

CALIFORNIA COASTAL COMMISSION

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Hearing Date: October 12-14, 2005
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 5-04-214**RECORD PACKET COPY****APPLICANT:** Kenneth Battram**AGENTS:** Mark McGuire, David Neish and William Meyer**PROJECT LOCATION:** 3335 Ocean Boulevard, City of Newport Beach (Corona Del Mar),
County of County

PROJECT DESCRIPTION: Request for after-the-fact approval for stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. The applicant also proposes the following: adding landscaping along the stairway; painting the upper portion of the stairway a color that helps blend into the background; removing the existing iceplant at the bottom of the lot; and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach.

SUMMARY OF STAFF RECOMMENDATION:

The subject site is located between the first public road and the sea in Corona Del Mar (Newport Beach) and is immediately inland of Corona Del Mar State Beach, which is a public beach. The application seeks "after-the-fact" approval for grading, a stairway down the bluff face and retaining walls located on the upper and lower bluff face and sandy beach, as well as landscaping and visual treatment and a public access dedication. The primary issues before the Commission are whether the project avoids development in hazard prone locations, preserves scenic resources, minimizes landform alteration, and impacts public access. Staff recommends that the Commission **DENY** the request.

As submitted, the proposed project is inconsistent with Sections 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The project also raises issues under Sections 30210 and 30240(b) of the Coastal Act. The pattern of development along this segment of Ocean Boulevard consists of structures that are sited upon the upper bluff face, while the mid and lower bluff face remains largely undisturbed and natural. With some exceptions, the overall appearance of the mid and lower bluff face and sandy beach in this area is natural and undeveloped. The exceptions include 1) lots where pre-coastal stairways traverse the bluff face to the sandy beach; and 2) lots that have unpermitted development at the toe of the bluff and on the beach (including projects that are currently subject to a Commission cease and desist order, as with the proposed project, or are under investigation by the Commission's Enforcement staff). Approval of the development would authorize grading, a stairway, retaining walls and unpaved patios cascading down the bluff face and onto the beach and would authorize a significant --approximately 80-foot-- encroachment

seaward beyond the predominant line of development. Moreover, the area where development is proposed has a low factor of safety and thus is subject to hazards.

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). On May 8, 1985, the Commission issued Administrative Coastal Development Permit No. 5-85-218 for additions to and remodeling of the original single-family residence on the subject property, including construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs. Although the property owners had a right under the Coastal Act, as noted in the 1985 CDP, to "maintenance and painting of the private beach stairs" in their original location, the demolition and reconstruction of the stairs in a different configuration and location on the bluff face (which was not authorized by that permit) resulted in significant new impacts to the bluff slope and constitutes new development. The proposed project would result in significant landform alteration of the upper and lower bluff and sandy beach and would be located in a hazard prone location.

Commission staff notes that there has been an increase in efforts to add amenities to existing single-family residences on the bluff or beach along this segment of Ocean Boulevard over the last several years. Denial of this project would be consistent with prior actions by the Commission where the Commission has prohibited significant encroachments upon the mid and lower bluff face and sandy beach. The Commission has denied proposals that included development upon the lower bluff face and sandy beach both up-coast and down-coast of this site (e.g., CDP No. 5-01-199-[Butterfield], CDP No. 5-04-339-[Palermo] and CDP No. 5-04-282-[McNamee]).

At the December 2001 Commission Hearing, the Commission denied in part Coastal Development Permit No. 5-01-199-[Butterfield] a request for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff. The Commission found that the proposed sand pit cut-out would not minimize alteration of natural landforms, was not visually compatible with the character of surrounding development and would adversely affect the scenic and visual qualities of the subject area. The development proposed in the subject application includes structures that are larger and more visually prominent than those elements of the Butterfield project the Commission denied.

In addition, at the May 2005 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-04-339-(Palermo) which included, among other elements, construction of a new 623 square foot pool house, pool, spa and patio area, retaining walls, landscape planters, and an outdoor barbeque area on the sandy beach and lower bluff face. The significant impacts to scenic resources and natural landforms resulted in denial of the project.

Also, in a more recent Commission action taken at the July 2005 Hearing for the McNamee site (CDP No. 5-04-482-[McNamee]), the Commission denied a similar type of proposal. Coastal Development Permit Application No. 5-04-482-[McNamee] requested the after-the-fact approval of existing storage lockers; built-in barbeque and cabinets; counter with sink and cabinets; shower at stair base; thatched shade palapa with four posts; two concrete tables and benches—all located on a sandy beach and, on the bluff face, a shed with refrigerator storage and toilet and floral garden improvements. Like the Palermo and Butterfield proposals, the significant impacts to scenic resources and natural landforms of the McNamee project resulted in its denial. The significant visual impact arguments made in the Commission's denial of the Palermo,

Butterfield and McNamee applications are equally applicable in the subject application as the type and impacts of the proposed development is similar.

Therefore, staff recommends that the application be **DENIED**, as it would have adverse impacts on the naturally appearing landform and the cumulative adverse impact of such projects on visual resources would be significant.

In addition to the proposed project, the applicant has identified two (2) alternatives that would have lesser impacts upon scenic resources and landforms. However, Commission staff found that neither of the alternative proposals adequately addresses the development concept's adverse visual impacts and exposure to hazards. The applicant's 1st Alternative (Exhibit #4) would consist of: leaving the existing stairway intact, but removing the existing retaining walls located on the lower portion of the lot; re-contouring of the slope to a natural condition and plant with drought tolerant, non-invasive vegetation; painting the upper portion of the stairway a color that helps blend into the background; and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. While there are some benefits to this alternative, this alternative would still result in significant visual impacts since the stairway would remain. The applicant's 2nd Alternative (Exhibit #5) would consist of: removing the existing stairway completely and replacing with a suspended stairway all the way down to the flat sandy portion of the lot in a least visually intrusive configuration; removing the existing retaining walls located on the lower portion of the lot; re-contouring of the slope to a natural condition and plant with drought tolerant, non-invasive vegetation; painting the stairway a color that helps blend into the background; and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. While there are additional benefits to this alternative as opposed to the 1st alternative, this alternative would still result in a new stairway that would result adverse visual impacts.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL APPROVALS RECEIVED: Approval in Concept (#2399-2004) from the City of Newport Beach Planning Department dated September 24, 2004.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Administrative Permit No. 5-85-218-[Schloessman]; Letter from Commission staff to William Meyer dated July 2, 2004; Letter from Kenneth Battram to Commission staff dated July 15, 2004; Letter from William Meyer to Commission staff dated August 25, 2005; *Biological Resources Survey* by JNE & Associates, Inc. dated August 12, 2004; *Wave-Runup & Coastal Hazard Study*, 3335 Ocean Boulevard, Corona Del Mar, CA Prepared for William Meyer prepared by Geosoils Inc. dated August 2004; Letter from Commission staff to William Meyer dated September 22, 2004; Letter from Kenneth Battram to Commission staff dated September 27, 2005; Letter from Lawson & Associates Geotechnical Consulting, Inc. dated September 28, 2004; Letter from Lawson & Associates Geotechnical Consulting, Inc. dated September 29, 2004; Letter from Commission staff to William Meyer dated October 29, 2004; Letter from William Meyer to Commission staff dated April 6, 2005; Letter from Mark McGuire to Commission staff received April 7, 2005; Letter from Lawson & Associates Geotechnical Consulting, Inc. dated December 8,

2004; Plans received on September 15, 2005 from William Meyer; and email from Mark McGuire dated September 16, 2005.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Existing Site Plan/Sections
4. Applicant's Alternative No. 1
5. Applicant's Alternative No. 2
6. Site Plan from City of Newport Beach Planning Department for CDP No. 5-85-218
7. Aerial Photo of the Project Site and Surrounding Pattern of Development
8. Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution.

A. Motion

I move that the Commission approve Coastal Development Permit No. 5-04-214 for the development proposed by the applicant.

B. Staff Recommendation of Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

C. Resolution to Deny the Permit

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. **PROJECT LOCATION, DESCRIPTION, PRIOR COMMISSION ACTION AT THE SUBJECT SITE AND PRIOR COMMISSION ACTION IN SUBJECT AREA**

1. Project Location

The proposed project is located at 3339 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits #1-2 and #7). The subject property, immediately inland of Corona del Mar State Beach, contains a single-family residence on the upper bluff face portion of the bluff face lot, and the bluff face descends down to the sandy beach. The unpermitted development (stairway, grading and retaining walls), for which "after-the-fact" approval is requested, is located on the upper, mid and lower bluff face and sandy portions of the subject property (Exhibit #3 and #7). To the north of the site, at the top of the bluff, is Ocean Boulevard. To the west (up-coast) are existing residential development. To the east (down-coast) are existing single-family homes, and further beyond is a natural vegetated bluff, a bluff park known as Inspiration Point and a public access way from Inspiration Point to the public beach (Corona Del Mar State Beach). To the south of the bluff, at the toe of the slope, is a privately owned (by the applicant) sandy beach immediately fronting a normally 200-foot wide sandy public beach. The pattern of development along Ocean Boulevard primarily consists of structural development sited at the upper portion of the bluff face with minimal disturbance of the mid and lower bluff face and the sandy beach (Exhibit #7).

The bluff is currently covered with vegetation and a *Biological Resources Survey* by JNE & Associates, Inc. dated August 12, 2004 conducted by JNE was completed to review the existing vegetation located on site. It concluded the following: "*Vegetation on the western (or lower portion) of the lot behind the house is dominated by Bougainvillea and Carpobrotus chilensis. A single Myoporum (probably Myoporum laetum) is located on the site. Lower on the lot Plumbago replaces Bougainvillea. The native species Isomeris arborea (bladderpod) was found on the lot close to the actual beach area ... The entire property is a highly disturbed area with cultivated landscape plants typical for the area. The neighboring properties are similar developed sites. The area does not provide habitat that would support native fauna.*"

2. Project Description

The application consists of a request for after-the-fact approval of a stairway down the bluff face from the existing residence located at the upper bluff face to the sandy beach and the grading and retaining walls necessary for the installation of the stairway (Exhibits #3 and #7). The stairway consists of an elevated section (approximately 29-feet in total length with a width ranging from 4-feet to 2.5-feet and at it's highest point is approximately 10-feet above the existing grade) and an at grade section (approximately 73-feet in total length with a width ranging from 4-feet to 4.25-feet) (Exhibit #3). The retaining walls vary in height from approximately 1-foot high to 6-feet high. The retaining walls support the stairway as well as two patio terrace levels, approximately 16-feet and 14-feet in width, set into the toe of the bluff (Exhibit #3). All of this development extends

more than 80 feet seaward of the predominant line of development and alters the bluff face landform. The applicant has also proposed the following: adding landscaping along the stairway; painting the upper portion of the stairway a color that helps blend into the background; removing the existing iceplant at the bottom of the lot; and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. With regard to the proposed public access dedication, important details are not addressed such as signage, the precise boundaries of the proposed easement, and who will own and manage the easement.

In addition to the proposed project, the applicant has submitted two (2) project alternatives that will be further discussed in Section II. E of the staff report. Submittal of this application was required by Consent Agreement and Cease and Desist Order CCC-04-CD-01. Previously, additional unpermitted development was located on site consisting of a chain link fence, storage shed (with sink and toilet), storage cabinets and a concrete patio located on the lower bluff face and sandy beach. However, Consent Agreement and Cease and Desist Order CCC-04-CD-01 required the removal of these elements and they have been removed.

3. Prior Commission Action at the Subject Site

Administrative Coastal Development Permit No. 5-85-218-[Schloessman]

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). On May 8, 1985, the Commission issued Administrative Coastal Development Permit No. 5-85-218 for additions to and remodeling of the original single-family residence on the subject property, including construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs.

Aerial photographs of the subject property indicate that a stairway existed on the down coast (eastern) portion of the subject property in 1972 and 1978. However, additional aerial photographs of the subject property indicate that the stairway present in 1972 and 1978 was in fact demolished and removed from the subject property, and a new stairway was constructed in a different location as of 1987. The 1985 Administrative Coastal Development Permit contained no provisions for demolition and construction of a new stairway in a different location on the property. The new stairway was constructed without benefit of a coastal development permit and –as was established in the findings for Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram] which are incorporated herein by reference- is unpermitted new development.

None of the other development on the subject property, including unpermitted development (stairway down the bluff face, retaining walls located on the upper and lower bluff face and sandy beach, concrete patio, chain link fence, storage shed (with sink and toilet) and storage cabinets located on the lower bluff face and sandy beach), was listed as part of the proposed project description in the application submitted for Administrative Coastal Development Permit No. 5-85-218, shown on the proposed or approved plans, or authorized by the Commission pursuant to its issuance of that permit.

Commission staff has obtained a copy of a site plan from the City of Newport Beach in reference to CDP No. 5-85-218 (Exhibit #6). Those plans show and state that a portion of

the stairway located on the upper bluff was to be new and a section was to attach to the existing stairway located on the lower bluff. In addition, the existing lower bluff portion of the stairway was to receive maintenance repairs and new paint. CDP No. 5-85-218 is referenced on the site plan; however, no stamp or sign off from Commission staff is included on the plans, and the plans on record with the City are inconsistent with the plans submitted as part of the application for CDP No. 5-85-218. CDP No. 5-85-218 only authorized construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs. The Commission never permitted construction of a new stairway.

Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]

The Commission approved Consent Agreement and Cease and Desist Order CCC-04-CD-01 at its March 2004 hearing (Exhibit #8). The Consent Order contains several provisions that 1) create an allowance for the applicant to submit an application to retain the unpermitted stairway and retaining walls and grading (no assurances of approval were made); and 2) required removal of an existing chain link fence, storage shed (with sink and toilet), storage cabinets and concrete patio located on the lower bluff face and sandy beach (these facilities have been removed). Furthermore, the Consent Order, which was signed and agreed to by the applicant, states that if the Commission denies a CDP application for the after-the-fact retention of unpermitted development on the subject property, the applicant shall remove the remaining unpermitted development on the subject property. The applicant was advised that his permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act.

