California Civil Code that prevent implied dedications from occurring even when those *prima facie* elements exist. Thus, even if the Commission concludes that the requisite elements of implied dedication have been met, it must also consider whether the applicants have demonstrated that the law prevents the area from being impliedly dedicated.

However, in evaluating the conformance of a project with Section 30211, the Commission cannot determine whether public prescriptive rights actually do exist; that determination is made by a court of law. Nevertheless, Section 30211 requires the Commission 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 prescriptive rights that may exist.

A. Right of Access Through Use - Implied Dedication

A right of access through use is, essentially, an easement over real property that comes into being without the explicit consent of the owner, though "adverse use." The acquisition of such an easement by the public is referred to as an "implied dedication" by the owner to public use. 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 by the public is known as a "public prescriptive easement," or an easement by prescription, reflecting the fact that the use must continue for the length of the "prescriptive period" before the right 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 limitations, after which the owner cannot assert full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

1. Prima Facie Case - the Elements of an Implied Dedication

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

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

However, the use analysis is only necessary if the proposed development would interfere with the alleged rights. In the present case, the applicants have objected to dedicating the access, and disputes whether prescriptive rights exist. However, the applicants propose to refrain from blocking the access that may exist while constructing the project. The applicants contend that the proposed development would not interfere with any public access rights that may exist because in his view the public rights have not been demonstrated.

Consequently, the Commission will evaluate whether the project as proposed would interfere with potential prescriptive rights of public access that might exist on the property. If the proposed project would not interfere with any potential prescriptive rights of public access that might exist, the project would be consistent with Section 30211 of the Coastal Act because any public rights of access to the sea acquired through use would be protected. The information collected (questionnaire responses and declarations) thus far does in fact indicate that there is a potential prescriptive right of public access that may exist on the site. The responses received from the questionnaire recipients provide evidence that supports this claim. There have been 40 completed questionnaires returned that indicate that the trail has been used since as far back as the 1950's and each of the 40 specifies the number of others seen using the trail at the same time. The number of people, seen by each of those persons who attest that they have used the trail, range from 1 to 20 people. As stated herein, staff has also received 29 separate declarations of use of the trail. Therefore the Commission is imposing Special Condition 2, which requires the final project to conform to the revised plans submitted by the applicants, providing a 10-foot wide, open strip of land free from obstructions along the upcoast property line. The Commission is also requiring a similar 25-foot wide open area along the bluff edge that extends from the northern property line to the existing trailhead. Once a person reaches the edge of the bluff at the northwestern corner, they can continue on to access the bluff trail that extends down the bluff face. Although the 10-foot wide, open area is located on the northern side of the lot, it still provides the same type of access to the ocean as any other path across the site would (i.e. across the middle of the property or along the other side of the site). The trailhead, which is located towards the top of the cliff, and the trail down the bluff face will not be physically altered by the proposed project. The public will continue to have access to the same trail that currently exists, extending from the

top of the bluff to the ocean. As conditioned, the project is consistent with Section 30211 of the Coastal Act.

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

As described previously, the applicants' proposed project involves the construction of a new two-story single-family residence with garage, pool house, sports court, retaining walls, fences and hardscape (driveway). 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 public street, Paseo Del Mar. As depicted on a majority of the questionnaires returned and on Commission 2001 aerial, the lot has typically been crossed vertically through the middle of the site. Commission's 1972 aerial photographs show a path crossing the lot from the southeastern corner of the site to the southwestern corner of the site. A review of an aerial (2001) on the Coastal Records Website also shows a path crossing the center of the lot from the street to the trailhead. While construction of a house on the lot would obstruct access through the middle of the site, passage would still be possible along the northern or southern perimeters of the property if development were sited accordingly.

b. Nature of Any Implied Dedication of Access

Staff initiated a prescriptive rights investigation in July 2003. As of September 17, 2003, 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 an implied dedication over the subject Walker property. The format of the information that suggests that an implied dedication may have taken place includes 1) forty (40) responses to the questionnaire, 2) twenty-nine (29) letters/declarations from the public who claim to have used the trail, 3) twenty-five (25) signatures by people who attest that they have used the existing trail, and 4) the previously described aerial photographs (1972, 1986, 2001). Collectively, approximately ninety (94) people have reported using the trail(s). According to the questionnaires, each of the respondents reported seeing approximately 1 to 20 people using the trail during the times when s/he was using the trail (Exhibit 10).

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, swimming, scuba diving and surfing. The time periods specified in the letters range from the 1955 to the present. They state that the existing fence that bisects the site from the northern property line to the southern property line is continuously broken apart or climbed over. Respondents state that the site was either previously unfenced, the fence had been torn down, or the gate was typically open. It appears that some type of fence existed in the Commission's 1986 aerial. A fence was not found in the 1972 aerial. When staff visited the site in August 2003, a fence and private property signs existed but there were at least 3 places where people had gotten through the fence by digging under the fence, bending apart the gates in the middle and a large hole through the fence at the southeastern side of the fence.

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.

2. 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.

Section 813 of the Civil Code, adopted in 1963, allows owners of property to grant access over their property without concern that an implied dedication would occur even if they did not take steps to prevent public use of the land. Section 813 provides that recorded notice is conclusive evidence that subsequent use of the land, during the time that such notice is in effect, by the public for any use or for any purpose is permissive. Thus, use of land after 1963 will not lead to an implied dedication if such recordation has occurred.

Section 1008 of the Civil Code, adopted in 1965, provides that no use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: "Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code." Thus, use of land after 1965 will not lead to an implied dedication if such posting has occurred.

The applicants have not presented the Commission with evidence that the landowners either recorded the Section 813 Civil Code notice or posted the property consistent with Civil Code Section 1008. The applicants contend 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 December 2002. As mentioned previously, there appears to be a fence on the site in the 1986 and 2001 aeriels. Some photos, dated 1998 that were submitted by the appellant, show a fence on the site also.

The courts have also recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose on shoreline properties 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 1,000 yards from the Pacific Ocean its bays, and inlets, unless there has been a written, irrevocable offer of dedication or unless a government entity has improved, cleaned, 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 1,000 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 in the property.

In addition, 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 Ms. Walker and Mr. Dupler acquired the property in 2002, there would have been ample time for an implied dedication to occur prior to that time.

3. 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.

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 May Substantial Issue 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 applicants are offering to leave a 10-foot wide area unobstructed by physical structures along the northern property line, which will allow the public access to the bluff edge. However, the proposed project does not include a way for the public to get from the northwestern portion of the bluff edge to the trailhead that is located further south (downcoast). The applicants propose verbally that people may travel along the northern property line and then cut across the rear yard area to access the bluff trailhead. The applicants explained that reasons for providing the set back on the northern side of the residence is because there is more room available along the northern side yard and along the bluff top in the rear portion of the yard. The southern side yard is only 8-feet wide, adjacent to the sports court. The rear yard area seaward of the sports court and pool house is narrower and is less stable because of a landslide seaward of the yard area. Staff concurs that the northern side yard and northwestern portion of the yard provides more stable land area for a public access trail. 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 would protect 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 Dupler 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 applicants in late 2002. 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 2002. The responses from the public indicate that the site has been used for access to the beach, diving, swimming, and

surfing since as far back as the 1950's. 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 applicants do 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 18 feet from the northern property line to allow the establishment of a potential trail and because of geological issues, the residential structure is set back 90 feet from the blufftop of the property. A 10-foot wide, open space area on the side property line would be sufficient to accommodate a vertical trail along the northern perimeter of the property to the bluff edge. A 25-foot wide unobstructed area along the bluff edge from the upcoast property line to the trail head would similarly not interfere with public access to the trail head which is located near the center of the property (Exhibit 9). As can best be determined, the seaward property line is close to the edge of the bluff, although the applicants have provided no definitive map indicating the location of the rear property line in relation to the bluff edge. The Commission imposes Special Condition 2, which requires the applicants to submit final plans that 1) conform to plans dated September 8, 2003, leaving a 10-wide strip of land along the northern property line open and free of physical obstructions for coastal access, and 2) includes a 25-foot wide strip of land along the bluff edge that is to be left open and free of physical obstructions for coastal access purposes, and the applicants must recognize that the bluff edge is dynamic and may meander over time. While a potential bluff top trail would be in a different location than the other configurations currently used by the public (along the southern property line and across the middle of the property), the route would provide equivalent access opportunities to the bluff trail. 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. The Commission includes in Special Condition 2 that if the applicants pursue a Quiet Title action and the result of that action proves that the public has no prescriptive rights on this site, Special Condition 2 of this permit no longer applies. Therefore, the Commission finds the proposed project, as conditioned to submit final plans that include two things: 1) eliminating development from within 10 feet of the northern property line (as proposed) and 2) eliminating development from within 25 feet from the bluff edge, to be consistent with Section 30211 of the Coastal Act. As described above, the questionnaire responses, declarations and photos that have been collected provide sufficient evidence to justify Special Condition 2 requiring the applicant to comply with their commitment to keep the area on the side free of obstructions and to provide an area from the side yard area to the bluff trailhead that is open to public use.

