

CALIFORNIA COASTAL COMMISSION

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**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-05-095

APPLICANTS: Doug and Jan Circle

AGENT: Brion S. Jeannette and Associates, Attn: Brion S. Jeannette

PROJECT LOCATION: 3415 Ocean Boulevard, Corona Del Mar (City of Newport Beach)
(Orange County)

PROJECT DESCRIPTION: Demolition of an existing approximately 2,100 square foot, two (2) story single family residence with an attached garage and construction of a new 4,488 square foot two (2) story single-family residence with a basement and an attached 388 square foot four (4) car garage (two cars parked on the ground level of the garage and two cars above by way of car-lift) on a coastal bluff face at a maximum height of 35-feet above finished grade. Associated construction consists of: a 141 square foot basement deck, a 392 square foot 1st floor deck and a 383 square foot 2nd floor deck. In addition, a portion, approximately 20-feet in length, of the existing bluff face stairway will be removed. The foundation of the residence will consist of a caisson and deepened conventional footings system. Grading will consist of 510 cubic yards of cut, 60 cubic yards of fill and export of 450 cubic yards to an area outside of the coastal zone.

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a bluff face lot 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 development described above would be located on the upper bluff face which overlooks the beach. The primary concern before the Commission on this matter is to assure that the proposed project conforms to the predominant line of development such that scenic resources are preserved, landform alteration is minimized and development in hazard prone locations is avoided.

As discussed more fully below, the proposed development does conform to the predominant line of development. Commission staff is recommending **APPROVAL** of the proposed project with **Seven (7) Special Conditions** regarding: 1) assumption of risk; 2) final project plans; 3) no future shoreline protective device; 4) additional approvals for any future development; 5) an addendum to the geotechnical investigation; 6) a revised drainage and run-off control plan; and 7) a deed

restriction against the property, referencing all of the special conditions contained in this staff report.

A component of the applicants' original proposal consisted of realignment of the existing bluff face stairway. Subsequently, the applicants decided to revise the proposed work that was to take place on the existing pre-coastal stairway. Instead of realigning the stairway to connect to the proposed basement level deck of the project, the existing stairway will remain in its' current alignment except for the northwestern portion of the stairway, an approximate 20-foot linear section, which will be removed in order to connect to the proposed basement level deck. This revised plan would also reduce the amount of proposed grading compared with the prior proposal. With the revised project, the applicants only submitted a site plan. Other necessary plans such as revised floor plans, elevation plans, cross-section plans, grading plans, or foundation plans were not submitted. Minor changes to these plans are necessary due to the revision to the stairway work. Also, the revised grading amounts were not submitted. In addition, a geotechnical investigation was submitted for the residence; however, no geotechnical investigation was submitted for the revised work on the stairway.

The pattern of development along this segment of Ocean Boulevard consists of primary structures (i.e. houses) that are sited upon the upper bluff face, while the mid and lower bluff face remains largely undisturbed and vegetated. With some exceptions, the overall appearance of the bluff in this area is natural and undeveloped. The exceptions include 1) lots that have pre-coastal, Commission-approved (such as the subject site), or unpermitted stairways traversing the bluff face, and 2) lots that have unpermitted development at the toe of the bluff (including projects that are currently subject to a Commission cease and desist order or are under investigation by the Commission's Enforcement staff). In addition, the toe of the bluff is immediately inland of Corona Del Mar State Beach, which is a public beach. The project site is consequently highly visible from the public beach.

As currently submitted, the proposed project would encroach approximately 17-feet seaward (8-feet for the structural and 9-feet for the deck) from the existing development located on-site. However, since the proposed project would still conform to the predominant line of development, it would not affect public views of the vegetated lower bluff face from the adjacent public beach or other public vantage points, such as Inspiration Point. As proposed, the enclosed living space area aligns approximately with the 56-foot bluff elevation contour line, and is located landward of the livable area approved on the Tabak and Halfacre projects which are located immediately downcoast of the subject site. Furthermore, the proposed basement level deck is located at the approximately 46-foot contour to the east and the approximately 50-foot contour to the west, which is landward of other accessory/deck improvements along this segment of Ocean Boulevard. The lower bluff face remains undisturbed except for an existing stairway that was the subject of Coastal Development Permit 5-01-112 [Ensign].