4. Prior Commission Action in Subject Area

a. 3329 Ocean Boulevard (Located adjacent up-coast from subject site): CDP No. 5-04-482-[McNamee]

At the July 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-482-[McNamee] for the after-the-fact approval of existing storage lockers; built-in barbeque and cabinets; counter with sink and cabinets; shower at stair base; thatched shade palapa with four posts; two concrete tables and benches—all located on a sandy beach and, on the bluff face, a shed with refrigerator storage and toilet and floral garden improvements. The primary issues before the Commission was whether the development preserves scenic resources, minimizes landform alteration and avoids development in hazard prone locations. The applicant was seeking after-the-fact approval of development on the sandy beach and lower bluff face/bluff toe. Along this segment of Ocean Boulevard, there is no history of Commission approval of development on the sandy beach (associated with a single-family residence). The toe of the bluff and sandy beach area are immediately inland of Corona Del Mar State Beach, which is a public beach. Thus, the development is highly visible from the public beach and other public vantage points, such as Inspiration Point. In addition, the proposed project is not needed for full use and enjoyment of the property as they have a substantial improvement in the form of a single-family dwelling on site. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use

Plan (LUP) regarding coastal bluff sites. The visual impact arguments made in the Commission's denial of the McNamee application are equally applicable in the subject application.

b. 3317 Ocean Boulevard (Located 1 lot up-coast from subject site): CDP No. 5-01-080-(Palermo) and CDP No. 5-04-339-(Palermo)

At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-01-080-(Palermo) for the construction of a 864 square foot pool house, pool, spa and exercise room on the beach and the lower portion of the bluff face. In addition, two (2) retaining walls were proposed. One was to be a 6-foot high wall located along the western perimeter of the swimming pool at the beach level and one was to be a 12-foot high wall at the rear of the pool house on the lower bluff face. These walls varied from approximately 6 to 12 feet in height. The primary issues raised by the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites. The arguments regarding visual impact made in the Commission's denial of the Palermo application can be also applied in the subject application.

At the May 2005 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-04-339-(Palermo) for the removal of an existing beach bathroom and construction of a new 623 square foot pool house, pool, spa and patio area on the beach and lower bluff face. In addition, there would have been construction of new retaining walls, landscape planters, an outdoor barbeque area and modification of the existing stairway. Footings, retaining walls, slab on grade and a caisson foundation system were proposed to support the proposed project. The primary issues raised by proposed project were the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. These issues mirrored those found in the previous denial (CDP No. 5-01-080) for the same project site. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites. The visual impact arguments found in this denial can also be applied upon the subject application.

c. 3401 Ocean Boulevard (Located down-coast from subject site): CDP No. 5-01-199-[Butterfield]

At the December 2001 Commission Hearing, the Commission approved in part and denied in part Coastal Development Permit No. 5-01-199-[Butterfield] for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels

on the existing pre-Coastal Act bluff face stairway. The Commission denied the toe of slope cut-out and approved the portion of the lattice work and gate located on a previously approved landing area. The Commission found that the gate replacement and lattice enclosures on the previously permitted landing areas to be consistent with the scenic and visual resources policies of the Coastal Act, as they will not obstruct views to or along the shoreline and are in keeping with the pattern of development in the area and therefore is consistent with Section 30251 of the Coastal Act. However, the Commission found that the proposed sand pit cut-out would not minimize alteration of natural landforms, was not visually compatible with the character of surrounding development and would affect the scenic and visual qualities of the subject area. As such, the portion of the proposed project involving the establishment of a sand pit cut-out area was inconsistent with Section 30251 of the Coastal Act. The development proposed in the subject application includes structures that are larger and more visually prominent than those elements of the Butterfield project the Commission denied.

d. SEE APPENDIX "A" FOR THE REMAINING ITEMS

B. SCENIC RESOURCES

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

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The proposed project is located upon a coastal bluff face and sandy beach immediately inland of Corona Del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural (Exhibit #7). Although several lots have stairways traversing the bluff face, and some have permitted and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. The applicant is seeking after-the-fact approval of development consisting of grading, a stairway along the bluff face and retaining walls located on the upper and lower bluff face and sandy beach. With regard to visual issues, the applicant also proposes the following: adding landscaping along the stairway and painting the upper portion of the stairway a color that helps blend into the background. As stated previously, while the property owners had a right under the Coastal Act, as noted in CDP No. 5-85-218, to "maintenance and painting of the private beach stairs" in their original location, the demolition and reconstruction of the stairs in a different configuration and location on the bluff face resulted in significant new impacts to the bluff slope and constitutes new development that is not consistent with Section 30251 of the Coastal Act and is not exempt from permitting requirements of the Coastal Act. Overall, the unpermitted development is inconsistent with Section 30251 because the stairway does not minimize alteration of natural landforms and together with the retaining walls located on the upper, mid and lower bluff face and sandy beach,

the development adversely affects public views of the vegetated bluff from the public vantage points. The new unpermitted stairway was constructed in a different configuration and occupies a larger footprint on the bluff slope than the previously existing stairway that was demolished. In addition, any development at this site must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area, minimize the alteration of existing landforms, and limit the seaward encroachment of development. The proposed project would result in significant landform alteration of the upper, mid and lower bluff and sandy beach and thus would adversely affect public views of the natural/vegetated bluff and sandy beach from the adjacent public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point, and is inconsistent with the pattern of development in the subject area.

1. Scenic Views and Landform Alteration

a. Scenic Views

The proposed project is located along the upper and lower bluff face and the sandy beach. The existing bluff face and sandy beach are natural landforms visible from public vantage points such as the beach (Corona Del Mar State Beach) and Inspiration Point and any alteration of this landform would adversely affect the scenic views of the coastline when viewed from these sites. This proposed development on the upper, mid and lower bluff face and sandy beach results in considerable adverse impacts to views from the sandy beach. The views from Inspiration Point of the natural vegetated bluff and the beach at the project site will be marred by the proposed development. In addition, the project significantly encroaches seaward and exceeds the predominant line of development. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural (Exhibit #7). Although several lots have stairways traversing the bluff face, and some have permitted and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. The edge of the existing concrete patio located on the upper bluff face is at approximately the 60-foot bluff contour line and represents the predominant line of development as that line crosses this site. The stairway and retaining walls for the stairway run from the upper bluff face down to the toe of bluff, while the concentration of the remaining retaining walls and patio terrace areas begin approximately from the 30-foot contour line (approximately 30-feet from the concrete patio located at upper bluff face) and continues down to the toe of the slope. The seaward-most element of the proposed development is 80-feet. Thus, significant development encroaches past the predominant line of development and will adversely impact scenic views.

b. Landform Alteration

The proposed development includes grading of the upper, mid and lower bluff and sandy beach to set the stairway and retaining walls into the bluff and sandy beach. The proposed stairway will significantly alter the natural landform due to the grading required for the stairway and also for the retaining walls, which vary in height from approximately

4-feet high to 6-feet high, that support it. In addition, landform alteration occurs for the construction of the remaining retaining walls, which vary in height from approximately 1-foot high to 4-feet high, and patio terrace areas that begin approximately from the 30-foot contour line down to the toe of the bluff. Moreover, the placement of the two patio terrace levels at the base of the bluff will result in substantial alteration of the natural landform. These two patio terrace levels are set into the toe of the bluff by approximately 16-feet and 14-feet. Unpermitted development also included grading for installation of a water line, sewer line and electrical line from the residence at the top of the bluff and continuing down the bluff to serve the storage shed on the sandy beach that housed a toilet and sink. The applicant isn't seeking authorization for these utilities, however, they also haven't been removed. This grading has resulted in significant alteration of the existing landform. The applicant has already removed the existing chain link fence, storage shed (with sink and toilet), storage cabinets and concrete patio located on the lower bluff face and sandy beach; however, the landform alteration caused by their placement still remains. For example, the shed was placed on one of the two patio terraces located at the lower bluff face/sandy beach that is supported by retaining walls. The shed may be gone, but the grading that was required to construct the patio terrace and also install utility lines still exists.

The applicant has suggested that the upper portion of the stairway could be painted so that it helps blend into the background. In addition, the applicant has offered to plant vegetation to screen the development from view. However, this would not eliminate adverse visual impacts from placement of the stairway and retaining walls on the upper and lower bluff face and the sandy beach. Moreover, the structures would still require significant grading and alteration of natural landforms, and thus would violate Section 30251 and the policies of the LUP.

2. Cumulative Impacts

The proposed project is located along a coastal bluff and sandy beach immediately inland of Corona Del Mar State Beach, a public beach. The site is highly visible from public vantage points such as the sandy public beach and from elevated vantages such as Inspiration Point. The overall appearance of the bluff in this area is natural and undeveloped. The applicant is seeking after-the-fact approval of development consisting of grading, a stairway along the bluff face and retaining walls located on the upper, mid and lower bluff face and sandy beach. Approval of the proposed project would set a precedent for the construction of new development along the beach and the upper and lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward. As stated previously, the overall appearance of the mid and lower bluff and sandy beach in this area is natural and undeveloped. The unpermitted development would result in significant development located on the upper, mid and lower bluff face and the sandy beach. In addition, the development extensively exceeds the predominant line of development in this area where the overall appearance of the mid and lower bluff and sandy beach is undisturbed. Therefore, the Commission cannot approve the proposed project.

CONCLUSION

The Commission finds that the project, as currently proposed, is not sited and designed to protect scenic and visual qualities of coastal areas as a resource of public importance. The

proposed project would not preserve existing scenic resources and would not preserve the existing community character where development is limited to the upper bluff face. The alteration of the bluff and the sandy beach results in an adverse visual effect when viewed from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. Allowing the proposed project would also lead to seaward encroachment of new development in an area where extensive unpermitted development has occurred that has encroached seaward and adversely affected the community character and public views. These are matters the Commission is presently trying to resolve through the coastal development permit process, and enforcement actions as necessary. The Commission finds that the proposed project results in the alteration of natural landforms, does not preserve scenic views, and is not visually compatible with the character of the surrounding area. Consequently, the proposed project increases adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act.

C. HAZARDS

Section 30235 of the Coastal Act states

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

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

New development shall:

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

Section 30235 of the Coastal Act states that, when certain conditions are satisfied, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion. Section 30253 of the Coastal Act mandates that development minimize risks to life and property in areas of high geologic, flood, and fire hazard. It also requires that development assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs or cliffs.

1. General Findings on Bluff Erosion

The proposed development is located on a coastal bluff, which has historically been subject to wave attack and erosion. Coastal bluffs in California, located at the intersection of land and ocean, are composed of relatively recent uplifted geologic materials and are exposed to severe weathering forces.

Coastal bluff erosion is caused by a combination of inherent environmental factors and erosion caused by human activity. Environmental factors include gravity, seismicity, wave attack, wetting and drying of bluff face soils, wind erosion, salt spray erosion, rodent burrowing and piping, percolation of rain water, poorly structured bedding, surface water runoff and poorly consolidated soils.

Factors attributed to human activity include: improper irrigation practices; building too close to the bluff edge; improper site drainage; use of impermeable surfaces which concentrate runoff; use of water-dependent vegetation; pedestrian or vehicular movement across the bluff top, face and toe, and breaks in irrigation lines, water or sewer lines. In addition to irrigation water or runoff at the bluff top, increased residential development inland leads to increased water percolating beneath the surface soils and potentially outletting on the bluff face along fracture lines in the bluff or points of contact of different geologic formations, forming a potential slide plane.

2. Site Specific Bluff Information

To address site-specific geotechnical issues with the proposed development the applicant has submitted two (2) investigations: *Lawson & Associates Geotechnical Consulting, Inc. dated September 28, 2004*; and *Lawson & Associates Geotechnical Consulting, Inc. dated December 8, 2004*. The investigations state that the site is comprised of Quaternary Marine Terrace deposits overlaying bedrock of the Monterey Formation and the contact between the terrace material and underlying bedrock is expected to be at an approximate elevation of 55-feet above MSL. The lower section of the bluff is mantled by an apron of slope wash/talus derived from both bedrock and terrace material through a combination of natural weathering and spoil material generated during construction work on top of the bluff. All the elements of the proposed project are located on this slope wash/talus material. Furthermore, the investigation states that due to the construction of the Newport Harbor Jetties, wave erosion at the base of the bluff has become virtually insignificant and due to the lack of active toe erosion at the base of the bluff, the talus has become somewhat stable. However, the investigation does state that the existing site has a minimum static factor of safety of 1.21. The investigation states that it considers the project components as very minor and thus would not have a significant effect on the long-term stability of the site. The investigation concludes that the placement of the unpermitted development on the bluff has not significantly altered the grade of the slope from a geotechnical perspective and will not have a significant impact upon the stability of the slope, either positively or negatively. Although the applicant's geologist has concluded the proposed development isn't adversely affecting the stability of the slope, the development itself is subject to significant hazards. The Commission finds that in order to be consistent with Section 30253 of the Coastal Act, development must be sited such that it will be located in an area with a minimum factor of safety against sliding of greater than 1.5 throughout its useful economic life, assumed to be 75 years; however,

this is not the case here. The proposed project would be located on an area that has a low factor of safety of 1.21. Development in such a hazardous area does not minimize risk to life and property.

The unpermitted development on the bluff face, consisting of the stairway and the retaining walls, has also substantially altered the natural landform and possibly contributed to erosion. The retaining walls on the bluff face are neither required to protect a coastal dependent use nor to protect any authorized existing structures. The installation of the new unpermitted stairway in a different location than the previously existing stairs on a coastal bluff slope, which is inherently unstable, required cutting into the bluff face and filling, creating a series of terraced switchbacks composed of wooden railroad-tie retaining walls and stairs in a previously undisturbed bluff face. The unpermitted grading and development also resulted in the removal of the previously existing bluff vegetation, cutting into the bluff slope and possibly contributing to erosion and instability.

In past permit and enforcement actions, the Commission has found that development on steep bluffs, as is the case here, has been found to have the potential to significantly exacerbate the natural processes of erosion. Erosion rates are often greater when structures are built on the bluff face. Rainwater running off such structures over time tends to undercut and erode the area of the bluff immediately behind and down slope of the structure. Additionally, the loss of vegetation through the altering of the natural landforms increases the potential for erosion to occur. In this case, the unpermitted stairway and retaining walls may result in potential increased erosion of the bluff slope because previously undisturbed bluff vegetation was removed and extensive areas of bare unanchored sandy soil were exposed on the bluff face. Furthermore, given the low factor of safety of the area of the proposed development, the stairway itself may potentially require the construction of additional bluff slope stabilization devices to protect the stairs.

2. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, the applicant submitted a wave run-up, flooding, and erosion hazard analysis, titled *Wave-Runup & Coastal Hazard Study, 3335 Ocean Boulevard, Corona Del Mar, CA* prepared by Skelly Engineering dated August 2004. The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design. The study states that there is a 200 foot wide sandy beach in front of the property 99.9% of the time and that aerial photographs over the last three decades show no overall shoreline retreat in general. This beach is due, in part, to the sheltering effect of the east jetty at the entrance to Newport Bay and the rocky headlands to the east, and as long as the jetty and headlands are present the beach should be fairly stable. In addition, the study states that the long-term erosion rate is approximately zero. Various other findings are discussed in this study and it concludes by stating: " ... wave runup and overtopping will not significantly impact this property over the life of the proposed improvements. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave or wave runup protection. No shore protection is proposed or should be necessary in the next 75 years. The improvements minimize risks from flooding."