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 ensure that sufficient space is provided to allow a 10-foot wide (along the northern property line) and a 25-foot wide (along the bluff edge) public trail area should a successful public rights case prevail. In addition, Special Condition 7 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 northern property line and the bluff edge and a future development restriction, the Commission finds that the proposed development is consistent with the public access and recreation policies of the Coastal Act.

D. Public Views

Policy D of the certified LCP regarding Geologic and Visual Resources states:

Geologic Stability and Visual Resources

Construction on private land, including but not limited to, buildings, stairways, pools, tennis courts, spas or solid fences, additions to structures, or grading on, or down the bluff face or within 50 feet of the bluff edge requires a coastal development permit and shall be prohibited without a geologic report and a finding that the improvements would minimize alteration of landforms and shall not be visually intrusive upon public view points.

Implementation for the policy listed above states:

18.04.160, 18.16.50 and 19.02.020 Coastal Zone Limitations on Development in Bluffs.

Structures, additions to structures, grading, stairways, pools, tennis courts, spas or solid fences, may be constructed on private property on, or within 50 feet of, the bluff edge in the Coastal Zone with a coastal development permit and only after preparation of a geologic report and findings by the City that the proposed structure, addition(s) to structure, grading, stairway, pool, tennis court, or solid fence (1) poses no threat to the health, safety, and general welfare to persons in the area by reason of identified geologic conditions which cannot be mitigated and (2) the proposed structure, addition, stairway, pool, tennis court or solid fence will minimize alteration of natural landforms and shall not be visually intrusive from public view points in the Coastal Zone. Permitted development shall not be considered visually intrusive if it incorporates the following to the maximum extent feasible:

- 1. The development is sited on the least visible portion of the site as seen from the Public View Points.*
- 2. The development conforms to the scale of existing surrounding development.*
- 3. The development incorporates landscaping to soften and screen structures.*
- 4. The development incorporates materials, colors, and/or designs which are more compatible with natural surroundings.*

The applicants propose to construct a two-story single family residence and garage, a sports court and a pool house on a vacant bluff top lot that is located between two single family residences in a low density residential neighborhood on Paseo Del Mar in Palos Verdes Estates. The site is not located within an area designated a public view point by the certified LCP. The proposed development is set back 90 feet from the bluff edge and is not visible from the very narrow beach at the toe of the bluff. The development is consistent with the scale of development that exists nearby. The applicants do not propose new landscaping. The applicants are also proposing to construct a row of fifteen 135-foot long caissons at the seaward edge of the proposed house to stabilize the site for the development. The bluff in this area is approximately 175 feet high and there is little beach area at the toe of the bluff. Staff contends that underground caissons set back 90 feet from the bluff edge will not impact public views from the beach if the bluff does not slough away. If the bluff begins to slough away, the caissons are set back far enough that views of the exposed portion of

the caissons would be minimal. The Commission is requiring the applicants to conform to the geotechnical engineers recommendations, including setting the caissons and other development back a minimum of 90 feet from the bluff edge. As conditioned, the proposed project is consistent with the certified LCP.

E. California Environmental Quality Act

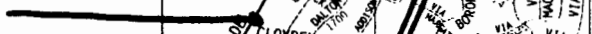
Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality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

The Commission finds that the proposed project, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact 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.

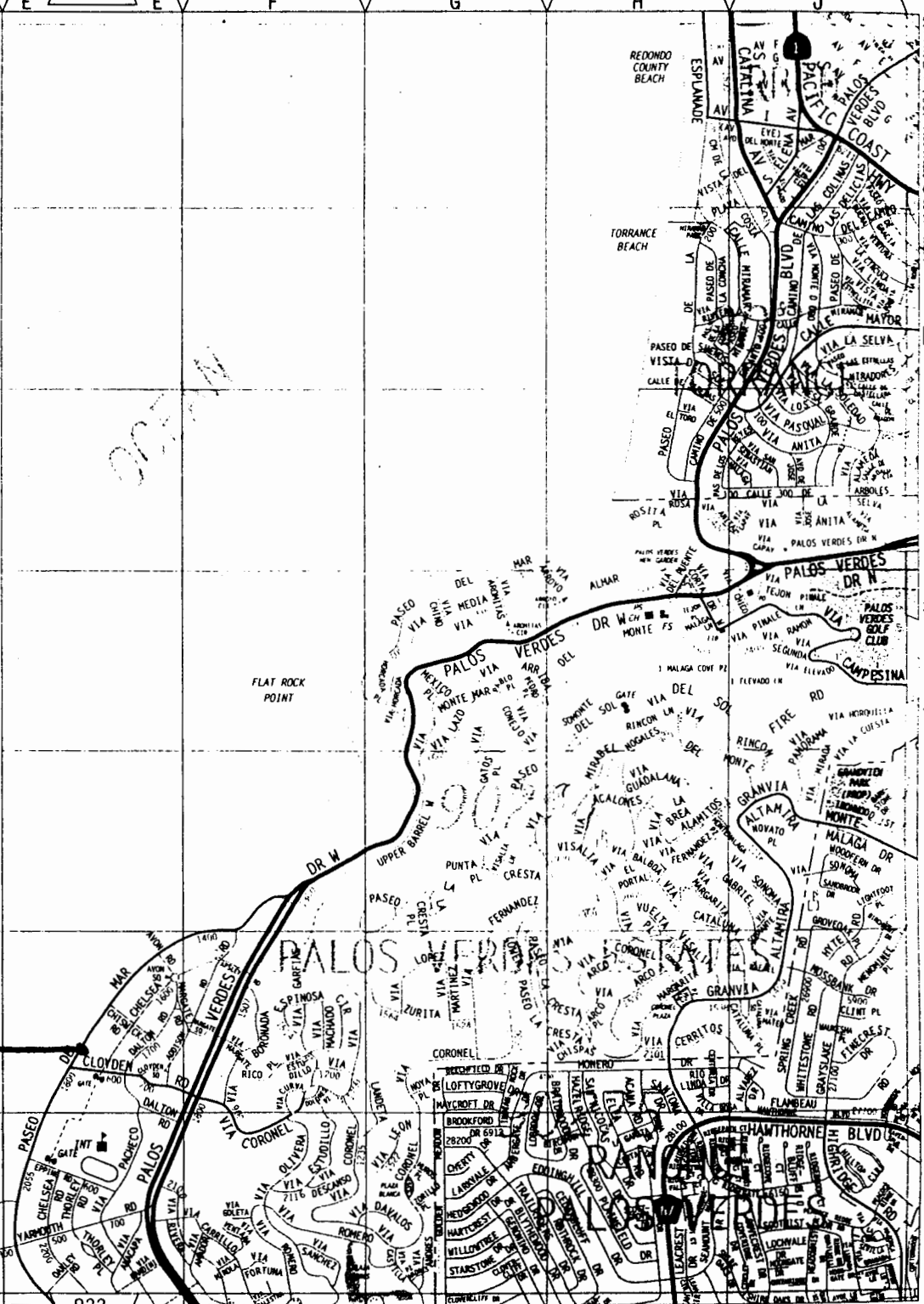
COASTAL COMMISSION
A5-PVE-03-87

EXHIBIT # 1
PAGE 1 OF 1

Project Site



ROCKY POINT



CORRELATION 2000 Thomas Blair Maps

Landscaping and Noise Control

Existing landscaping will surround the proposed sports court. No new landscaping is proposed.

The applicant has submitted a geotechnical report, which has been reviewed and approved by the City Geologist and Soils Engineer, subject to several conditions of approval.

City Code Section 19.02.040 states that a coastal permit may be approved by the issuing body only upon affirmative findings that:

- 1) The plans for the proposed development and the coastal development permit comply with all of the requirements of this chapter and other relevant city ordinances and development standards.
- 2) The proposed use is consistent with the certified local coastal program, the general plan, any applicable specific plan, and the applicable zoning ordinance or ordinances; and
- 3) The proposed use will not be visually intrusive from public view points, and
- 4) The required reports and plans demonstrate to the satisfaction of the city, in its sole discretion, that the proposed use can be supported by the bluff and the proponent has demonstrated that the proposed use will not increase any existing geologic hazards; and
- 5) The proposed development, when located between the sea and the first public road inland from the sea, is in conformance with the public access and recreation policies of the California Coastal Act as contained in Chapter 3, sections 30200 through 30224, of the California Public Resources Code, the applicable sections of the California Code of Regulations, and the local coastal program.