Although the applicants' report indicates that the site is safe for development (from a wave erosion standpoint) at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes. For example, the study states that there is no general overall shoreline retreat in the area due to the sheltering effect of the Newport Harbor jetty and rocky headlands. As long as this jetty and rocky headlands are present the study concludes that the beach should be fairly stable. However, if something were to happen that would cause damage to the jetty and rocky headlands, then shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

CONCLUSION

To meet the requirements of the Coastal Act, new development must be sited and designed to: "*Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*" As proposed, the development is located in a hazard prone area where risks to life and property are not minimized. Furthermore, the unpermitted development on the bluff face, consisting of the stairway and the retaining walls, has also substantially altered the natural landform and possibly contributed to erosion. Thus, the Commission finds that the project is not consistent with the geologic hazards policy of the Coastal Act. New development, such as the proposed, should be sited and designed so that risks to life and property are minimized in areas of geologic hazard. Therefore, the Commission finds that the proposed project is inconsistent with Section 30253 of the Coastal Act and therefore must be denied.

D. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

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

Section 30240 (b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The project site contains beach area and bluff face on the seaward side of Ocean Boulevard, directly adjacent to Corona del Mar State Beach, a public recreation area. Public access is available directly seaward of the toe of the bluff on the sandy public beach (Corona del Mar State Beach). Development at this site, if approved, must be sited and designed to be compatible with Sections 30210 and 30240(b) of the Coastal Act. Section 30210 of the Coastal Act states that recreational opportunities shall be provided to the public. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas.

The proximity of the proposed project to Corona Del Mar State Beach, a public beach, raises Coastal Act concerns, as it is new seaward encroaching development that can discourage use of the public beach. Development adjacent to public areas can diminish the value of the beach for public use by giving the impression of privatization of public areas. For instance, the patio areas and stairway landing proposed at this site create an impression that the surrounding area is private and that the public should use areas of the beach well seaward of the site. This forces the public to move more seaward to enjoy the beach and thus has an adverse impact on public use of the beach. In addition, a particular concern is during the winter when the width of the beach narrows. The narrowing of the beach would force the public to use the more inland portions of the beach that are adjacent to the toe of the bluff. However, the perception of privatization created in this area would dissuade the public from using the beach adjacent to the toe of the bluff resulting in adverse impacts upon public use of the beach.

To counteract the potential adverse public access impacts, the applicant has proposed to grant a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. However, the applicant's proposal lacks adequate supplemental information to determine the effectiveness of the proposal at addressing public access impacts. The specific area that the applicant proposes to offer for public use has not been clearly identified. Also, the applicant has not proposed any type of signage that would adequately identify the area as a public use area. Furthermore, details regarding who would accept the easement and maintain it were not disclosed. Thus, although the applicant's proposal to grant an easement for public use on site has been made, the proposal lacks important supplemental information. Therefore, public access issues remain to be fully addresses.

E. ALTERNATIVES

Due to the project's impact on coastal views and the alteration of natural landforms, possible project alternatives were requested from the applicant in order to find an approvable project that would limit impact on coastal views and alteration of natural landforms. The applicant has provided the following alternatives.

Applicant's 1st Alternative

The applicant's 1st Alternative (Exhibit #4) would consist of: leaving the existing stairway intact, but removing the existing retaining walls located on the lower portion of the lot; re-contouring of the slope to a natural condition and plant with drought tolerant, non-invasive vegetation; painting the upper portion of the stairway a color that helps blend into the background; and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. While this alternative would remove the retaining walls located on the lower portion of the lot and re-contour the slope to a natural condition, this alternative would still result in significant visual impacts since the stairway would remain thus be inconsistent with Section 30251 of the Coastal Act. Furthermore, development would still be located in a hazard prone location that has a low factor of safety and wouldn't be consistent with Section 30253 of the Coastal Act.

Applicant's 2nd Alternative

The applicant's 2nd Alternative (Exhibit #5) would consist of: removing the existing stairway completely and replacing it with a suspended stairway all the way down to the flat sandy portion of the lot in a least visually intrusive configuration; removing the existing

retaining walls located on the lower portion of the lot; re-contouring of the slope to a natural condition and plant with drought tolerant, non-invasive vegetation; painting the stairway a color that helps blend into the background; and the grant of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. This alternative would remove the existing stairway and retaining walls and re-contour the slope to a natural condition. In addition, the new proposed stairway design would resemble the pre-coastal stairway that was previously located on site (although it would be in an entirely different location). However, the new stairway would have adverse visual impacts and involve grading on the bluff face that would still be inconsistent with Section 30251 of the Coastal Act. Furthermore, development would still be located in a hazard prone location that has a low factor of safety and wouldn't be consistent with Section 30253 of the Coastal Act.

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant already possesses a substantial residential development of significant economic value of the property. A project alternative does exist on site and that would be a no project alternative. A no project alternative would not deny access to the beach below, as access to the beach below would still be available near the site to the east (down-coast) at a public access way from Inspiration Point to the public beach (Corona Del Mar State Beach).

F. VIOLATIONS

The development of which the Commission is aware that occurred on site without benefit of the required coastal development permit consists of grading and landform alteration of a coastal bluff and beach and the construction/installation of a stairway along the bluff face, with retaining walls located on the upper and lower bluff face and sandy beach; as well as the following additional development, which has been removed: concrete patio, chain link fence, storage shed (with sink and toilet) and storage cabinets located on the lower bluff face and sandy beach.

The above-referenced development occurred prior to submission of this permit application. The Commission previously determined that this development constitutes unpermitted development that is subject to the permit requirements of the Coastal Act, in Order No. CCC-04-CD-01. The applicant is requesting after-the-fact approval for the first part listed above: a stairway and associated grading and retaining walls located on the upper, mid and lower bluff face and sandy beach. Since the unpermitted development is inconsistent with the Chapter 3 policies of the Coastal Act, the Commission is denying this application.

Although development has occurred prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action including potential judicial action and administrative orders, as well as the recordation of a notice of violation, as provided for in Section 30812 of the Coastal Act with regard to the alleged violation, nor does it constitute any finding of legality of any development undertaken on the subject site without a coastal permit.

G. LOCAL COASTAL PROGRAM

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

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

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

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

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

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

The construction of the proposed project is inconsistent with these policies in the City's certified LUP and as well as Chapter 3 policies of the Coastal Act discussed previously, specifically Sections 30251 and 30253. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration and avoid negative visual impacts. Section 30253 of the Coastal Act mandates that development minimize risks to life and property in areas of high geologic, flood, and fire hazard. Development on the coastal bluff would result in development in hazard prone areas, cause landform alteration and adverse impacts upon scenic resources which is inconsistent with these Sections of the Coastal Act. Granting after-the-fact authorization for the proposed development, despite the fact that it would violate all of the aforementioned policies, would prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required, by Section 30604(a). The proposed project is also inconsistent with the City's LUP policy regarding coastal bluff sites. Public views were not taken into consideration as they have been adversely impacted by the proposed project. In addition, the grading, cutting and filling of the bluff face, which has adversely altered the scenic value of the bluff, was not necessary to install erosion-preventive devices to assure the stability of the bluff. Therefore, the project is found inconsistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal Act and must be denied.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation

measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment.

As described above, the proposed project has adverse environmental impacts. There is a feasible alternative or mitigation measure available (i.e. no project alternative). Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there is a feasible alternative that would lessen significant adverse impacts that the activity would have on the environment. Therefore, the project must be denied.

H:\FSY\Staff Reports\Oct05\5-04-214-[Battram]RC(CDM)

Appendix "A"

A. 3431 Ocean Boulevard (Located 4 lots down-coast from subject site): CDP No. 5-01-191-[Tabak], CDP No. 5-02-203-[Tabak] and 5-02-203-A1-[Tabak]

At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-01-191-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence. The proposed structure would have covered virtually the entire upper and lower bluff face areas. The primary issues of the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites. The visual impact arguments made in the Commission's denial of the Tabak application are equally applicable in the subject application.

At the January 2003 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-02-203-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence and also demolition and replacement of existing wooden staircase to the beach. The proposed project had been reduced compared with a prior proposal. The Commission found that the proposed development was consistent with the pattern of development in the immediate vicinity and the project would not have a cumulative adverse impact on visual coastal resources. Under this proposal, living space additions were restricted to the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. However, excepting the re-construction of a pre-coastal stairway confined to a narrow alignment that was proposed to be shared with the neighboring property (i.e. Halfacre), no other additions were allowed below the 33-foot elevation contour upon the lower bluff face or on the sandy beach.

At the March 2005 Commission Hearing, the Commission approved an Immaterial Amendment to Coastal Development Permit Application No. 5-02-203-A1-[Tabak] that proposed redesign of the previously approved project including revision of an approximate 22-foot long portion of the previously approved stairway located at the base of the bluff and also the grading would now consist of 3,400 cubic yards of cut and export to an area outside of the coastal zone. No habitable area would extend past the approved line of development for enclosed area (48-foot contour) and the pool would not extend past the approved line of development for accessory structures (33-foot contour).

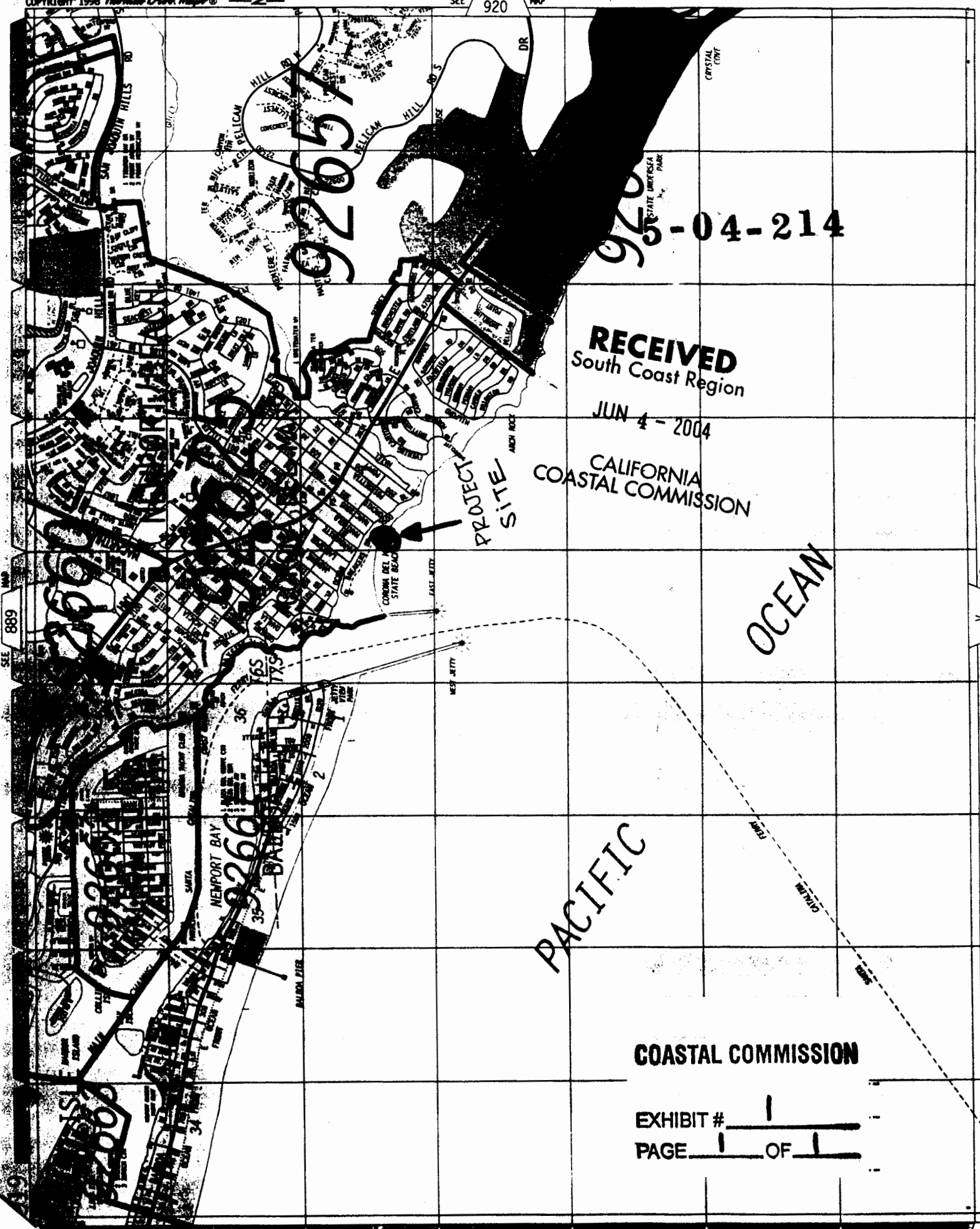
B. 3425 Ocean Boulevard (Located 3 lots down-coast from subject site): CDP No. 5-03-100-[Halfacre]

At the January 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-03-100-[Halfacre] for the conversion and addition to an existing basement to living area, construction of a new basement-level deck, construction of a new sundeck on the bluff face that does not extend any further than the 33-foot contour line, a new stairway connection to an approved stairway leading down to

the toe of the bluff located on the downcoast adjacent property (i.e. Tabak), removal and replacement of existing side yard and rear yard fences, and after-the-fact approval of two 2nd floor decks on the seaward side of the existing single-family residence. The primary issues before the Commission were the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. The Commission found that the proposed development, as conditioned, was consistent with the pattern of development in the immediate vicinity and the project would not have a cumulative adverse impact on visual coastal resources and would be consistent with the hazard policies of the Coastal Act. The proposed new habitable space adhered to the 48-foot bluff elevation contour limit established for CDP No. 5-02-203-[Tabak]. As conditioned, the proposed project also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements. No other accessory improvements were allowed below the 33-foot elevation contour upon the lower bluff face or on the sandy beach.

C. 3415 Ocean Boulevard (Located 1 lot down-coast from subject site): CDP No. 5-01-112-[Ensign]

At the February 2002 Commission Hearing, the Commission approved Coastal Development Permit No. 5-02-112-[Ensign] for the after-the-fact approval of a new switchback bluff face stairway with keystone-type earth retention blocks, landscaping and in-ground irrigation. The primary issues before the Commission were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, community character and impacts to public access. As submitted, the proposed project raised issues with Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The Commission found that the proposed stairway that may have followed a pre-Coastal Act pathway, as conditioned, does not present an adverse visual impact because it follows the natural topography of the bluff, was effectively screened with vegetation and was consistent with the character of the surrounding area. The development proposed in the subject application includes structures that were not pre-coastal unlike those approved by the Commission in the Ensign project.



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South Coast Region

JUN 4 - 2004

CALIFORNIA
COASTAL COMMISSION

OCEAN

PACIFIC

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

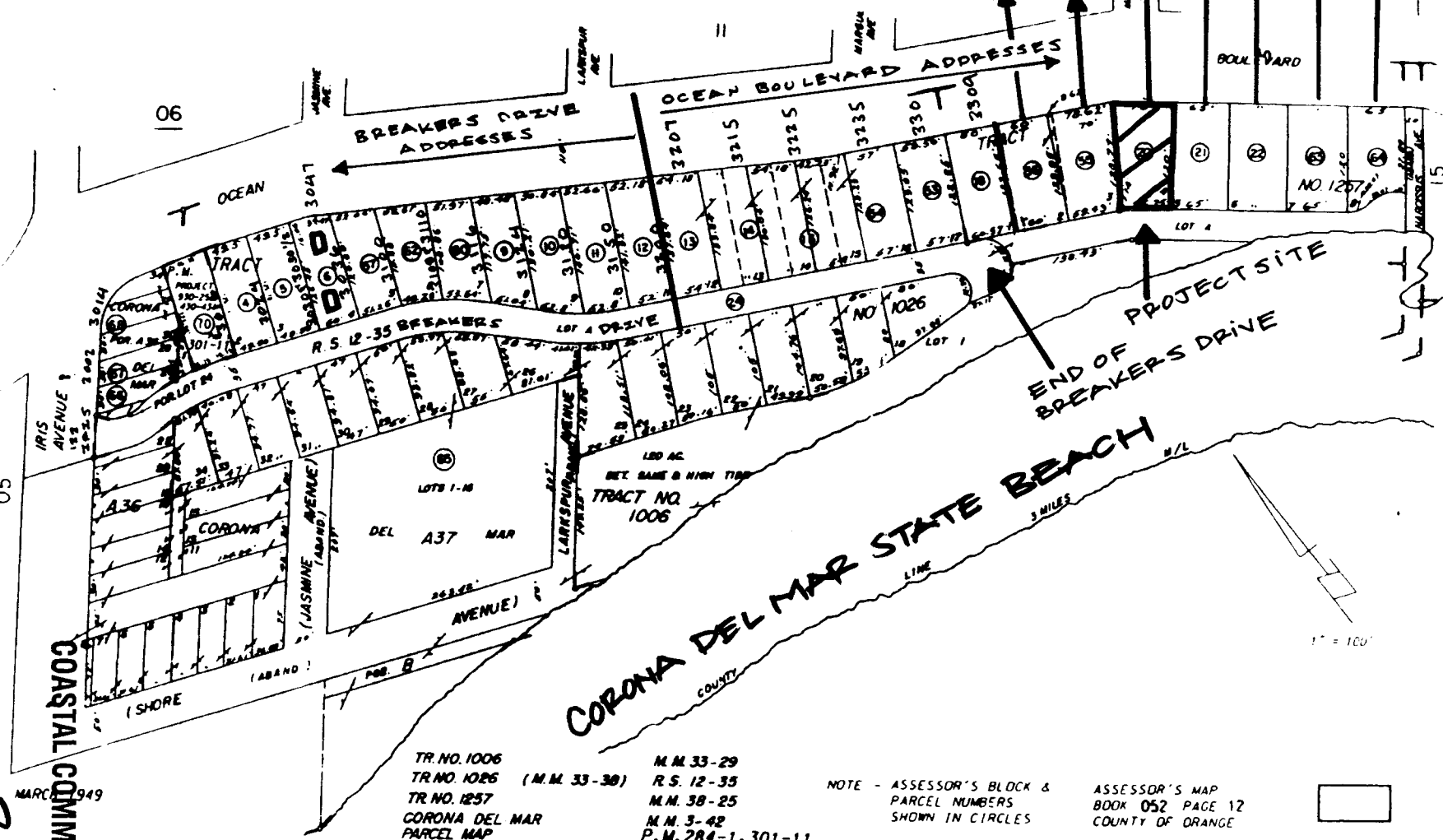
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EXHIBIT # 2
PAGE 1 OF 1

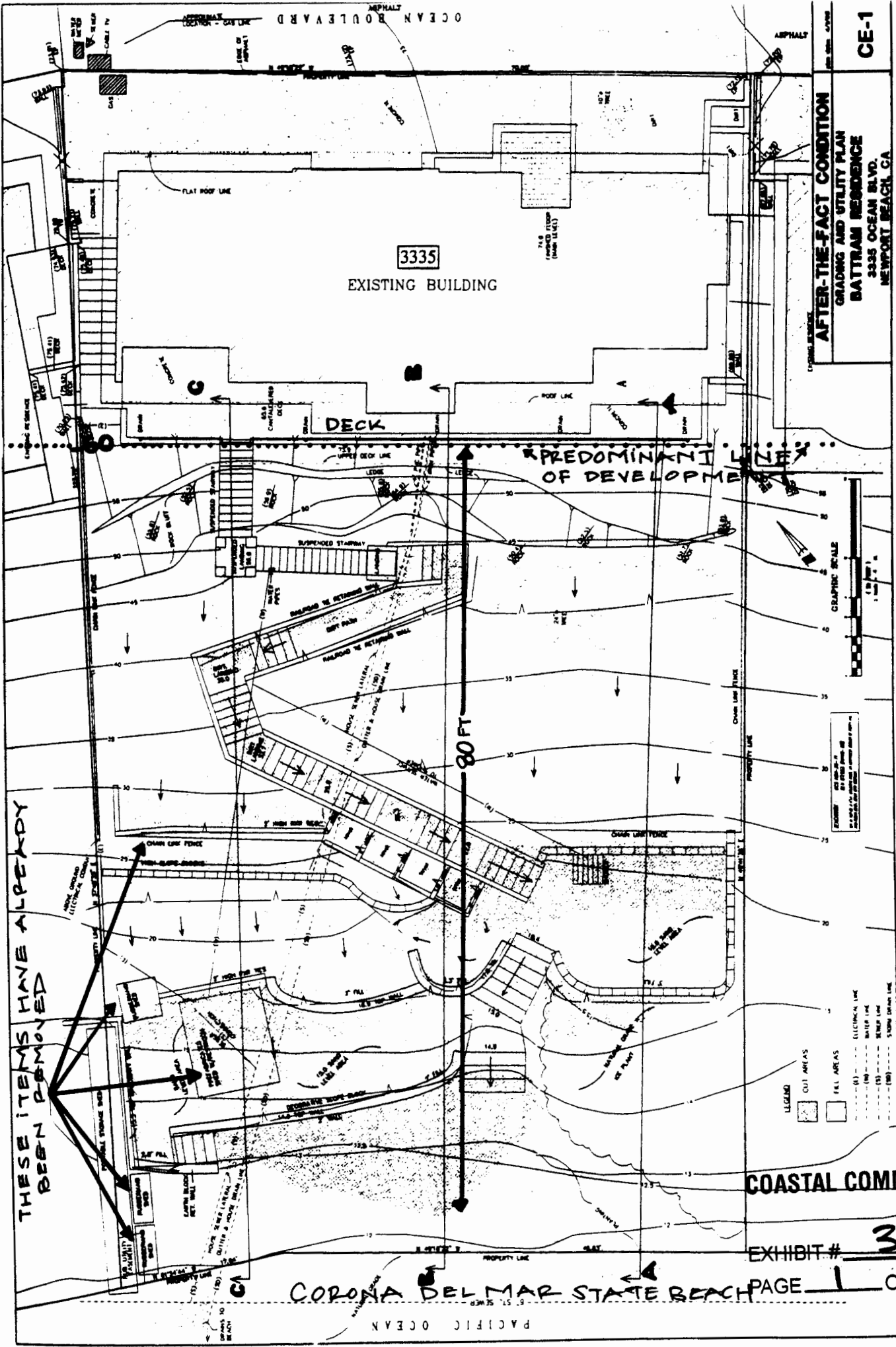
COASTAL COMMISSION

05

06



INSPIRATION POINT



CE-1

AFTER-THE-FACT CONDITION
GRADING AND UTILITY PLAN
BATTRAM RESIDENCE
3335 OCEAN BLVD.
NEWPORT BEACH, CA

THESE ITEMS HAVE ALREADY
BEEN REMOVED

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 4

CORONA DEL MAR STATE BEACH

PACIFIC OCEAN

70.0
65.0
60.0
55.0
50.0
45.0
40.0
35.0
30.0
25.0
20.0
15.0
10.0
5.0

PROPERTY LINE

EXHIBIT # 3
PAGE 2 OF 4

COASTAL COMMISSION

SLOPE
BLOCK
(TYP)

FILL

CUT

SLOPE GRADE

73.9 DECK

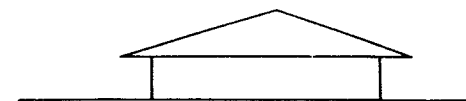
65.6 DECK

73 FS

SLOPE GRADE

SECTION A-A

SCALE: HORIZ: 1"=8'
VERT: 1"=8'



70.0
65.0
60.0
55.0
50.0
45.0
40.0
35.0
30.0
25.0
20.0
15.0
10.0
5.0

PROPERTY LINE

EXHIBIT # 3
PAGE 3 OF 4

COASTAL COMMISSION

SLOPE
BLOCK
(TYP)

CUT

FILL

PLANTER

PLANTERS

FILL

CUT

RAILROAD
TIES (TYP)

WALKWAY

CUT

CUT

CUT

RAILROAD
TIES (TYP)

WALKWAY

FILL

73.9
DECK

65.6
DECK

SLOPE GRADE

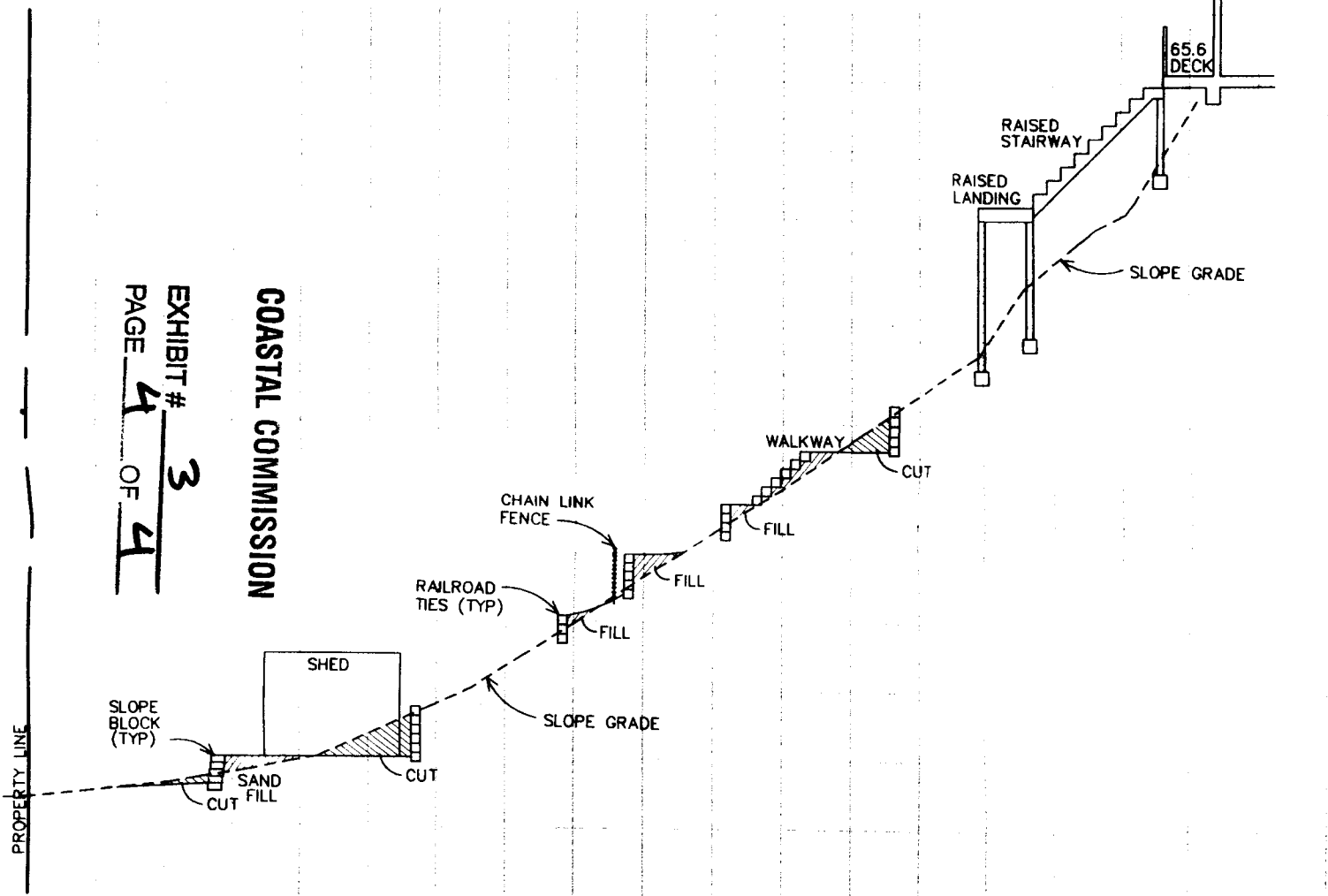
73 FS

SECTION B-B

SCALE: HORIZ: 1"=8'

VERT: 1"=8'

70.0
65.0
60.0
55.0
50.0
45.0
40.0
35.0
30.0
25.0
20.0
15.0
10.0
5.0



COASTAL COMMISSION
EXHIBIT # 3
PAGE 4 OF 4

SECTION C-C

SCALE: HORIZ: 1"=8'
VERT: 1"=8'

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PROPERTY LINE
N 50°00'00" W 5000.00'