Staff was able to make the findings necessary to approve the project.

Staff Concerns

- The application proposes 1932 cu. yds. of grading. Municipal Code Section 18.24.010 states that the purpose of the grading ordinance is to 'regulate the development of each building site with respect to adjacent land, public or private, and existing structures so as to maximize visually pleasant relationships, minimize physical problems and preserve the natural contours of the land insofar as is reasonable and practical.'
- A two-story volume area of approximately 800 sq. ft. is proposed at the entry and living room.
- A portion of the 8 ft. high wall and fence combination surrounding the tennis court is located within the minimum required front yard setback of 30 ft.
- Building height proposed is near the maximum allowed.

Correspondence Received

No correspondence has been received by the Planning Department regarding the plans at the time of this writing (January 15, 2003).

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EXHIBIT # 3

PAGE 3 OF 4

Environmental Considerations

CEQA - This project is exempt from CEQA pursuant to California Administrative Code Title 14, Chapter 3, Section 15303.

Suggested Conditions of Approval

Standard with the following additional conditions:

- No additional conditions.

Findings Required to Approve

Reference City of Palos Verdes Estates Municipal Code Chapters 18.05, 18.24, 18.36 and 19.

Permit Streamlining Act

Application was accepted as complete on January 10, 2002. Pursuant to Government Code Section 65920, action must be taken on this item by March 11, 2003.

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South Coast Region
MAR 24 2003
CALIFORNIA
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A5-PVE-03-87
EXHIBIT # 3
PAGE 4 OF 4

**COASTAL DEVELOPMENT, NEIGHBORHOOD COMPATIBILITY,
GRADING AND SPORTS COURT PERMIT**

CDP-44/NC-1028/GA-1285/SC122-02

Conditions of Approval

1. This approval is granted for the land or land use as described in the application and any attachments thereto, and as shown on the plot plan submitted, Exhibit B.
2. Prior to obtaining a building permit and within 30 day hereof, the applicant and property owner shall file with the Secretary of the Planning Department written acknowledgment of the conditions stated herein on forms provided by the Planning Department.
3. All buildings, fences, signs, roadways, parking areas, and other facilities or features shall be located and maintained as shown on the approved plans.
4. All buildings and structures shall be of the design as shown on the approved plans.
5. Compliance with and execution of all conditions listed herein shall be necessary prior to obtaining final building inspection clearance and/or prior to obtaining any occupancy clearance. Deviation from this requirement shall be only by written consent of the Director of Planning.
6. All requirements of any law, ordinance, or regulation of the State of California, City of Palos Verdes Estates, and any other governmental entity shall be complied with.
7. This approval is subject to the applicant paying all fees and assessments to the City of Palos Verdes Estates, as required by Ordinance.
8. In the event the City determines that it is necessary to take legal action to enforce any of the provisions of these conditions, and such legal action is taken, the applicant shall be required to pay any and all cost of such legal action, including reasonable attorney's fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amiably resolved, unless the City should otherwise agree with the applicant to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.
9. The applicant shall defend, indemnify, and hold harmless the City and its officers, agents, and employees from any claim, action or proceeding against the City or its officers, agents or employees to attach, set aside, void, or annul approval of this application. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense.

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45-PVE-03-87
EXHIBIT # 4
PAGE 1 OF 2

10. An approval granted by the Planning Commission does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Department of Building and Safety must be obtained prior to construction, enlargement, relocation, conversion, or demolition of any building or structure within the City.
11. The owner shall provide for the planting of trees in the parkway adjacent to the site of the building in accordance with the recommendation of the Public Works Director or authorized designee.
12. The owner shall provide for the improvement of streets, alleys, walks, and drainage courses adjacent to the site of the building in conformance with standards and specifications of the City and plans approved by the City Engineer.
13. All pool/spa equipment and air conditioning units shall be contained in sound attenuating structures, subject to the approval of the City Engineer.
14. The owner shall provide a "Knox box" universal gate lock, if applicable, accessible to the police and fire departments. Applicants are advised to contact 1-800-552-5669 with any questions.
15. All non-standard encroachments shall be removed from any Parkland adjacent to the subject property, unless specifically approved otherwise, by the Planning Commission.
16. **The main lateral roof ridge and tower shall be reduced in height by 12 inches.**
17. **The pool house ridge shall be reduced by 3 feet.**
18. **No structures shall exceed 3.5 feet within the front yard setback.**
19. **The relocation of the pool house, as shown on the revised plan submitted 1-21-03 is approved.**

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EXHIBIT # 4

PAGE 2 OF 2

Remaining declarations located in permit file in the Long Beach office.

DECLARATION OF William C. Brand

1. William Brand declare:

1. I am over the age of eighteen years. The following is of my own personal knowledge, except as to those matters stated to be on information and belief, which I believe to be true. If called as a witness, I could and would competently testify to these facts.
2. I am a resident of Redondo Beach California.
3. Beginning in or about 1966 I began accessing a beach in Palos Verdes Estates by using an existing trail across 1745 Paseo Del Mar. Since then I have used the trail at various times until the present.
4. My purpose in using the trail across 1745 Paseo Del Mar was to dive & surf.
5. I have observed this trail to be in continuous use since 1966.
6. I used this trail in 2002. At that time, the trail across 1745 Paseo Del Mar was open and obviously still in use.
7. I have also observed many other people using this trail since 1966 to access the beach for recreational purposes.
8. This trail is very important to access the "Pipes" and "Turbos" surfing and diving spots.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13 day of January at Redondo Beach California.

Declarant:

W.C. Brand
(Signature)

William C. Brand
(Print name)

310/374-4001

COASTAL COMMISSION

A-5-PVE-03-87

EXHIBIT # 5

PAGE 1 OF 3

DECLARATION OF

DAVID C. YOAKLEYI, DAVID C. Yoakley, declare:

1. I am over the age of eighteen years. The following is of my own personal knowledge, except as to those matters stated to be on information and belief, which I believe to be true. If called as a witness, I could and would competently testify to these facts.
2. I am a resident of Torrance, California.
3. Beginning in or about 1965 I began accessing a beach in Palos Verdes Estates by using an existing trail across 1745 Paseo Del Mar. Since then I have used the trail at various times until the present.
4. My purpose in using the trail across 1745 Paseo Del Mar was to SKIN DIVING & SURFING.
5. I have observed this trail to be in continuous use since 1965.
6. I used this trail in 2002. At that time, the trail across 1745 Paseo Del Mar was open and obviously still in use.
7. I have also observed many other people using this trail since 1968 to access the beach for recreational purposes.
8. This trail is very important to access the "Pipes" and "Turbos" surfing and diving spots.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of JANUARY at LANADA Bay, California.

2003

Declarant:

David C. Yoakley
(Signature)DAVID C. Yoakley
(Print name)COASTAL COMMISSION
A-5-PVE-03-87EXHIBIT # 5PAGE 2 OF 3

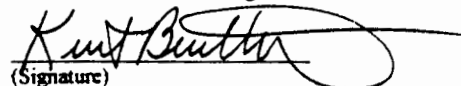
DECLARATION OF Kurt Buettgenbach

I, Kurt Buettgenbach, declare:

1. I am over the age of eighteen years. The following is of my own personal knowledge, except as to those matters stated to be on information and belief, which I believe to be true. If called as a witness, I could and would competently testify to these facts.
2. I am a resident of 1560 Golden Ave. Hermosa Beach, California 90254.
3. Beginning on or about 1963 I began accessing a beach in Palos Verdes Estates by using an existing trail across 1745 Paseo Del Mar Palos Verdes Estates, Cal. 90274 Since then I have used the trail at various times until the present.
4. My purpose in using the trail across 1745 Paseo Del Mar Palos Verdes Estates, Ca 90274 was to accompany my Father and Uncles and other family members to access the beach in order to skin dive and scuba dive and enjoy the tide pools with our extended family and friends. Beginning on or about 1970 I have used the trail to enjoy several surfing spots including Pipes, Turbos, Longs, and Charlie's.
5. I have observed this trail to be in continuous use since approximately 1963.
6. I used this trail in 2002. At that time, the trail across 1745 Paseo Del Mar was open and obviously still in use.
7. I have also observed many other people using this trail since 1963 to access the beach for recreational purposes.
8. This trail is very important to access the "Pipes" and "Turbos" surfing and diving spots.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of January 2003 at 1560 Golden Ave. Hermosa Beach, California.

Declarant: Kurt Buettgenbach


(Signature)

KURT BUETTGENBACH
(Print name)

COASTAL COMMISSION

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EXHIBIT # 5

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small boat race at Malaga Cove; launching the small boats over the rocks on improvised wooden tracks. See Appendix VII for description of past interests and notes on activity regarding boating facilities.