8/31/05

CE-4

EXISTING BUILDING

3335

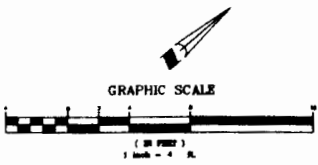
RESIDENT

ALTERNATE 1 CONDITION

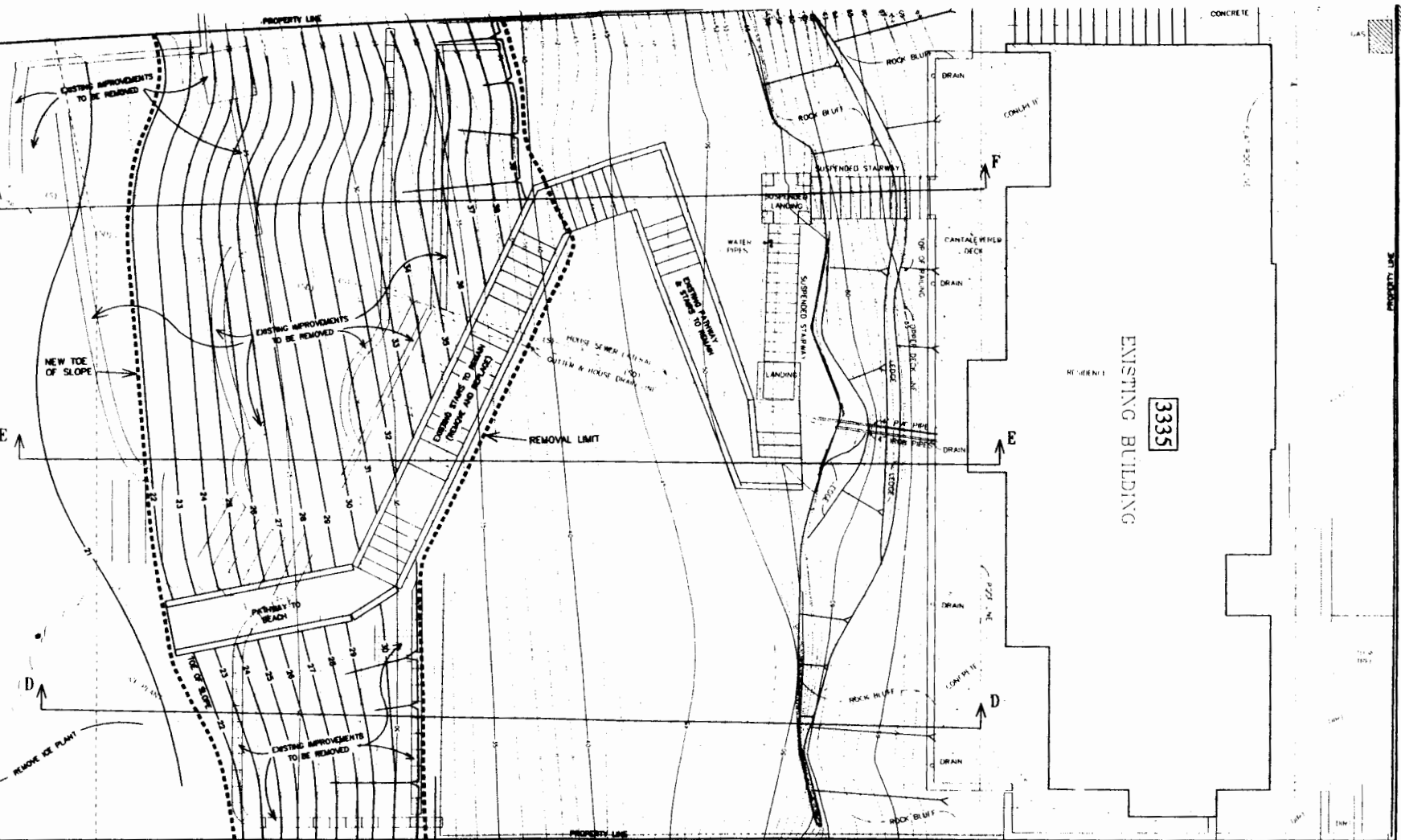
BATTRAM RESIDENCE
3335 OCEAN BLVD.
NEWPORT BEACH, CA

8/31/05

CE-4



N 47°00'00" E 120.00'



COASTAL COMMISSION

EXHIBIT #

4

PAGE

1

OF

1

CORONA DEL MAR STATE BEACH

8/31/05

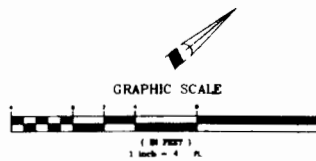
CE-6

ALTERNATE 2 CONDITION

BATTRAM RESIDENCE
3335 OCEAN BLVD.
NEWPORT BEACH, CA

EXISTING BUILDING

3335



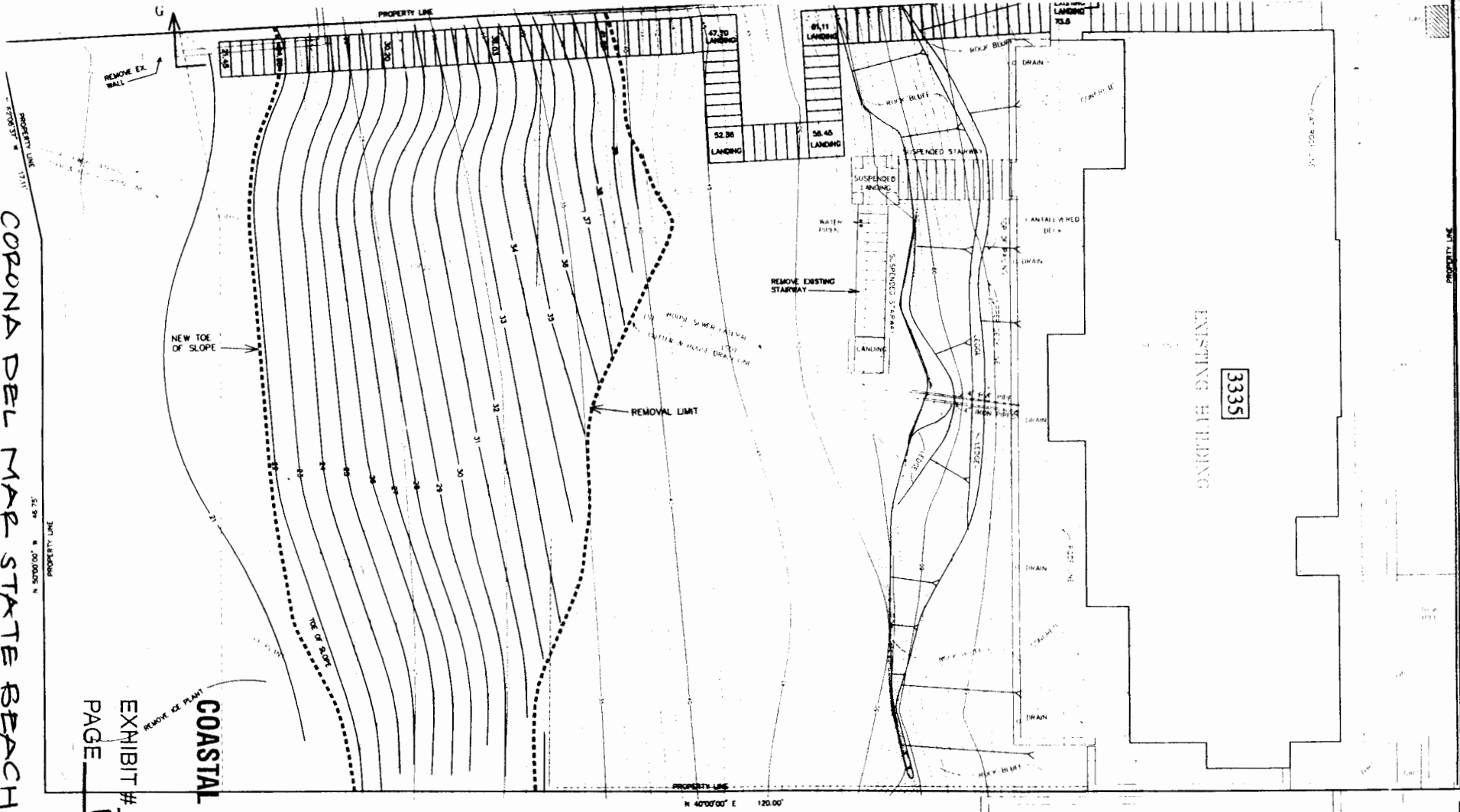
- (1) ELEVATION LINE
- (2) WATER LINE
- (3) CENTER LINE
- (4) STORM DRAIN LINE

COASTAL COMMISSION

EXHIBIT # 5

PAGE 1 OF 1

CORONA DEL MAR STATE BEACH



CALIFORNIA
COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 1

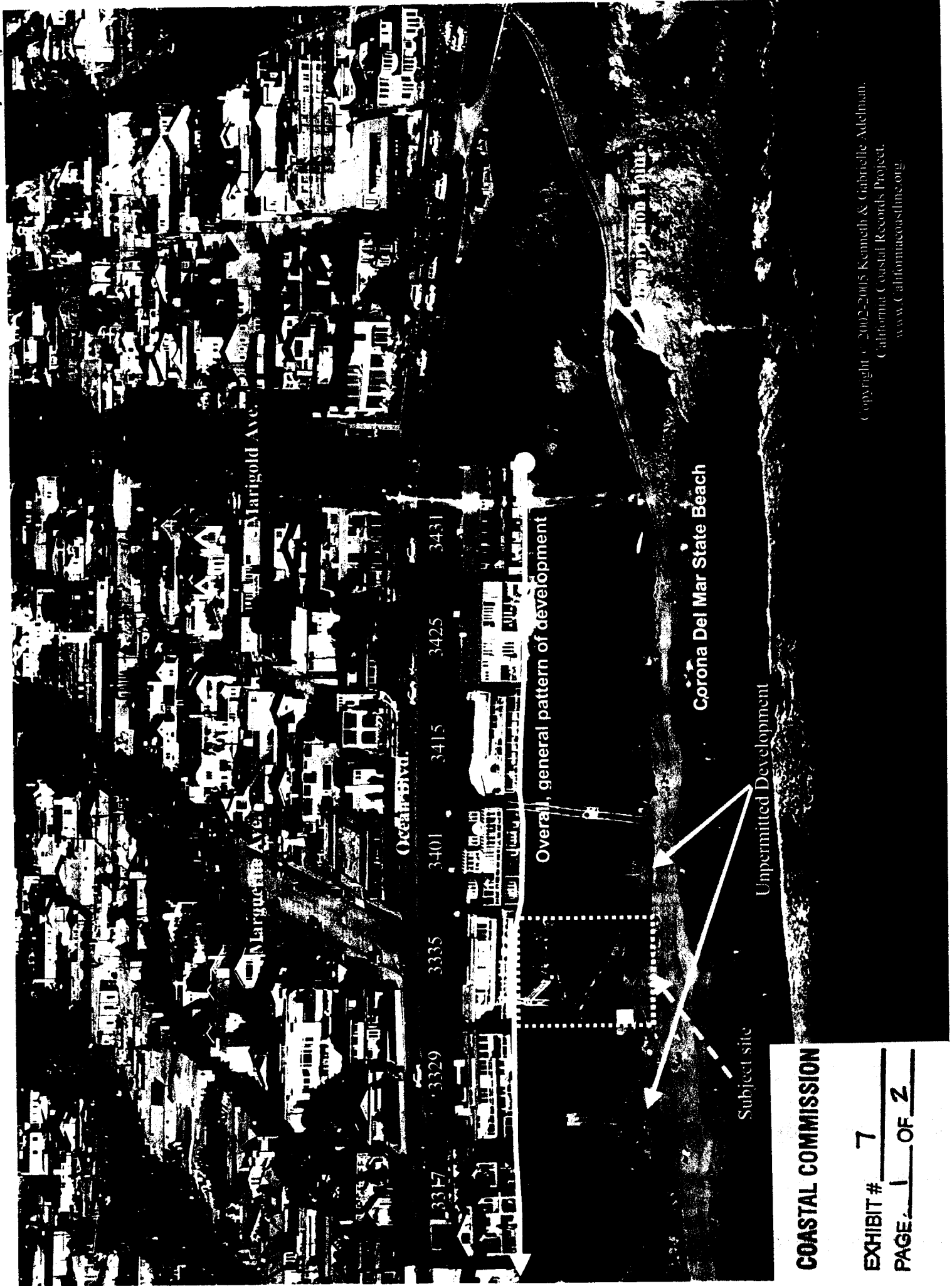
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1. 07/04/2020

THE ABOVE DATE ARE FULL AND CORRECT

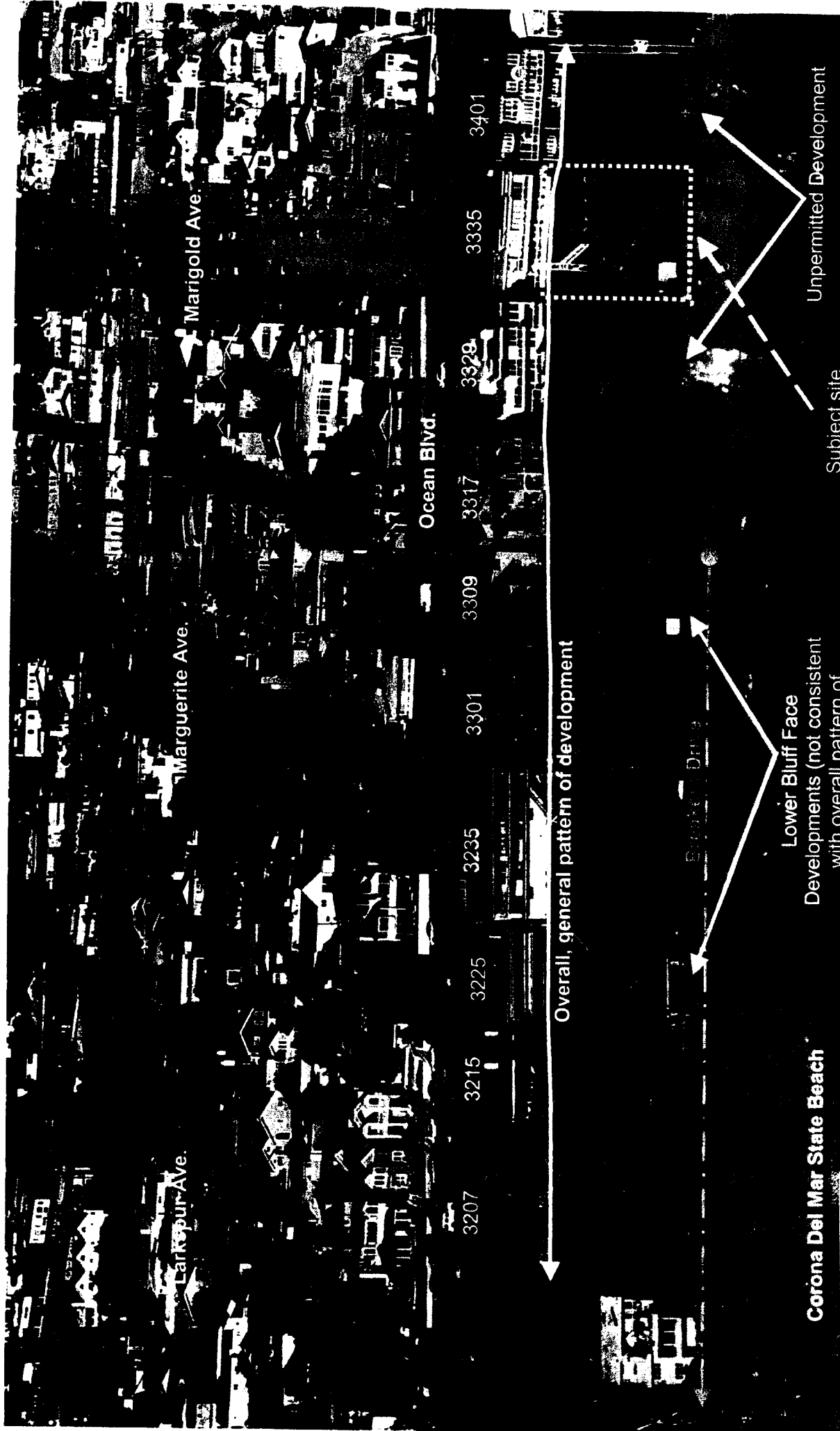
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COASTAL COMMISSION

EXHIBIT # 7

PAGE 1 OF 2



Corona Del Mar State Beach

Lower Bluff Face
Developments (not consistent
with overall pattern of
development)

Subject site

Unpermitted Development

COASTAL COMMISSION

EXHIBIT # 7
PAGE 2 OF 2

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CALIFORNIA COASTAL COMMISSION

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SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
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**F10**

Staff:
Staff Report:
Hearing Date:

SMR-SF
February 27, 2004
March 19, 2004

**FINDINGS FOR CONSENT AGREEMENT AND CEASE AND DESIST ORDER NO.
CCC-04-CD-01**

CEASE AND DESIST ORDER: CCC-04-CD-01

RELATED VIOLATION FILE: V-5-00-048

PROPERTY LOCATION: 3335 Ocean Boulevard, Corona del Mar, Orange County, APN 052-120-020 (**Exhibit 1**)

DESCRIPTION OF PROPERTY: 8052-square-foot (0.18-acre) oceanfront lot, immediately inland of Corona del Mar State Beach

PROPERTY OWNERS: Kenneth Battram

VIOLATION DESCRIPTION: Unpermitted grading and landform alteration of a coastal bluff and beach; unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

SUBSTANTIVE FILE DOCUMENTS: Cease and desist order file No. CCC-04-CD-01
Background Exhibits 1 through 9

CEQA STATUS: Categorically exempt (CEQA Guidelines (CG) §§ 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321)

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 36

I. SUMMARY

Staff recommends that the Commission approve and issue Commission Consent Agreement and Cease and Desist Order No. CCC-04-CD-01 ("Consent Order") to remove unpermitted development at 3335 Ocean Boulevard, Corona del Mar ("subject property") and to submit a Coastal Development Permit (CDP) application to retain the unpermitted stairway. The unpermitted development consists of grading and landform alteration of a coastal bluff and beach and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets. Mr. Kenneth Battram is the owner of the subject property.

The subject property is located in the Corona del Mar area of Newport Beach, immediately inland of Corona del Mar State Beach. The subject property contains a single family home on the bluff top portion of the lot, and a bluff face that cascades down to the sandy beach. The unpermitted development is located on the bluff face and sandy beach portions of the subject property, adjacent to Corona del Mar State Beach. Corona del Mar State Beach is a public beach that serves as a popular visitor destination point for recreational uses. Several hundred feet southeast (four properties down coast) of the subject property is a public bluff park known as Inspiration Point, which has a public access way from Inspiration Point to the beach below. The unpermitted development on the subject property is visible from the sandy beach and bluff park. Regarding coastal planning and development, Newport Beach has a certified Land Use Plan but does not yet have a certified Local Coastal Program.¹ The Commission therefore has jurisdiction for issuing coastal development permits and for enforcing the provisions of the Coastal Act in this area.

The unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in §30106 of the Coastal Act (Public Resources Code). The development was undertaken without a coastal development permit, in violation of Public Resources Code §30600. Therefore, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act. The proposed Consent Order would require the removal of all unpermitted development from the flat/sandy beach portion of the subject property and the submittal of a CDP application for retention of the stairway, retaining walls, and grading on the bluff slope. If the Commission denies the CDP application for after-the-fact authorization of the stairway, retaining walls, and grading on the bluff slope, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Mr. Battram shall then be required to submit, for the review and approval of the Executive Director of the Commission, a Stairway Removal and Bluff Slope Revegetation and Monitoring Plan for the bluff face portion of the subject property that provides for removal of all unpermitted development and revegetation of the bluff slope within 30 days of the Executive Director's approval of such plan.

¹ The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 2 OF 36

II. HEARING PROCEDURES

The procedures for a hearing on a proposed cease and desist order are outlined in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a cease and desist order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR §13186, incorporating by reference §13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions of any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Order.

III. MOTION

MOTION: I move that the Commission issue Consent Agreement and Cease and Desist Order No. CCC-04-CD-01 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

The Commission hereby issues Consent Agreement and Cease and Desist Order No. CCC-04-CD-01 set forth below and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 3 OF 36

IV. PROPOSED FINDINGS

A. Description of Unpermitted Development

The violation consists of unpermitted grading and landform alteration of a coastal bluff and beach and unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets (**Exhibit 2**).

B. Background and Administrative Resolution Attempts

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a CDP. On May 8, 1985, the Commission issued Administrative CDP No. 5-85-218 for additions and remodeling of the original single-family residence on the subject property, including construction of a new roof, seaward extensions of decks, and maintenance and painting of the private beach stairs (**Exhibit 3**). Aerial photographs of the subject property indicate that a stairway existed on the down coast (eastern) portion of the subject property in 1972 and in 1978 (**Exhibit 4a-4b**).

Aerial photographs of the subject property, however, indicate that this stairway was in fact demolished and removed from the subject property, and a new stairway down the bluff was constructed in a different configuration and location as of 1987 (**Exhibit 4c**). The 1985 CDP contained no provisions for demolition and construction of a new stairway in a different location on the property. The new stairway was constructed without the benefit of a CDP and is new unpermitted development.

None of the additional development cited above (chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets on the lower bluff face and beach) was authorized in a CDP either. This development is not visible in the 1972, 1978 and 1987 aerial photographs of the subject property (**Exhibit 4**), nor was it authorized in the administrative CDP approved in 1985. The proposed Order would require removal of all of the unpermitted development on the flat/sandy beach portions of the subject property, and the submittal of a complete CDP application for retention of the unpermitted stairway and retaining walls. Commission staff has advised Mr. Battram that the permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act.

Commission staff first notified Mr. Battram of the violation on the subject property in a letter dated May 7, 2001 (**Exhibit 5**). In this letter, staff informed Mr. Battram that an application to retain the unpermitted development would likely be denied, and recommended that Mr. Battram submit a CDP application for removal of the unpermitted development and restoration of the site, and gave him a deadline to submit a CDP application by June 15, 2001. Mr. Battram failed to submit a CDP application by this deadline. In a letter dated August 31, 2001, staff set a second deadline of September 28, 2001 for submittal of a CDP application, **COASTAL COMMISSION** Battram also failed to meet (**Exhibit 6**). In a letter dated April 3, 2003, staff set a third deadline of May 12, 2003 for submittal of a CDP application, again recommending that Mr. Battram apply to remove the unpermitted development (**Exhibit 7**). Mr. Battram failed to meet this

EXHIBIT # 8
PAGE 4 OF 36

deadline. South Coast District staff subsequently referred Violation File No. V-5-00-048 regarding this matter to Headquarters enforcement staff and recommended initiation of formal enforcement proceedings.

In a letter dated December 10, 2003, Commission staff issued a Notice of Intent (NOI) to commence Cease and Desist Order proceedings (**Exhibit 8**). The NOI stated the basis for issuance of the proposed Order, stated that the matter was tentatively being placed on the Commission's February 2004 hearing agenda, and provided the opportunity for Mr. Battram to respond to allegations in the NOI with a Statement of Defense form.

In telephone conversations with Mr. Battram's representative on February 6 and 13, 2004, staff determined that it was possible to resolve the violation through a Consent Order. Mr. Battram is willing to remove unpermitted development from the flat/sandy beach portion of the subject property and to submit a CDP application requesting after-the-fact authorization of the unpermitted stairway, retaining walls, and grading on the bluff slope. In the event that the Commission denies the CDP application for after-the-fact authorization of the stairway, retaining walls, and grading on the bluff slope, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Mr. Battram shall then submit, for the review and approval of the Executive Director of the Commission, a Stairway Removal and Bluff Slope Revegetation and Monitoring Plan for the bluff face portion of the subject property that provides for removal of all unpermitted development and revegetation of the bluff slope within 30 days of the Executive Director's approval of such plan. Consequently, Mr. Battram has not filed a Statement of Defense, but rather has signed a Waiver of Defenses form that notes his intent to resolve the Coastal Act violation through settlement with the Coastal Commission. Staff received the signed Waiver of Defenses form on February 27, 2004 (**Exhibit 9**).

C. Basis for Issuance of the Cease and Desist Order

The statutory authority for issuance of a proposed Cease and Desist Order is provided in §30810 of the Coastal, which states, in relevant part:

- (a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the Commission without securing the permit, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in §30106 of the Coastal Act (Public Resources **COASTAL COMMISSION** development was undertaken without a coastal development permit, in violation of Public

Resources Code §30600. Therefore, the Commission may issue a Cease and Desist Order under §30810 of the Coastal Act.

D. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a Consent Order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

E. Consent Agreement: Settlement

Section 30820(a)(1) of the Coastal Act provides that "civil liability may be imposed by the superior court in accordance with this article on any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission...in an amount that shall not exceed thirty thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500)." Mr. Battram is willing to resolve the violation administratively and through a settlement process. To that end, Mr. Battram has stated his intent to comply with the Consent Order. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Mr. Battram has agreed to pay a monetary settlement in the amount of \$4,000 (see Section 9.0 of the attached Consent Order).

F. Waiver of Defenses

In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the issuance and enforcement of the Consent Order, the parties agree not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

Staff recommends that the Commission issue the following Consent Order:

COASTAL COMMISSION

EXHIBIT # 8
PAGE 6 OF 36

CONSENT AGREEMENT AND CEASE AND DESIST ORDER CCC-04-CD-01

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders Kenneth Battram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to cease and desist from: (1) engaging in any further development on his property unless authorized pursuant to the Coastal Act and (2) continuing to maintain any development on his property that violates the Coastal Act, except as authorized herein. Accordingly, through the execution of this Consent Order, the Respondents agree to comply with the terms of the above-stated order and with the following terms and conditions.

1.0 TERMS AND CONDITIONS

- 1.1 Within 60 days of issuance of the Consent Order, Respondents shall remove all unpermitted development from the flat/sandy beach portion of the subject property, including concrete patio, storage shed and storage cabinets.
- 1.2 Within 60 days of issuance of the Consent Order, Respondents shall submit a complete CDP application for retention of the unpermitted stairway and retaining walls on the subject property. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property, Respondents shall remove the remaining unpermitted development on the subject property according to Sections 1.3 and 1.4 of the Consent Order. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property and the Respondents decide to challenge such a denial without first implementing Sections 1.3 and 1.4 of the Consent Order, the Commission shall have the full right to seek penalties for Respondents' failure to remove unpermitted development under Chapter 9 of the Coastal Act.
- 1.3 If a CDP application to retain the stairway, retaining walls, grading and any other unpermitted development on the bluff slope is denied, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Respondents shall then submit within 60 days for the review and approval of the Executive Director of the Commission a Stairway Removal and Bluff Slope Revegetation and Monitoring Plan for the bluff face portion of the subject property, and comply with all other terms of this Order regarding removal of the stairway. The Revegetation and Monitoring Plan (hereinafter, "Plan") shall be prepared by a qualified restoration professional and shall include the following:
- a) Goals and Performance Standards. Section A of the Plan shall present the following goals of the revegetation activities.

1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and

COASTAL COMMISSION

EXHIBIT # 8

PAGE 7 OF 36

1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
2. Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities. No invasive plants are permitted for revegetation.
3. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Plan will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
4. Section A of the Plan shall also include specific ecological performance standards that relate logically to the revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
5. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent vegetated areas vegetated undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture.

If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

COASTAL COMMISSION
EXHIBIT # 8
PAGE 8 OF 56

b) **Revegetation Methodology.** Section B of the Plan shall describe the methods to be used to revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:

1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the revegetation of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated shall not be disturbed by activities related to the Plan.
2. Specify that the revegetation of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation.
3. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using local native drought resistant plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area. Invasive plants are not permitted for the revegetation of the site.

c) **Monitoring and Maintenance.** Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

1. The Respondents shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration professional, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional revegetation activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of revegetation at the site.
2. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the revegetation project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the

COASTAL COMMISSION

EXHIBIT # 8
PAGE 9 OF 36

revised or supplemental restoration plan must be processed as a CDP or modification of Consent Agreement and Cease and Desist Order CCC-04-CD-01.

- d) Appendix A shall include a description of the education, training and experience of the qualified restoration professional who shall prepare the Plan. A qualified restoration professional for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of coastal bluff habitats.
 - e) Interim erosion control plans shall be included in the Plan. Interim erosion control measures shall be prepared by a qualified restoration professional and shall include the following:
 - 1. The following temporary erosion control measures shall be used: hay bales, wattles, silt fences. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
 - 2. Interim erosion control measures shall include, at a minimum, the following components:
 - a. A narrative describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
 - b. A detailed site plan showing the location of all temporary erosion control measures.
 - c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term revegetation and monitoring plan.
- 1.4 Within 30 days of the approval by the Executive Director of the documents submitted under Section 1.3, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under Section 1.3.

If a CDP application to retain the stairway is denied, or a complete CDP application is not submitted within nine months of the date of issuance of this Consent Order (whichever is shorter):

- 1. Remove the unpermitted stairway, retaining walls and all other unpermitted development from the bluff face.
- 2. Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 10 OF 36

3. Revegetate the bluff face as described in Section 1.3.
4. Submit to the Executive Director a report documenting the revegetation of the bluff face. The report shall include photographs that clearly show all portions of the bluff face on the subject property.
- 1.5 Within 60 days of the submittal of the report documenting the revegetation of the bluff face, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the Consent Order.
- 1.6 In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to Section 1.3 above, submit to the Executive Director monitoring reports. For the duration of the monitoring period, all persons subject to the Order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Consent Order, subject to twenty-four hours advance notice.

2.0 PERSONS SUBJECT TO THE ORDER

Mr. Kenneth Battram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing.

3.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is described as follows:

3335 Ocean Boulevard, Corona del Mar, CA, APN 052-120-20

4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted grading and landform alteration and unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets.

5.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810, and the Respondents have elected to not challenge the Commission's jurisdiction over this matter in the interest of settling and resolving it. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has jurisdiction to act as set forth in this Consent Order, and Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 11 OF 36

6.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual basis and the terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist Order dated December 10, 2003. Specifically, Respondents decided not to file a statement of defense and to waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Order. Respondents are not contesting the Commission's jurisdiction and basis for the purposes of adoption, issuance and enforcement of this Consent Order. Respondents' waiver herein is limited to a hearing on the Commission's adoption, issuance and enforcement of this Consent Order and no other hearing or proceeding.