Recommendations:

1. Improve Access Trails - Access trails should be delineated so as to direct the public to those areas where appropriate activities are to be encouraged while at the same time promote public safety and reduce the assistance required of police, Coast Guard and the fire department. To encourage attentiveness on the part of those using trails, they should all be appropriately posted as to risk. Exhibits II and III identify most existing trails. Existing and future trails may be discussed in three categories:

a. Existing Improved Trails:

Malaga Cove - Swim Club Road

Bluff Cove - path to Flat Rock Point

These trails are the most heavily used. No immediate improvements are recommended.

b. Existing Improvable Trails:

"Haggarty's"
Margate Canyon
Chiswick Road
Via Neve
Lunada Bay

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Home construction has now blocked off the two trails most frequently used in the past at Lunada Bay and currently the only accesses are very hazardous and heavily traveled. A reasonably safe access trail should be provided at Lunada Bay. Improvable trails should be scheduled for improvement. Trail improvements might be accomplished in coordination with a trail committee of the Sierra Club or Oceanographic Society, or alternatively in connection with storm drain or other related improvements.

BEACH ACCESS TRAILS

Map Key	Ownership	Bluff Height	Public Frontage Parking	Trail Difficulty	V. Si
1. Torrance Beach	Public	*		3	
2. Rosita Place	Private	125	0	10	
3. Swim Club Road	Public	85	50	2	
4. "Haggarty's"	Public	75	12	6	
5. Via Chino	Public	80	30	6	
6. Flat Rock Point	Public	175	40	4	2
7. Bluff Cove	Public	300	20+	8	2
8. Margate Canyon	Public	230	20+	8	
9. Chiswick North	Public	205	20+	8	
10. Chiswick Road	Public	200	20+	7	
11. <u>Cloyden Road</u>	Private	175	0	7	
12. Lunada Bay	Public	160	30+	7	X
13. Via Oleadas	Private	145	0	6	
14. Resort Point South	Public	165	10	8	
15. Via Neve	Public	170	20+	7	
16. Southern Boundary	Private	*		10	

Difficulty: 1 = excellent, 10 = very poor

* Access from adjacent beaches

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c. Dangerous Trails:

↙ Via Chino
Cloyden Road
Others less commonly used

Future use of very dangerous trails should be discouraged by fencing camouflaged with barrier type shrubbery.

2. Designate and Improve View Sites and Associated Parking -

View sites permit viewing of the scenic values of the tidelands. Such viewing of tidelands is a purpose in which there is local and statewide interest. View sites will require some parking area. We believe limited and carefully controlled parking areas are preferable to either major shoreline developments with large parking and traffic requirements, or reversion of tidelands to the State. All existing view sites should be posted as such.

a. Bluff Cove North - The Bluff Cove access area is now being used as a view site and parking currently is on an "informal" basis. An improved and landscaped view site with appropriate parking facilities would present a much better appearance and greater safety than the uncontrolled offstreet parking now practiced.

The northern edge of Bluff Cove contains two possible parking areas in the Paseo Del Mar right-of-way with minimal

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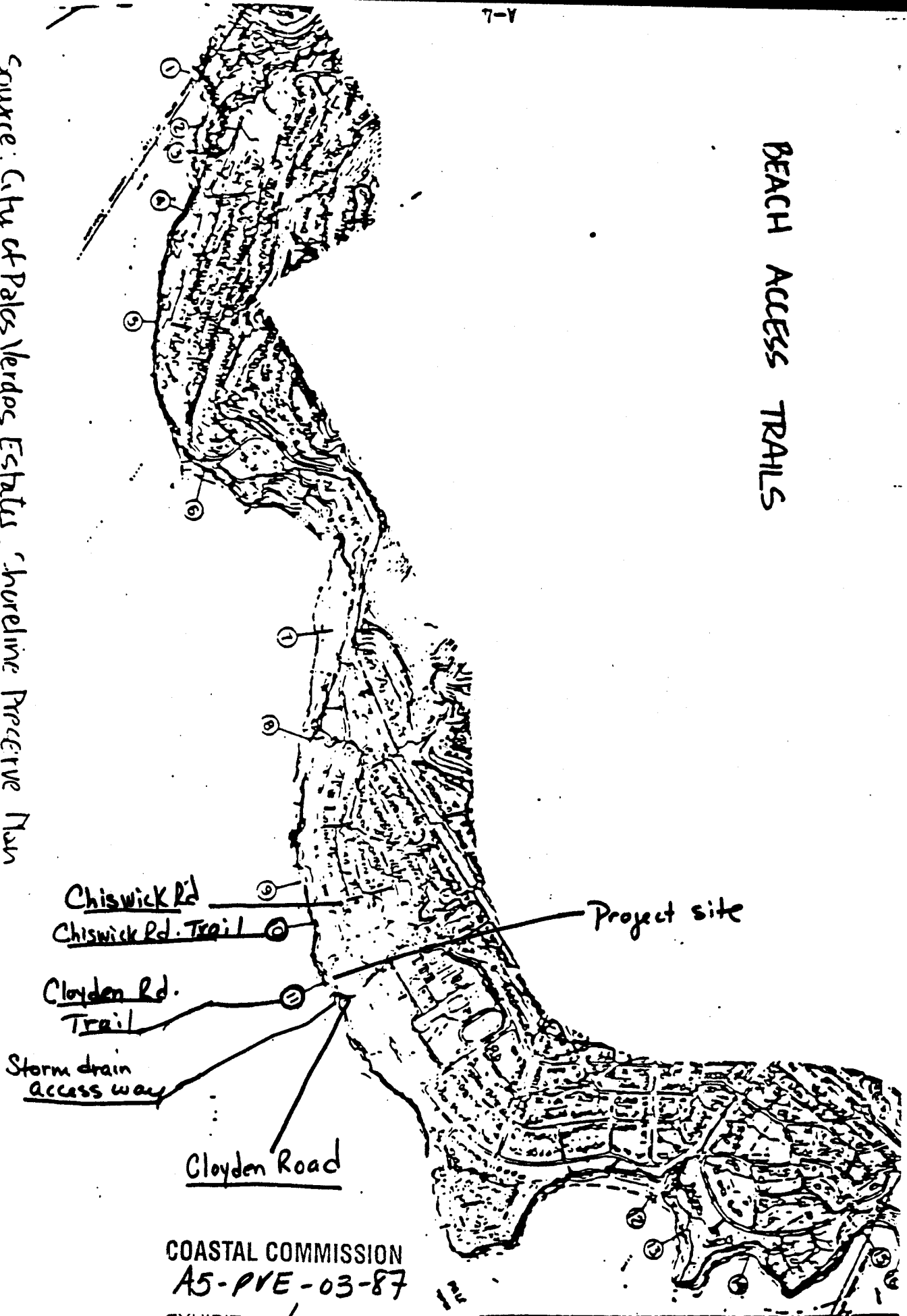
A5-PVE-03-87

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BEACH ACCESS TRAILS

Source: City of Palo Verde Estates, 'Shoreline Preserve Map



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PAGE 4 OF 4

EXHIBIT

Dale Hinkle, P.E. Inc.

15510 Rockfield Blvd., Suite B
Irvine, California 92618
(949) 458-0498 Fax (949) 458-1918
E-mail: HINKLEPE@aol.com

RGE # 402
RCE# 23023

Federal I.D.
33-0117087

June 4, 2002

Mr. Tim Dupler
2129 Paseo Del Mar
San Pedro, California 90732

RECEIVED
Coast Region

SEP 10 2003

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Dupler:

Re: Geotechnical Investigation
1745 Paseo Del Mar - Palos Verdes Estates

At your request, we have conducted a geotechnical investigation at the above-referenced site. We performed one 150-foot deep geologically-logged boring at the site. We also performed logging of an exposed bluff at the west side of the site. In addition to the data that we collected, we used borings and test pits from previous reports by K. Ehlert dated August 18, 1999 (attached) and Lockwood-Singh & Associates dated July 6, 1982.

The data collected indicates that the site has complex geology with a small fold near the south side which has caused a landslide on the southeast portion of the site.

We have established a 50 to 70-foot setback from the top of slope (bluff). Our calculations show that up to 45 feet deep, the factor of safety is between 1.0 and 1.1. Below 45 feet, a 1.5 safety factor clearly exists. The landslide is at an angle to the bluff, so we calculated a worst-case true dip direction. We assumed a partial saturation condition for the analysis.

Caissons have been designed so that the ocean side soil can fall away to a depth of 45 feet below present grade at the 70-foot setback and still have a factor of safety of over 1.5.