7.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is March 19, 2004. This order shall remain in effect permanently unless and until rescinded by the Commission.

8.0 FINDINGS

This order is issued on the basis of the findings adopted by the Commission on March 19, 2004, as set forth in the attached document entitled "Findings for Consent Agreement and Cease and Desist Order No. CCC-04-CD-01."

9.0 SETTLEMENT/COMPLIANCE OBLIGATION

9.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$4,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payment amount by April 30, 2004 to the attention of Sheila Ryan of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.

9.2 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension, will constitute a violation of this Consent Order and shall result in respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, limiting, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public

COASTAL COMMISSION

EXHIBIT # 8

PAGE 12 OF 36

Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

10.0 DEADLINES

Prior to the expiration of the deadlines established by this Consent Order, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under this Consent Order, but cannot meet deadlines due to unforeseen circumstances beyond their control.

11.0 SITE ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

12.0 GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by respondents or their agents in carrying out activities pursuant to this Consent Order. Respondents acknowledge and agree (a) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (b) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

13.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the Order. However, pursuant to the agreement of the parties as set forth in this Consent Order,

COASTAL COMMISSION
EXHIBIT # 8
PAGE 13 OF 36

Respondents agree to waive whatever right they may have to challenge the issuance and enforceability of this Consent Order in a court of law.

14.0 SETTLEMENT OF CLAIMS

The Commission and respondents agree that this Consent Order settles all monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. However, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this order.

15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future respondents of the property, interest and facility, heirs and assigns. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Order.

16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 10.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

17.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

18.0 LIMITATION OF AUTHORITY

18.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.

18.2 Correspondingly, Respondents have entered into this Consent Order and waived their right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

COASTAL COMMISSION
EXHIBIT # 8
PAGE 14 OF 36

19.0 INTEGRATION

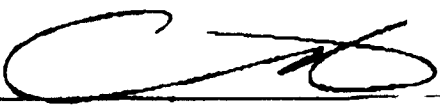
This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

20.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:



Kenneth Battram

2-27-09

Date

Executed in Monterey on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

Exhibits

1. Locus map for the subject property.
2. Photographs of unpermitted development on the subject property in 2000, 2001, and 2002.
3. Coastal Development Permit No. 5-85-218.
4. Aerial photographs of the subject property in 1972, 1978 and 1987.
5. Letter dated May 7, 2001, from Commission staff to Mr. Battram.
6. Letter dated August 31, 2001, from Commission staff to Mr. Battram.
7. Letter dated April 3, 2003, from Commission staff to Mr. Battram.
8. Letter dated December 10, 2003, Commission staff issuing a Notice of Intent (NOI) to commence Cease and Desist Order proceedings.
9. Waiver of Defenses form submitted to Commission staff dated February 27, 2004.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 16 OF 36



Exhibit 2a. September 2000 photograph of retaining walls, storage shed and cabinets on subject property.

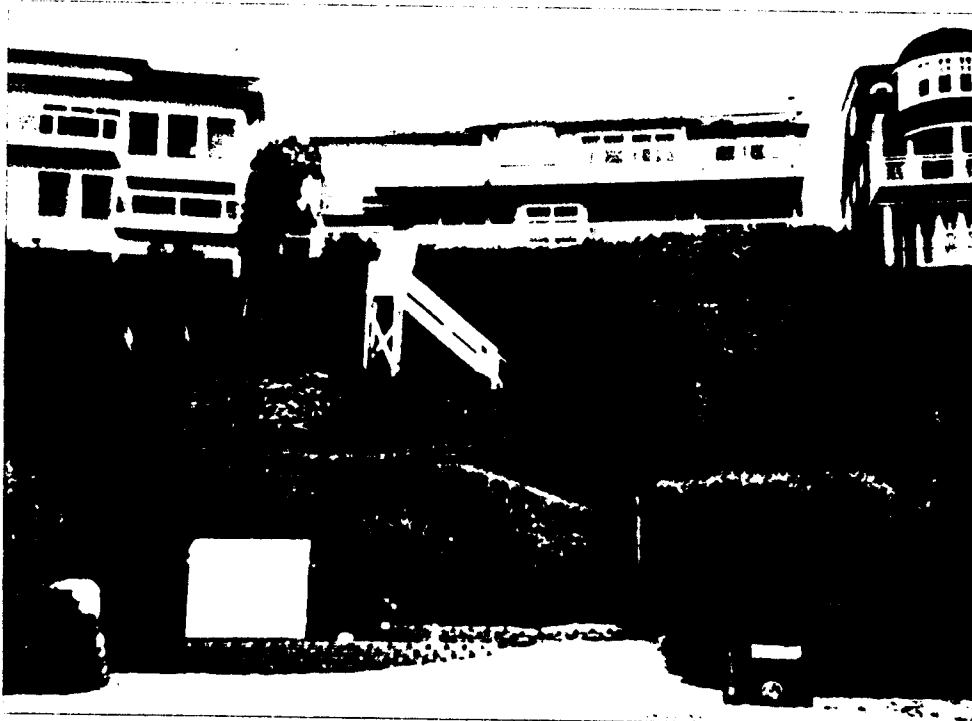


Exhibit 2b. March 2001 photograph of retaining walls, storage shed, stairway, and chain link fence on subject property.

STAL COMMISSION

EXHIBIT # 8
PAGE 18 OF 36



Copyright 2002 Ken Adelman, California Coastal Records Project.

Exhibit 2c. September 2002 photograph of
subject property.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 19 OF 36

California Coastal Commission
SOUTH COAST DISTRICT
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

Date: April 26, 1985

Permit Application No. 5-85-218 CK:sjl

ADMINISTRATIVE PERMIT

APPLICANT: Tom Schloessman

PROJECT DESCRIPTION: Additions to a two-story single family residence, which include extensions of the upper and lower floor decks, new roof, entryway, garage door, and the addition of 102 sq. ft. of living area.

PROJECT LOCATION: 3335 Ocean Blvd., Newport Beach

EXECUTIVE DIRECTOR'S DETERMINATION:

Pursuant to PRC Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

Additional reasons for this determination, and for any special conditions, may be discussed on the reverse (Page 2).

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

Wednesday, May 8, 1985 at 10:00

Redwood Empire Faire, 1055 North State Street, Ukiah

IMPORTANT - Before you may proceed with development the following must occur:

For this permit to become effective you must sign Page 2 of the enclosed duplicate acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development.

COASTAL COMMISSION

EXHIBIT # 8

PAGE 20 OF 36

MICHAEL L. FISCHER
Executive Director

by: [Signature]

Exhibit 3
CCC-04-CD-01
(Battram) Page 1 of 5



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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

see page 3

SPECIAL CONDITIONS:

None.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 21 OF 36

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

A. Project Description. The project is located at the top of a coastal bluff above Corona del Mar State Park on the seaward side of Ocean Blvd. in Corona del Mar. The proposed development consists of several additions and some remodeling of an existing 2411 sq. ft. single family residence. The project involves removal of the existing roof and construction of a new pitched roof; seaward extensions of the upper and lower floor decks; new entryway and garage door; and maintenance and painting of the private beach stairs. The dining room, kitchen, and master bathroom will be extended three feet seaward onto the existing decks, adding 102 sq. ft. of living area to the residence. The deck extensions would be within the stringline projection established by the adjacent residences.

B. Coastal Views.

The certified Land Use Plan of the City of Newport Beach has designated Ocean Blvd. in Corona del Mar as a "coastal view area". The coastal view policy in the LUP provides that:

Coastal Views

Where coastal views from existing roadways exist, any development on private property within the sight lines from the roadway shall be sited and designed to maximize protection of the coastal view. This policy is not intended to prohibit development on any site.

The residence is situated approximately 20 feet below the grade of Ocean Blvd. with the top of the existing roof approximately 11 feet below grade. The new pitched roof would increase the height of the structure by roughly six feet. The new height, though, would still be below the grade of Ocean Blvd. and would not impact the sight line from that roadway. The Executive Director therefore determines that the proposed project is consistent with the coastal view policy of the certified Land Use Plan and the provisions of Chapter 3 of the Coastal Act.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 22 OF 36

PERMIT AUTHORIZATION

Mr. Tom Schloessman
P.O. BOX 5665
Newport Beach, CA 92662-5665

Please be advised that you are hereby authorized to proceed with development of your project, permit number 5-85-218, which was reported to the Commission on May 8, 1985. Development of your project is subject to compliance with all terms and conditions specified in the Administrative Permit which was sent to you on April 26, 1985.

Should you have any questions please contact our office.

MICHAEL L. FISCHER
Executive Director

by: CR



COASTAL COMMISSION

EXHIBIT # 8
PAGE 24 OF 36

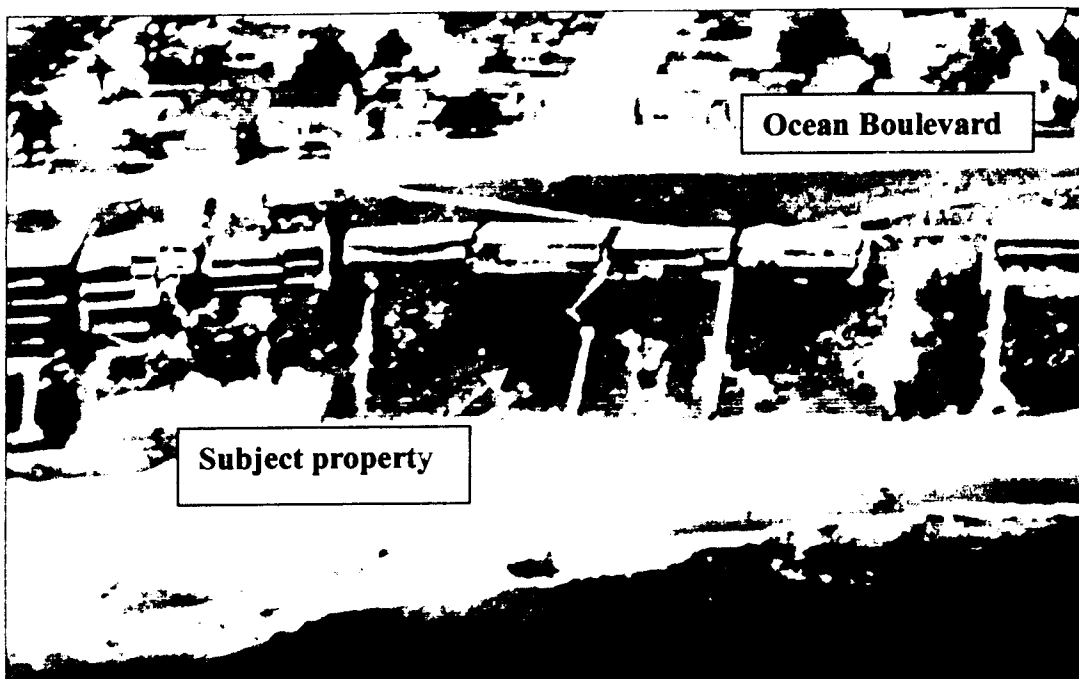


Image 723939, Dept. of Navigation and Ocean Development (now Dept. of Boating and Waterways).

Exhibit 4a. 1972 photograph of subject property.

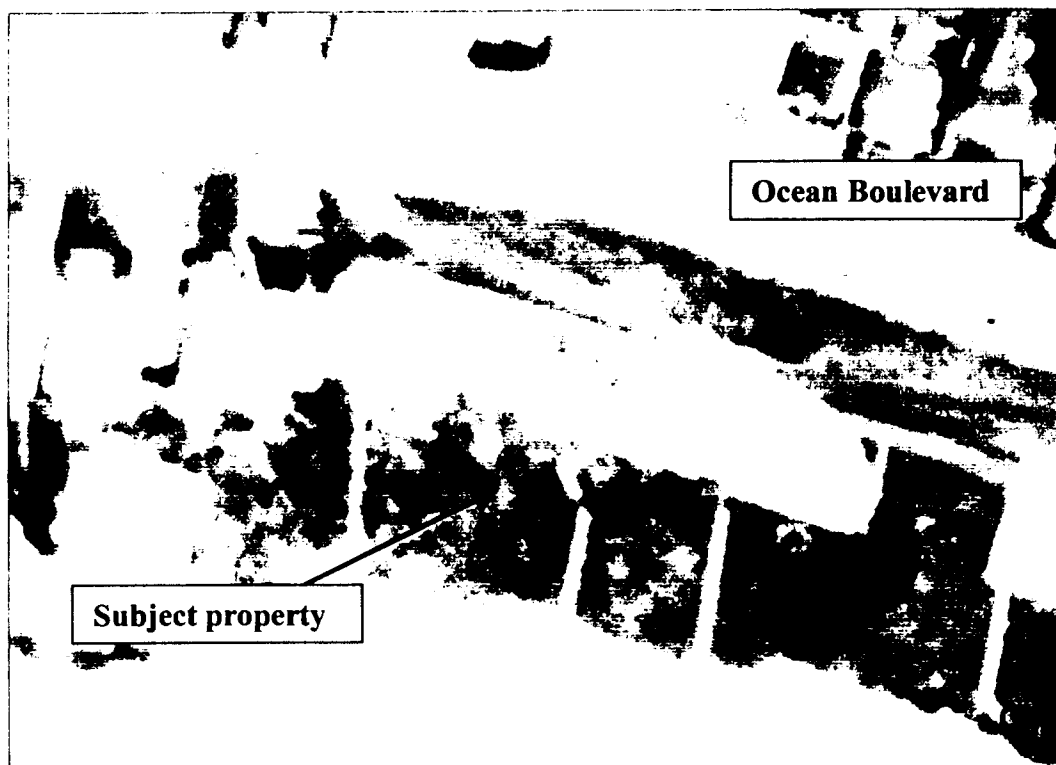


Image 4-23-78#203, California Dept. of Water Resources, April 23, 1978.

Exhibit 4b. 1978 photograph of subject property. Bluff face appears unaltered.