We have recommended either placing a row of tied-back caissons on the bluff side of the house or caisson foundations under the entire house. The first option (one row) would require 10 to 12 caissons approximately 3 feet diameter, 9 feet on center and 85-90 feet deep with tie-backs approximately 80 to 105 feet long. The number of caissons depends on the width of the house on the west side. The second option depends on the house geometry but would require 20-30 caissons approximately 30 inches diameter by 75 to 100 feet deep with large grade beams to hold the top. The calculations for the caisson plan cannot be done without a precise house plan.

The row of tied-back caissons is most likely less costly because the footings can be continuous reinforced grade beams resting on bedrock or re-compacted fill. The grade beam foundations would be 2' x 2' with six #6 bars.

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It is necessary to evaluate the precise house footprints and elevations to complete the calculations. The conceptual calculations are contained in this report. A setback line has been shown on Figure 2.

We appreciate the opportunity to be of service to you on this project. If you have any further questions, please feel free to call our office.

Sincerely,

R. D. H.
RGE #



T. Welch
CEG #1204

COASTAL COMMISSION
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PAGE 2 OF 10

CITY OF PALOS VERDES ESTATES



(310) 378-0383

CITY HALL

PALOS VERDES ESTATES
CALIFORNIA 90274-0283

GEOTECHNICAL ENGINEERING REVIEW SHEET

Site Address: 1745 Paseo del Mar Receipt/ PC No.
Lot/ Block/ Tract: BYA/ATC Pr # 42.25127.003
Owner: Dupler
Applicant: Dupler
Architect/ Engineer
Project Type: Caisson wall for new residence
Site Plan dated:

Geotechnical Engineer: Dale Hinkle
Geotechnical Report dated: June 4, 2002
Previous Report(s): n.a.
Engineering Geologist: Tim Welch
Geology Report dated: same
Previous Report(s): n.a.
Previous Review(s): n.a.

STATUS

- X Additional concerns recommended to be addressed prior to approval (See Comments below). Current review of the Geologic and Geotechnical Engineering Investigation and soldier pile design should only be considered as a landslide mitigation only and should not be construed as review for site development. Site specific development shall be addressed when site development plans are submitted.

COMMENTS

1. The Consultants are aware that Geosoils Inc. performed a preliminary investigation consisting of three deep bucket auger borings for a potential buyer in February 2002. Based on verbal discussions with the Geosoils geologist, James Van Meter, BYA understood that bentonitic layers were encountered at depth in several of the borings and that bedding oriented N15W to N25W and 15 to 22 degrees southwest was encountered in several of the borings. The applicant is urged to make all necessary

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efforts to acquire the Geosoils geologic data and to have the Consultants incorporate said data into their report and geologic interpretations.

2. The Consultants have developed a cross section through the center of the property utilizing subsurface data from the recent DHPE B-1 and Keith Ehlert Boring B-1 (which is projected 65 feet northeast onto the section). A previous boring, LS B-1 (by Lockwood-Singh, 1980), is located directly on cross section A-A' but the data from that boring is not incorporated on the section. The bedding reported in LS B-1 and Test Trench TT-6 indicate bedding that dips out of slope. This bedding information suggests that an anticline axis is present between DHPE B-1 and LS B-1 with the west flank dipping 23 to 28 degrees out-of-slope. This interpretation is similar to that interpreted on sections A-A' and B-B' by Keith Ehlert, 1999. Cross-section A-A' should be updated with all relevant geologic data.
3. Based on review of the previous cross sections by Ehlert, 1999, the geologic structure underlying the property is variable from northeast to southwest. As such several cross sections should be analyzed to evaluate that the proposed shear pins are adequate for the various slope and geology conditions underlying the site. The Consultants must present slope stability analyses for the revised cross section A-A' to address that the proposed shear pins are adequate for failures towards the northwest.
4. It is not clear that the appropriate along-bedding shear strength of the bentonitic layers has been determined by the Consultants. For example, were the samples sheared along bedding? The Consultant should provide additional data to substantiate that the strength parameters are appropriate for use in the stability analysis.
5. The computer slope stability analyses were performed along a non-critical cross-section with a 2.5h:1v slope rather than perpendicular to the bluff. One section appears to be analyzed for the steep bluff (File DUPLER10.PLT) but it is unlabelled, no FS is shown and a second tieback near the toe is shown, representing an unexplained condition. The caisson/ tieback system should be analyzed based on a computer slope stability program whereby the required caisson shear and tieback force contributions are determined to maintain a minimum 1.5 factor of safety against slope failure. These values should then be converted to consistent earth pressure values for design.
6. The passive pressure is provided as 40 pcf not to exceed 40,000 pcf (the latter should be psf). The maximum allowable passive pressure value of 40,000 psf is excessive. Considering the low unit weight of diatomaceous materials, the Kp value translates to higher than assumed values. The passive pressure used in the calculations is even higher than the value mentioned in the report (1100 pcf v. 400 pcf). The allowance for arching factors should be clarified. *W*
7. The allowable bearing values (pcf should be psf) should be re-considered to verify that the variations with footing depth and especially with footing width are appropriate. While in some applications such allowances are made, a higher load concentration on larger footings may have settlement implications, the tabulated depth and width variations may not be consistent with the low unit weights and safety factors (min. 3) applied to bearing capacity. Also, such variable values on expansive/ *not used*

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collapsible soils may cause more problems. In general, a width allowance for bearing capacity is discouraged.

8. The potential for tieback creep should be discussed for long-term, permanent applications, especially if the bond zone is within a clayey bedrock material which may be or become submerged.
9. The conclusions and recommendations presented in the report should be incorporated into the plans. The Consultants shall review, approve, and sign the project plans. The signed plans should be submitted for review. Additional concerns may be raised upon review of the foundation plans.

Note: Given that the design of the proposed soldier piles is based on the results of the slope stability analysis, additional concerns regarding the design of the piles may be raised upon review of the requested information regarding slope stability.

Reviewed by:

Osman Pekin

Date:

7/23/02

Osman Pekin, PhD, GE

Geotechnical Engineering Reviewer

Reviewed by:

Edward H. Sabins

Date:

7/23/02

Edward H. Sabins, CEG

Engineering Geology Reviewer

Bing Yen & Associates, Inc./ ATC
17321 Irvine Blvd., Suite 200
Tustin, CA 92780
Tel. 714-734-0303

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Dale Hinkle, P.E. Inc.

15510 Rockfield Blvd., Suite B
Irvine, California 92618
(949) 458-0498 Fax (949) 458-1918
E-mail: HINKLEPE@aol.com

RGE # 402
RCE# 23023

Federal I.D.
33-0117087

October 29, 2002

Mr. Tim Dupler
2129 Paseo Del Mar
San Pedro, California 90732

Re: Supplemental Report and Comments to the City of Palos Verdes Estates
Following an October 11, 2002 Meeting with Mr. Sabins of
B.C. Yen and Associates, Inc./ATC

Ref: Response to City of Palos Verdes Estates' Review Letter dated July 23, 2002
Regarding Geotechnical Report dated June 4, 2002
By Dale Hinkle P. E., Inc. dated August 23, 2002
1745 Paseo Del Mar - Palos Verdes Estates

Geotechnical Investigation
1745 Paseo Del Mar - Palos Verdes Estates
By Dale Hinkle P. E., Inc., dated June 4, 2002

Dear Mr. Dupler:

On October 11, 2002 a meeting was held with the review consultants for the City of Palos Verdes Estates and our office to hear and respond to some additional non-written comments and concerns. Shortly prior to the meeting, the field logs by Geosoils, Inc. were reviewed and the data plotted on our Geologic Map and structurally analyzed. As earlier suspected and commented on, the additional data offered no new insight of relevant information that would otherwise change our structural geologic findings. However, it was the concern of the reviewer's that the remainder of the natural sea bluff could possibly fail in the future as did the southerly portion, which may not be engineered for from a foundation standpoint. Therefore, additional geologic and engineering analysis has been performed that considers this possible future adverse geotechnical influence. The following paragraphs discuss our updated findings, conclusions and recommendations.

The existing landslide was extended across the entire site as if it really exists (see Figure 1). Cross-Section C-C' was then redrawn to reflect an anticipated worst-case potential condition for the sea bluff (see Figure 2). The geometry of the anticipated slide is consistent with earlier cross-sections in our report and those from previous studies. As such, the critical failure plane for design setback remains essentially unchanged. However, further consideration has been factored into the engineering slope stability analyses by assuming an approximate 25 foot high backscarp at the outside edge of the proposed caisson wall (see Figure 8).