EXHIBIT # 8
PAGE 25 OF 36

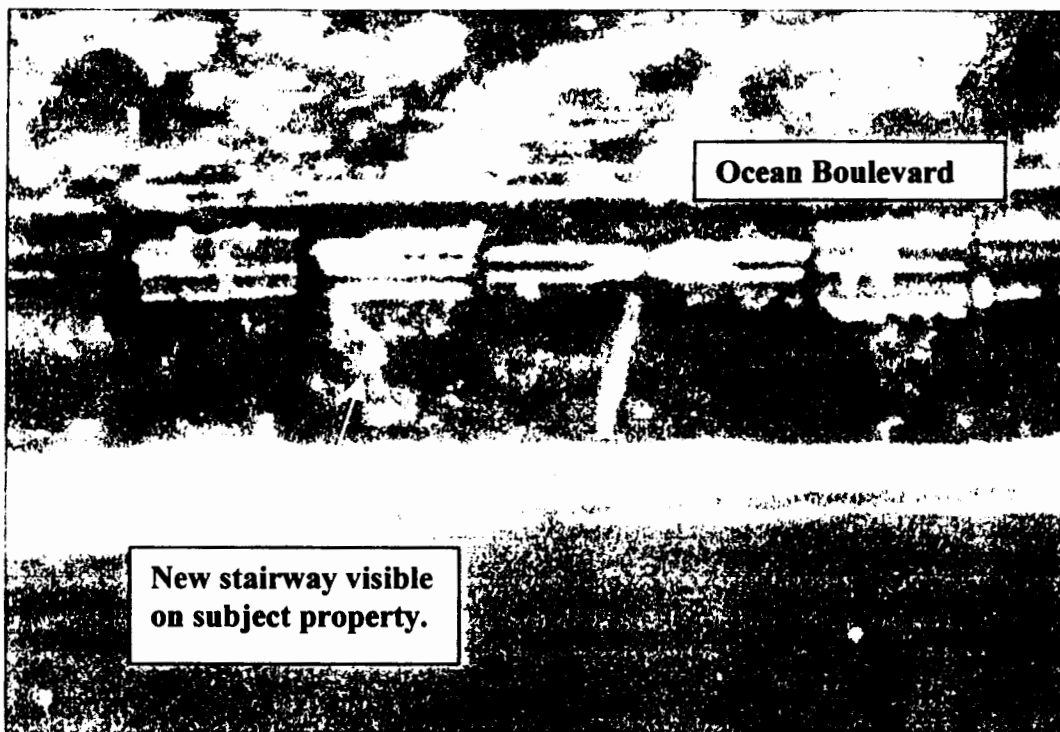


Image 1987-3-92, California Dept. of Water Resources, Summer 1987.

Exhibit 4c. 1987 photograph of subject property. New stairway is visible.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 26 OF 36

CALIFORNIA COASTAL COMMISSION

1 Coast Area Office
Ocean Gate, Suite 1000
Beach, CA 90802-4302
590-5071



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z584862962)

May 7, 2001

Kenneth Battram
17985 Skypark Circle #C
Irvine, CA 92614

Violation File Number: V-5-00-048

Property location: 3335 Ocean Boulevard, Corona del Mar, Orange County

Violation: Grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach.

Dear Mr. Battram:

Our staff has confirmed that development consisting of grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed has occurred on the face of a coastal bluff and on the sandy beach on your property, which is located within the Coastal Zone. Commission staff has researched our permit files and concluded that no Coastal Development Permit has been issued for any of the above development. Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the coastal zone must obtain a Coastal Development Permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

Based on a review of historical aerial photographs of your property, Commission staff has determined that although a previously existing stairway was located on the bluff face on your property in 1972; at some point in time between 1972 and 1986, the previously existing bluff face stairway was removed. Further, between 1986 and the present, a new stairway was apparently constructed on the bluff face in a different configuration than the previously existing stairway without the required Coastal Development Permit.

The construction of the new stairway, chain-link fence, concrete patio, storage shed, retaining wall, and related grading constitutes development under the Coastal Act and therefore, requires a

COASTAL COMMISSION

EXHIBIT # 8
PAGE 27 OF 36

Coastal Development Permit. Any development activity conducted in the coastal zone without a valid Coastal Development Permit constitutes a violation of the Coastal Act.

In most cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources or by obtaining a Coastal Development Permit authorizing the development after-the-fact. Removal of the development and restoration of the site also requires a Coastal Development Permit. Therefore, in order to resolve this matter administratively, you must submit a complete Coastal Development Permit Application to either retain the development, or to remove the unpermitted development and restore the bluff face to its previous condition.

Although you are entitled to submit a permit application to retain the unpermitted grading, storage shed, retaining wall, patio and stairway improvements, please note that the above development does not appear to be consistent with the Chapter Three policies of the Coastal Act of 1976. Therefore, our staff is likely to recommend denial of this project. If the Commission denies the project, our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments. In order to avoid a delay in resolution of this violation, and avoid the possibility of any monetary penalty or fine, we are requesting that you submit a complete Coastal Development Permit Application by **June 15, 2001** for either removal of the unpermitted development and restoration of the site or to authorize the as-built development. For your convenience, a Coastal Development Permit Application has been enclosed.

We hope that you will choose to cooperate in resolving this violation by submitting a permit application. If you do not, we will consider pursuing additional enforcement action against you. You should be aware that the Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 562-590-5071. If you are unable to meet the above deadline for submission of an application, please contact me as soon as possible.

Sincerely,



Grace Noh
Enforcement Officer

Enclosures: Coastal Development Permit Application

cc: Steve Hudson, Enforcement Supervisor, Southern California Districts, CCC
Teresa Henry, District Manager, South Coast District, CCC
Steve Rynas, Orange County Area Supervisor, CCC

COASTAL COMMISSION

EXHIBIT # 8
PAGE 26 OF 36

CALIFORNIA COASTAL COMMISSION

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



August 31, 2001

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z584862967)**

Kenneth Battram
17985 Skypark Circle #C
Irvine, CA 92614

Violation File Number: V-5-00-048

Property location: 3335 Ocean Boulevard, Corona Del Mar, Orange County

Unpermitted Development: Grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach.

Dear Mr. Battram:

We have verified that you are in receipt of our letter to you dated May 7, 2001, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete Coastal Development Permit Application to either authorize the as-built development or remove the unpermitted development and restore the site was June 15, 2001. As of this date, our office has not received an application for the above unpermitted development.

As previously stated, the unpermitted development consisting of: grading and construction of a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach, which is located in the coastal zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a Coastal Development Permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

In most cases, violations involving unpermitted development may be resolved administratively, avoiding the possibility of court-imposed fines and penalties, by obtaining a Coastal Development Permit for removal of the unpermitted development and restoration of any damaged resources or by obtaining a Coastal Development Permit authorizing the development after-the-fact.

In order to resolve this matter administratively, you were previously requested to submit an application by June 15, 2001, for approval of the unpermitted development or for removal of the unpermitted development and restoration the site to its previous

EXHIBIT # 8PAGE 29 OF 36

condition. Although we would still prefer to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000. In addition, to such penalty, Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

In order to resolve the violation on your property in a timely manner and avoid the possibility of any court-imposed monetary penalty or fine, please submit a complete Coastal Development Permit Application by no later than **September 28, 2001**, for either removal of the unpermitted development and restoration of the site or to authorize the as-built development. Please contact me by no later than **September 14, 2001**, regarding how you intend to resolve this violation. We hope that you will choose to cooperate in resolving this violation by submitting a permit application by **September 28, 2001**. If you do not, we will consider pursuing additional enforcement action against you.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 562-590-5071.

Sincerely,



Grace Noh
Enforcement Officer

Enclosure: Coastal Development Permit Application

cc: Steve Hudson, Enforcement Supervisor, Southern Districts, CCC
Teresa Henry, District Manager, South Coast District, CCC
Steve Rynas, Orange County Area Supervisor, CCC

COASTAL COMMISSION

EXHIBIT # 8
PAGE 30 OF 36

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
10000 Ocean Gate, Suite 1000
Long Beach, CA 90802-4302
213 590-5071



April 3, 2003

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL**

Kenneth Battram
7241 Garden Grove Blvd., Ste M
Garden Grove, CA 92841

Violation File Number: V-5-00-048

Property location: 3335 Ocean Boulevard, Corona Del Mar, Orange County

Unpermitted Development: Grading, stairway, chain-link fence, retaining wall, concrete patio and storage shed on the face of a coastal bluff and on the sandy beach.

Dear Mr. Battram:

We have verified that you are in receipt of our letters to you dated August 31, 2001 and May 7, 2001, which informed you that: (1) unpermitted development has occurred on your property and (2) in order to resolve this matter administratively and avoid the possibility of court-imposed fines and penalties, the deadline for you to submit a complete coastal development permit to resolve the unpermitted development on site was **June 15, 2001**. As of this date, our office has not received an application for the above referenced unpermitted development.

As previously stated, the unpermitted development consisting of: grading, a stairway, chain-link fence, retaining wall, concrete patio, and storage shed on the face of a coastal bluff and on the sandy beach, which is located in the Coastal Zone, requires a coastal development permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. Any development performed without a coastal development permit constitutes a violation of the California Coastal Act.

In order to resolve this matter administratively, you were previously requested to submit an application for a coastal development permit for the unpermitted development by June 15, 2001. We would still prefer to resolve this matter administratively. In order to resolve the matter regarding the unpermitted development on the bluff slope in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you submit a complete Coastal Development Permit Application by **May 12, 2003**, for restoration of the graded slope to its previously existing topography, removal of the unpermitted stairway, chain-link fence, retaining wall, concrete patio, and storage shed and revegetation of the bluff slope with native plant species. For your convenience, a coastal development permit application has been enclosed. Please contact me by no later than **April 21, 2003**, regarding how you intend to resolve this violation.

COASTAL COMMISSIONEXHIBIT # 8
PAGE 31 OF 36

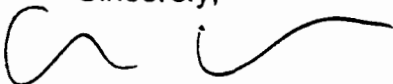
Page 2 of 2
V-5-00-048 (Battram)

We hope that you will choose to cooperate in resolving this violation by submitting a permit application by May 12, 2003. If you do not, we will consider pursuing additional enforcement action against you. The Coastal Act contains many enforcement remedies for Coastal Act violations. Section 30803 of the Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In addition, section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6,000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071.

Sincerely,



Andrew Willis
Assistant Enforcement Officer

COASTAL COMMISSION

EXHIBIT # 8
PAGE 32 OF 36

CALIFORNIA COASTAL COMMISSION

FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



VIA CERTIFIED and REGULAR MAIL

December 10, 2003

Mr. Kenneth Battram
7241 Garden Grove Blvd, Ste. M
Garden Grove, CA, 92841

Subject: Notice of Intent to Commence Cease and Desist Order Proceedings

Violation No.: V-5-00-048

Location: 3335 Ocean Boulevard, Corona Del Mar, Orange County
(APN 052-120-20)

Violation Description: Unpermitted grading and landform alteration; construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets

Dear Mr. Battram:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development. The unpermitted development consists of grading and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets on the face of a coastal bluff and on the sandy beach. This development is located at 3335 Ocean Boulevard, Corona Del Mar, Orange County, APN 052-120-20 ("subject property"). You own the subject property.

The purpose of these enforcement proceedings is to obtain a Cease and Desist Order that directs you to cease and desist from constructing and/or maintaining any unpermitted development and compels the removal of unpermitted development. The proposed Cease and Desist Order is discussed in more detail in the following sections of this letter.

COASTAL COMMISSION

EXHIBIT # 8PAGE 33 OF 36

History of the Violation Investigation

In letters from the Commission dated May 7, 2001, August 31, 2001, and April 3, 2003 you were notified that Commission staff had confirmed that unpermitted development consisting of grading and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets had occurred on the face of a coastal bluff and on the sandy beach on the subject property. Based on a review of Commission records, Commission staff has determined that although a previously existing stairway was located on the bluff face on your property in 1972, at some point in time between 1972 and 1986 the previously existing bluff face stairway was removed. Further, between 1986 and the present, a new stairway was apparently constructed on the bluff face in a different configuration than the previously existing stairway and without the required coastal development permit. The other unpermitted development listed above was also constructed or placed after the enactment of the Coastal Act.

A coastal development permit was neither applied for nor obtained before the unpermitted development was performed on the subject property. According to Commission records, no coastal development permit applications were filed for any of the above-described development on the subject property. Previously issued coastal development permit No. 5-85-218 authorized development on the subject property consisting of additions to a two-story single family residence, which include extensions of the upper and lower floor decks, new roof, entryway, garage door, and the addition of 102 square feet of living area.

In order to try to resolve the matter administratively, Commission staff initially requested that you submit an application for a coastal development permit for the unpermitted development by June 15, 2001. Staff sent you a second letter dated August 31, 2001 and again requested that you submit an application for a coastal development permit for the unpermitted development no later than September 28, 2001. Staff sent you a third letter dated April 3, 2003, and requested that you submit an application for a coastal development permit for the unpermitted development by May 12, 2003. As of this date, we have received no response to these letters and you have not submitted an application for the above-referenced unpermitted development.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

COASTAL COMMISSION

The Executive Director of the Commission is issuing this notice of intent to commence Cease and Desist Order proceedings since unpermitted development inconsistent has occurred at the subject property. This unpermitted development consists of grading and landform alteration and construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets on the face of a coastal bluff and on the sandy beach. These activities and

EXHIBIT # 8
Page 34 of 36

construction or placement of these structures constitutes "development" as defined in Section 30106 of the Coastal Act. The development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit was applied for nor obtained for the unpermitted development on the subject property.

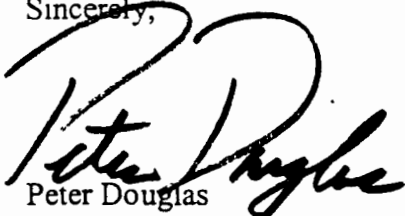
Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Section 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than January 7, 2004.**

The Commission staff is tentatively scheduling the hearing for the proposed Cease and Desist Order during the February 18-20, 2004 Commission meeting in San Diego. If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,



Peter Douglas
Executive Director

Encl.: Statement of Defense Form for Cease and Desist Order

cc (without Encl):
Sheila Ryan, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Steve Hudson, Southern California Enforcement Supervisor
Theresa Henry, South Coast District Manager
Steve Rynas, Orange County Area Supervisor
Bill Meyer, Agent for Mr. Battram
Daniel K. Ohl, Deputy City Attorney, City of Newport Beach

COASTAL COMMISSION

EXHIBIT # 8
PAGE 35 OF 36

STATE OF CALIFORNIA—THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CALIFORNIA COASTAL COMMISSION

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WAIVER OF DEFENSES

Pursuant to Title 14 of the California Code of Regulations Public Resources Code Section 13181, respondents to a Coastal Commission Notice of Intent to Commence Cease and Desist Order Proceedings (NOI) are provided with the opportunity to assert a statement of defense contesting the Coastal Act violations alleged in the NOI or raise mitigating factors related to the alleged violations.

In light my desire to resolve the Coastal Act violations through settlement with the Coastal Commission, I have agreed to stipulate to the issuance by the Commission of a Consent Agreement and Cease and Desist Order ("Consent Order"). To facilitate this settlement, I hereby waive my right to assert defenses contesting the alleged Coastal Act violations alleged in the NOI and the Consent Order.

Kenneth Battram

2-27-04

Date

COASTAL COMMISSION

EXHIBIT # 8
PAGE 36 OF 36