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The existing landslide that occupies the southwest end of the site represents a composite failure, not entirely controlled by bedding planes. If the slide was a pure bedding plane failure, then the slide would extend across the entire site and likely farther to the east. The apparent dip of the strata along Cross-Sections A-A' and C-C' varies from about 2° to 14°, with a weighted average of approximately 8°. The size, extent and general configuration of the existing landslide are not consistent with a purely bedding plane failure occurring along an apparent dip of 8° or even 14°. Rather, the existing slide represents a composite failure also incorporating oversteepened slope conditions and joint sets that are inherent to the bedrock. In addition, the bedrock has been folded or buckled so that there is no constant angle of dip to the strata. The new design worst-case failure assumes a 25° dip perpendicular to the ocean as a failure plane (Section C-C'). The true dip Section A-A' also has a 25° dip.

Revised calculations are attached showing the conjectured failure condition after movement. The caissons have been designed to resist this movement and keep the entire house and occupants free of damage.

The revised calculations along the worst-case failure on Section C-C' show a factor of safety of 1.78 for a 75-foot deep caisson system with 150k anchors and three-foot diameter caissons at nine feet on-center. The caissons are set back 90 feet from the top of slope. Several other issues were raised during our meeting which are as follows:

No Development Zone

There will be no development zone from the existing top of slope to the proposed house. This will be a 90-foot wide zone where no permanent habitable structures are allowed. The area can have a pool or tennis court, but no guest house. The area can be lawn, but if it is irrigated, it must have a 20 mil PVC membrane and a subdrain collection system to prevent all irrigation water from infiltrating into the ground.

Design Parameters

The worst-case failure plane must be 45 feet below existing grade at the caisson location. The downhill side of the caissons shall have a worst-case scarp of 25 feet (25 feet cantilever) during failure. The failure plane shall have a ϕ of 15° and cohesion of 200 p.s.f. The moist density shall be 100 p.c.f. The failure wedge shall slope 25° from horizontal at Section C. These are worst-case calculations to be performed and are attached.

We appreciate the opportunity to be of service to you on this project. We hope this clarifies all of the issues at this time. If you have any further questions, please call our office.

Sincerely,

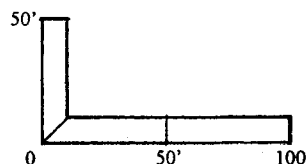
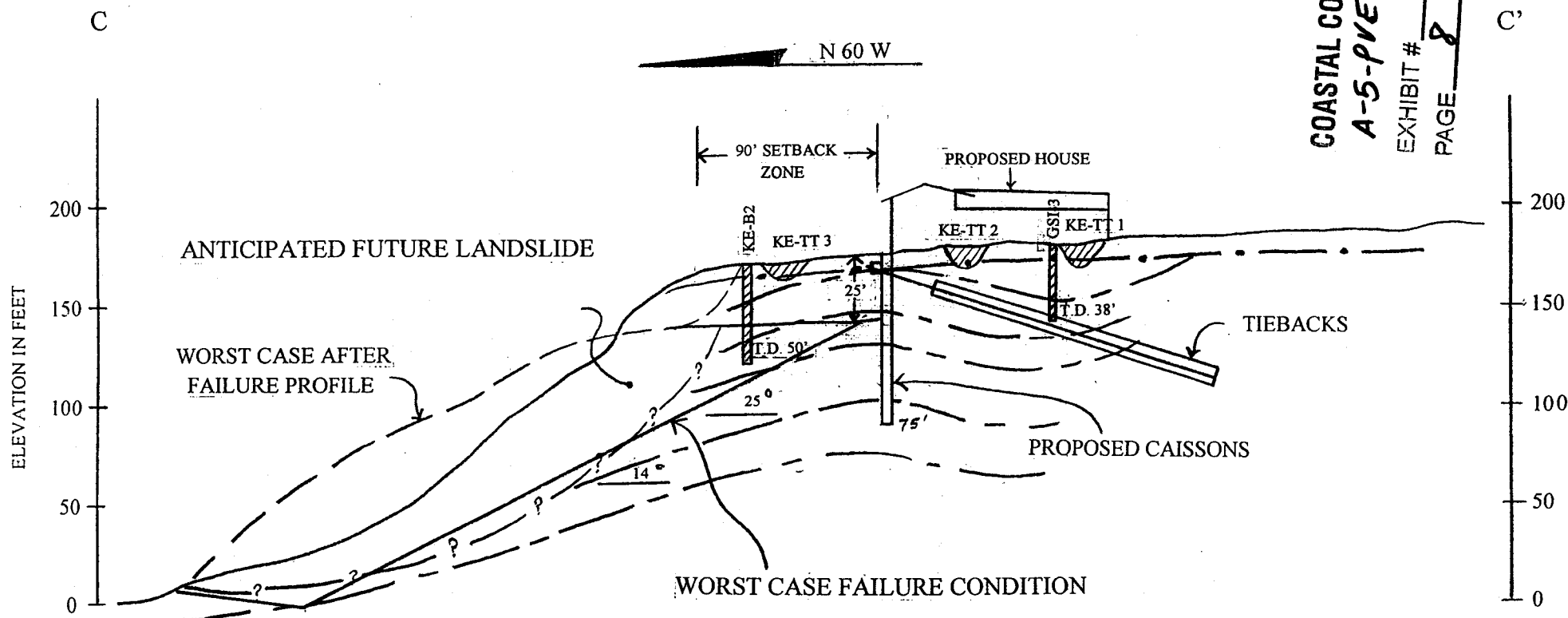
R. D. Hinkle
RGE #402

T. C. Welch
CEG #1204

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REVISED →

1745 PASEO DEL MAR		
WORST CASE FAILURE CONDITION		
SECTION C-C'		
SCALE	CHECKED BY	DRAWN BY
DATE 10/28/02		
DALE HINKLE P.E. INC.		FIG 8

Dale Hinkle, P.E. Inc.

15510 Rockfield Blvd., Suite B
Irvine, California 92618
(949) 458-0498 Fax (949) 458-1918
E-mail: HINKLEPE@Aol.com

RGE # 402
RCE# 23023

Federal I.D.
33-0117087

November 15, 2002

Mr. Tim Dupler
2129 Paseo Del Mar
San Pedro, California 90732

Re: Supplemental Calculations
Proposed Single Family Residence
1745 Paseo Del Mar, Rancho Palos Verdes

Dear Mr. Dupler:

At the request of Mr. Ed Sabins, of Bing Yen Incorporated, I have performed additional slope stability calculations for the caisson/tieback system design for 1745 Paseo Del Mar. Mr. Sabins requested that we calculate the factor of safety of the system if we assume a 14 degree out-of-slope component of bedding. We had previously designed the site for an eight degree out-of-slope component which was the average we had measured.

The 14 degree out-of-slope bedding component was the extreme worst case measurements which correspond to approximately six bedding attitudes out of the approximately 103 bedding measurements that we reported from four separate consultants. We feel that our average out-of-slope bedding component of eight degrees is more representative of the site conditions at Section C-D', but we have performed the calculations for your review. We have provided calculations for both eight degrees and 14 degrees (average and extreme). The calculations are attached.

The calculations show that by using the eight degree average bedding, we have caissons approximately three feet diameter, nine feet on-center and 85 feet long at a distance of 90 feet from the top of slope. When we do the calculation using 14 degrees out-of-slope bedding, the caissons must extend 134 feet deep (to elevation +40±) to have the site reach a factor of safety of 1.5 (static) using the same number of caissons and anchors. There are approximately 15 caissons and anchors proposed.

In performing the new calculation, we created a new section (at the request of Mr. Sabins) which we call Section A-D'. The section is shown on the geologic map.

The assumptions using Section A-D' were that we had cross-bedding at the toe of the section. The cross-bedded shear strength was $\phi = 38$ degrees, $c = 800$ p.s.f., $\gamma_m = 100$ p.c.f. We also used the strength of the anchor to negate the driving force of the wedge of rock uphill of the caissons. This is reasonable considering that the bedding component flattens even more east of the proposed caissons.

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The bending moment design for the caissons should use the same parameters listed in our previous reports. This assumes a worst case true dip of 25 degrees out-of-slope.

It is our opinion that it is unfair to assume the worst case measured dips on the site and design caissons using that data. We are respectfully presenting our geotechnical professional opinion of the conditions and in no way are we criticizing the opinion of the reviewer; we simply disagree. Our client has informed us that if that is the only way to obtain approval for the project, then we will design it using the worst case data. We are submitting the calculations for your review.

We appreciate the opportunity to be of service to you. If you have any further questions, please do not hesitate to call our office.

Sincerely,

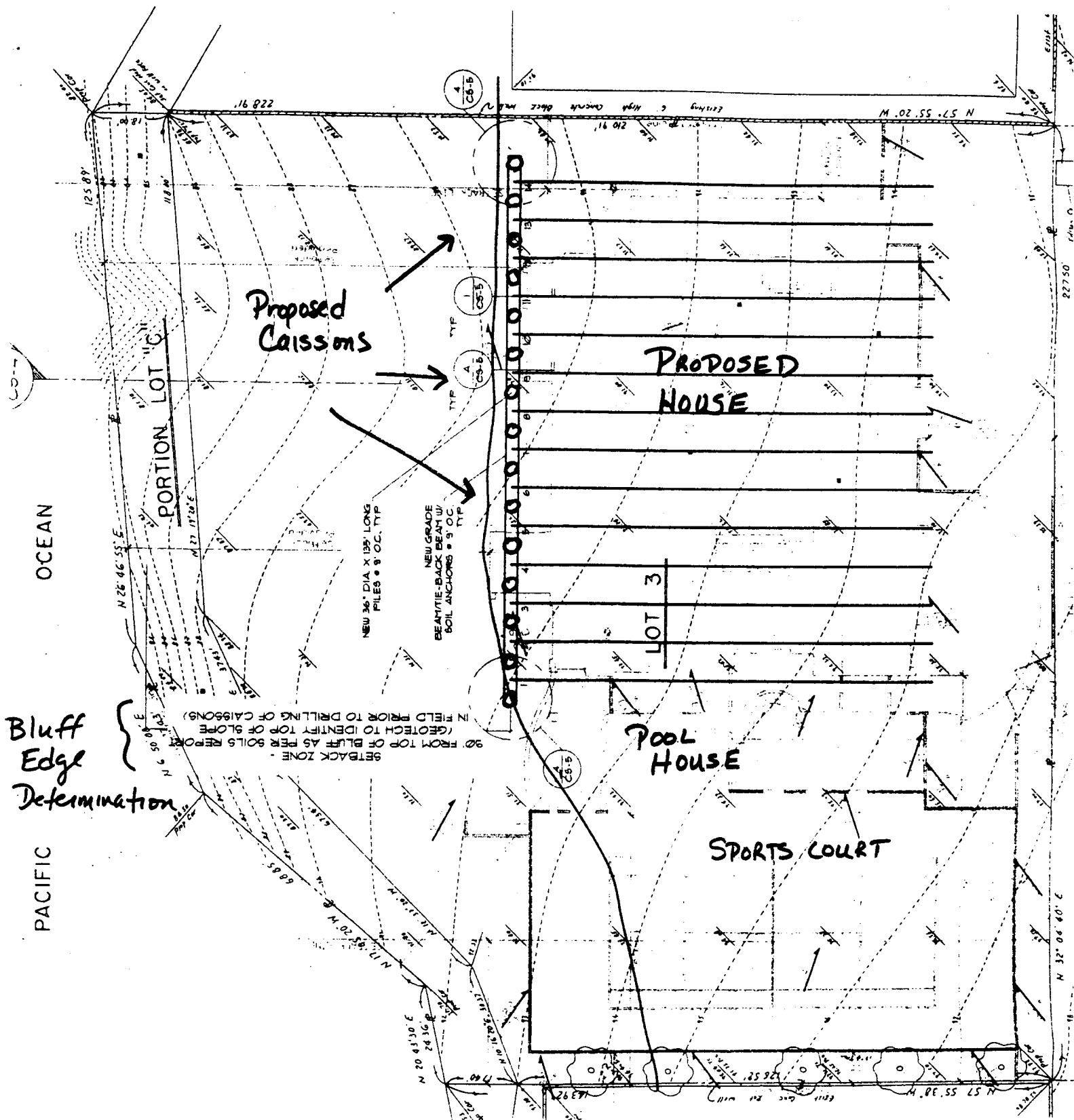
R. D. Hinkle
RGE #402

Attachments

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PROPERTY LINE
RIP-RAP

85'-0"
Setback
Provided

Landscaping

85'-0"
Setback
Provided

10'-0" Designated Area

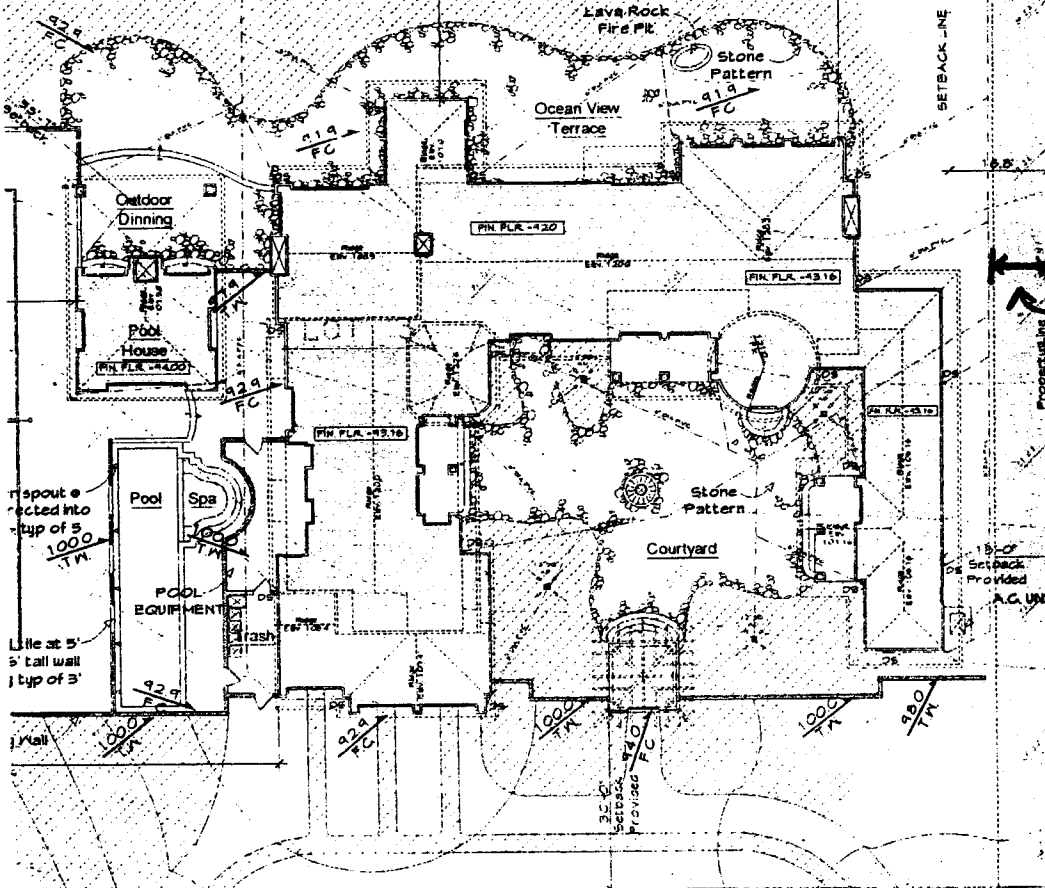
SITE PLAN

SCALE 1/32" = 1'-0"



Proposed
10'-wide
open space
set back

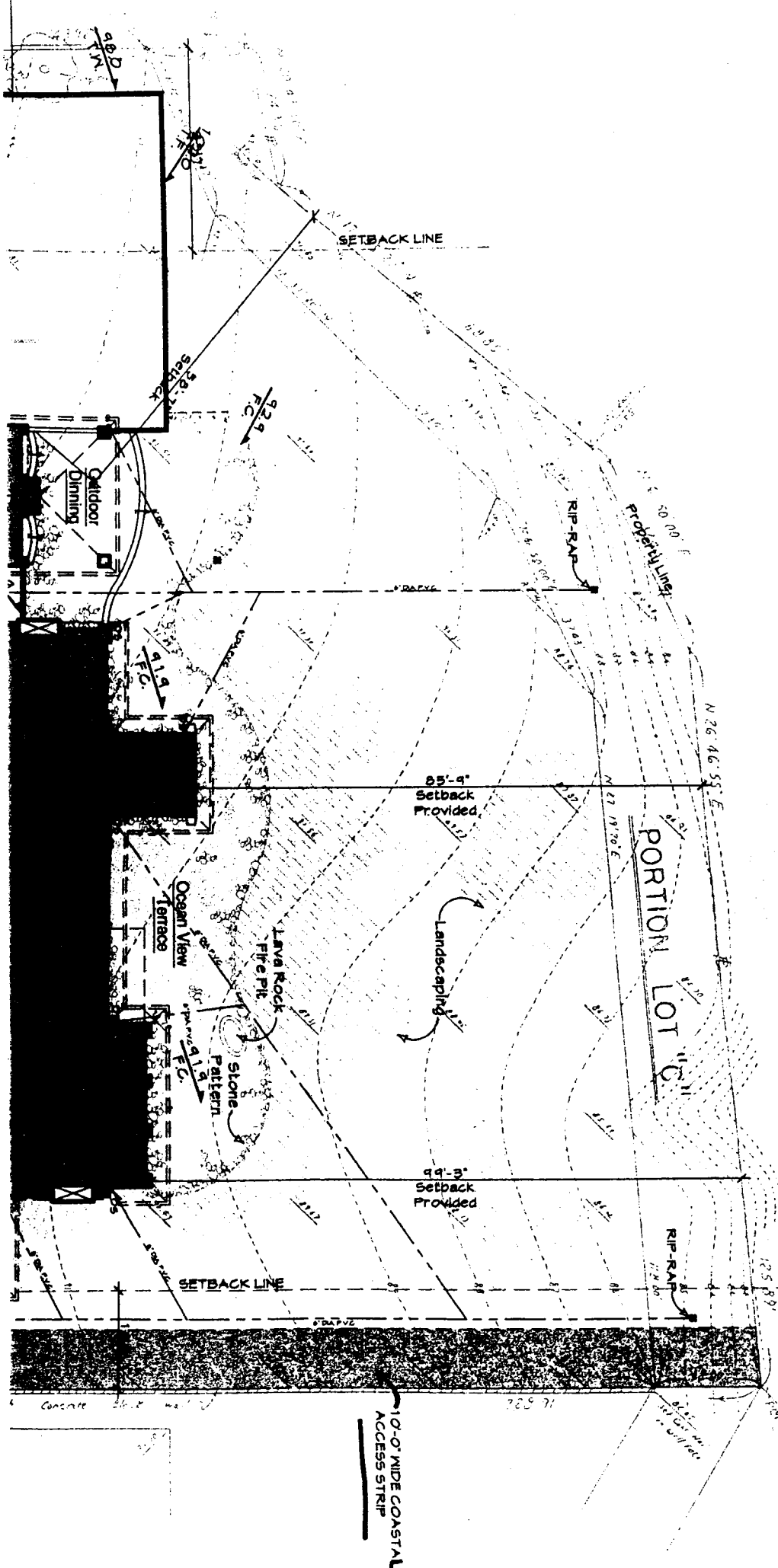
N. Property line



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PACIFIC

OCEAN

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Have you personally and openly crossed this site and used the trail down the bluff as shown in this photomap? Please mark all of your areas of use including trails, bluff or beach areas. Include parking sites. As you much as you can, please pinpoint the locations and indicate dates and types of use.

Cloyden Road

Paseo del Mar

PLEASE SIGN AND DATE.

SIGNATURE

DATE

City Cement Storm Drain.

Cloyden Road Trail

Project Site

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CALIFORNIA COASTAL COMMISSION

PUBLIC ACCESS PROGRAM
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4865
Email: jchase@coastal.ca.gov



September 24, 2003

Memo to: Melissa Stickney, Coastal Analyst, Long Beach

From: Joy Chase, Access Program Analyst, Santa Cruz

Subject: Preliminary Report on Prescriptive Rights Study
Cloyden Road Trails, 1745 Paseo Del Mar; Palos Verdes Estates
Los Angeles County

COASTAL COMMISSION

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The Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters, Land Law Section of the California Attorney General's Office, revised May 1989, was designed to assist in determining when the public has acquired the right of access to the sea through use. The Manual describes the basic principles for the public to obtain an easement by way of implied dedication. In California the public must have used the land for a prescriptive period of five years before an easement comes into being and (1) if the land is a beach or coastal bluff it must be shown that the land was used as if it were a public recreational area; (2) the use should be substantial rather than minimal; (3) the use must be by the public at large as opposed to a number of persons who belong to some limited identifiable group; (4) the use must be continual though not continuous

A standardized Public Use Questionnaire and Declarations poses the questions required to determine whether the principles described in the Manual are met. An investigation of public use of 1745 Paseo Del Mar was formally begun on July 30, 2003 with the publication of the Prescriptive Rights Study, Public Use Questionnaire and Declarations, Cloyden Road Trail(s), 1745 Paseo Del Mar, City of Palos Verdes Estates, Los Angeles County on the California Coastal Commission's Coastal Access website. The website provides information on the prescriptive rights investigation process and its basis in law as well as a downloadable questionnaire. A number of questionnaires were provided to the appellant for distribution and questionnaires were sent to members of the Fathomiers Dive Club.

To date (September 22, 2003) forty questionnaires have been returned. Analysis of the questionnaires was broken down in the following way:

- distance of primary address from 1745 Paseo Del Mar as one criteria to determine if the use was more than local and represented the public-at-large;
- composition of users and types of use to determine whether the users represented the public at large as contrasted to a limited type of user; and whether the users used the beach as a public recreational area.
- the year use began to determine if the prescriptive period of 5 years has been met.
- the range of number of times used, to determine if the use was substantial.
- how often the user observed other people on the beach and the number range of the other users present as another indicator to determine if the use was substantial.

(The responses received on one questionnaire are not included in the following calculations. This respondent reports "no trespassing" signs at 1745 Paseo del Mar, alternative available

access, rarely seeing others use the trail(s), and urges the Coastal Commission staff "NOT to grant Prescriptive Rights to the Cloyden Road Trail(s)."

Of the 39 questionnaires evaluated four were from respondents whose addresses were in Palos Verdes Estates within one and a half miles of the study parcel. Three of these users stated that they drove to the site and parked on Paseo del Mar. The addresses of thirty-five users were outside of Palos Verdes Estates, most within the larger Los Angeles metropolitan area communities – Torrance, Manhattan Beach, Redondo Beach, Rancho Palos Verdes Estates, Los Angeles, San Pedro, Huntington Beach, Irvine. These cities and communities are several miles from the access trails and the recreational respondents are not members of the local community. Hence, almost all users live at a distance that would require vehicular transportation from the surrounding communities to the access trails and parking on Paseo del Mar or nearby streets. The data shows that 89% of the trail users are not local users.

The recreational uses reported were viewing, skin diving, surfing, tidepooling, access, picnicking, hiking, fishing, beachcombing, etc. Since most of these uses are directly related to the beach and sea, it would appear to indicate that the parcel was crossed primarily to access the beach and not as a destination itself. According to users the Cloyden Road trail descent of the bluff face is less difficult than other trails in the area. Respondents also report watching sunsets and assessing surf conditions from the blufftop on a regular basis. A significant number of questionnaires included skin diving as a use and several members of the Fathomiers dive club contributed questionnaires to the study. However, as a whole the questionnaires describe a range of uses and indicate that no single identifiable group dominates trail and bluff use to the exclusion of the general public.

The questionnaire asks respondents to indicate the year they first began use of the trails to determine if the prescriptive period of 5 years of general public use has been met. One user reported beginning use in 1949, 3 users reported beginning use in the 1950's, 1 in the 1960's, 4 in the 1970's, 11 in the 1980's, 5 between 1990-1994, 5 between 1995-1999, 2 users reported use of the beach once for a picnic but did not report in what year, and 6 others have not yet provided this data. The data indicates that the access trail(s) has been used by the general public for several decades.

To determine if the use was substantial rather than minimal the questionnaire asked for the range of number of times used by the respondents and how often the user observed other people on the beach and the number range of the other users observed. The data indicates that of the 39 users who responded 26 or approximately 66% have used the trail(s) more than 100 times; 11 of these reported having used the trail(s) more than 500 times. Nineteen users report that they have observed other users *every time* they use the trail(s) and that the range of observed users was between 1 and 19. Fifteen users indicate that they *frequently* see other users and the number of those observed is between 1 and 15. Three respondents report seeing other users *occasionally* and that the range observed is between 1 and 5. Two questionnaires reported that during the users' one visit they observed 4 other groups.

The 39 questionnaires often represent more than one user, e.g., family or companions and they often provide names of other known users. In addition, 29 separate declarations of use of the

trail across 1745 Paseo Del Mar were previously submitted by the appellant, as was a list of 25 other signatures of people declaring personal and open use of the trails. Only three people from these sources also sent in questionnaires. The questionnaires are a more compelling source of evidence since they provide the questions created by the Office of the Attorney General to meet the requirements for legal action. The appellant reports that he has contacted the person who collected the declarations and that that person will be handing out questionnaires to many of the declarants. Questionnaires have not been mailed to the list of 25 users pending receipt of a legible copy of their addresses.

In summary, approximately 94 people have reported personal use of the Cloyden Road trail(s). Thirty-nine reported their use and observance of others' use in the form of a questionnaire and declaration prepared by the Attorney General's Office and 55 in the forms of declarations and petitions. The information indicates a decades-long pattern of continuous, unobstructed general public use of the Cloyden Road trail(s). However, whether or not the number of questionnaires received to date would support a claim of significant public use can only be determined by judicial action. The period of time to publicize and collect questionnaires for this case has been very short (approximately 6 weeks). The public interest in protecting this access from closure appears high and the return of additional questionnaires could be expected.

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