In addition, approval of this project would be consistent with prior action taken in this area. For instance, in recent proposals at the Tabak site (CDP No. 5-02-203-[Tabak]), which is downcoast of the project site, living space additions were landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. However, the remainder of the lower bluff, below the 33-foot elevation contour was required to remain undeveloped. In addition, the Halfacre site (CDP No. 5-03-100-[Halfacre]), which is downcoast of and adjacent to this site, the new habitable space is aligned at the 46-foot contour line. However, due to undulations in topography, the Halfacre livable space is located landward of the Tabak livable area,

therefore not appearing to be encroaching seaward. As conditioned, the Halfacre project also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements.

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 and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. 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 (No. 2200-2004) from the City of Newport Beach Planning Department dated March 9, 2005; and Variance No. 2003-001 and Modification Permit No. 2003-004 (PA2003-006 amended) from the City of Newport Beach Planning Department dated February 8, 2005.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permits: 5-96-096-[Nguyen], 5-01-112-[Ensign], and 5-03-358-[Ensign]; Letter to Brion S. Jeannette and Associates, Inc. from Commission staff dated April 7, 2005; Letter from Brion S. Jeannette and Associates, Inc. to Commission staff dated May 9, 2005; *Update Preliminary Geotechnical Investigation For New Single Family Residence, 3415 Ocean Boulevard, Corona Del Mar, California (Project No. 71458-01/Report No. 05-5555)* prepared by Geofirm dated May 5, 2005; and *Wave-Runup & Coastal Hazard Study, 3415 Ocean Boulevard, Corona Del Mar, CA* prepared by Geosoils, Inc. dated April 2005.

LIST OF EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Existing Topographic Map
4. Site Plan
5. Predominant Line Site Plan
6. Coastal Development Permit No. 5-01-112-[Ensign]

STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following motion and resolution:

MOTION:

"I move that the Commission approve Coastal Development Permit No. 5-05-095 pursuant to the staff recommendation."

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

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Assumption of Risk, Waiver of Liability and Indemnify**

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

2. Final Project Plans

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans (i.e. site plan, floor plans, elevations, cross-sections, grading, foundation, etc.). As proposed in the preliminary plans, these final project plans shall show that the enclosed living space and any deepened foundation systems shall not extend seaward of the 56-foot elevation contour line and that proposed accessory development (e.g. decks) and any preparatory work (e.g. grading) shall not extend seaward of the approximately 46-foot contour to the east and the approximately 50-foot contour to the west.
- B.** The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. No Future Shoreline Protective Device

- A.** By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-05-095 including, but not limited to, the residence and decks and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B.** By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the residence and decks, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-095. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-05-095. Accordingly, any future improvements to the development authorized by this permit, including but not limited to landscaping and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections

13252(a)-(b), shall require an amendment to Permit No. 5-05-095 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. **Geotechnical Investigation**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, an addendum to the geotechnical investigation entitled: *Preliminary Geotechnical Investigation For New Single Family Residence, 3415 Ocean Boulevard, Corona Del Mar, California (Project No. 71458-01/Report No. 05-5555)* prepared by Geofirm dated May 5, 2005 for the project, which addresses the currently proposed stairway work shown on the plans received on September 9, 2005. If the addendum to the geotechnical investigation recommends use of any exposed foundation elements (e.g. caissons) seaward of the proposed enclosed living space (56-foot elevation contour), or any stabilization, soil recompaction or other grading seaward of the existing 46-foot elevation contour, an amendment to this permit or a new permit shall be required in order to implement such recommendations. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in this submitted investigation approved by the Executive Director.
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- C. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Drainage and Runoff Control Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of revised drainage and run-off control plans. The drainage and runoff control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be collected on site for discharge to the Ocean Boulevard (or connection to an existing drainage system) through piping without allowing water to percolate into the ground.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a

Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- C. The applicants shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

7. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION, LOCAL GOVERNMENT APPROVAL AND PRIOR COMMISSION ACTION

1. Project Location

The proposed project is located at 3415 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits #1-3). The lot size is 7,800 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Single-Family Detached Residential and the proposed project adheres to this designation. The subject site is immediately inland of Corona Del Mar State Beach, a public beach. The project site is located along a stretch of Ocean Boulevard where single-family residences have been developed upon the upper bluff face, but where the mid and lower bluff face appears natural and undeveloped. The subject property is accessed by a common descending right-of-way off Ocean Boulevard at the front of the property. The rectangular-shaped bluff face property fronts approximately 65 feet on the Ocean Boulevard right-of-way and extends southwesterly approximately 120 feet to the rear property line located along Corona Del Mar State Beach. An existing single-family residence is terraced down the upper coastal bluff face. The middle and lower portions of the lot consists of a generally natural sea bluff. The overall height of the bluff slope is approximately 80 feet, while maximum relief across the property is approximately 60 feet. The slope ratio is typically uniform near 1.4:1 (horizontal: vertical). Lower portions of the bluff appear natural but are landscaped with shrubs, trees and ice plant.

The subject site is currently developed with a 2,100 square foot, two (2) story single-family residence with an attached garage upon the upper bluff face constructed in the late 1950's. Ocean Boulevard is located to the north (inland of the existing residence), at the top of the bluff. Up-coast, to the west, are existing single-family homes. Down-coast, to the east 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) consisting of a concrete pathway. Seaward, to the south of the project site is a coastal bluff with an existing switchback wood beam (railroad tie) stairway (that follows the contours of the bluff) with 3' high railings along the bluff face from the rear yard patio at the top of the slope to the sandy public beach below that was the subject of CDP No. 5-02-112-[Ensign] heard by the Commission in February 2002, to be discussed further in the staff report.

2. Project Description

The applicants' proposal consists of demolition of an existing approximately 2,100 square foot, two (2) story single family residence with an attached garage and construction of a new 4,488 square foot two (2) story single-family residence with a basement and an attached 388 square foot four (4) car garage (two cars parked on the ground level of the garage and two cars above by way of car-lift) on a coastal bluff face at a maximum height of 35-feet above finished grade (it will not exceed the height of Ocean Boulevard). Associated construction consists of: a 141 square foot basement deck, a 392 square foot 1st floor deck and a 383 square foot 2nd floor deck. The foundation for the residence will consist of a caisson and deepened conventional footings system. Grading consisted of approximately 1,000 cubic yards of cut and fill, including export of some cut to an area outside of the coastal zone. No landscaping is proposed.

Working with the applicant, some changes to the proposed project have occurred since the initial submittal in order to address seaward encroachment. Initially, the applicant sought to re-align the existing stairway that descends the bluff face from the existing residence to the sandy beach. As currently proposed, instead of realigning the stairway to connect to the proposed basement level deck of the project, the existing stairway will remain in its' current alignment except for the northwestern portion of the stairway, an approximate 20-foot linear section, which will be removed in order to connect to the proposed basement level deck (Exhibit #4). This revised plan reduces the amount of proposed grading since grading was required for previously proposed realignment of the stairway. With the revised project, the applicants only submitted a site plan (Exhibit #4). Other necessary plans such as revised floor plans, elevation plans, cross-section plans, grading plans, or foundation plans were not submitted. Changes to these plans were necessary due to the revision to the stairway work. In addition, the revised grading amounts were not submitted. In addition, a geotechnical investigation was submitted for the residence; however, no geotechnical investigation was submitted for the originally proposed work or revised work on the stairway.

As proposed, the enclosed living space area aligns approximately with the 56-foot bluff elevation contour line, and is located landward of the livable area approved on the Tabak and Halfacre projects which are located immediately downcoast of the subject site. Furthermore, the proposed basement level deck is located at the approximately 46-foot contour to the east and the approximately 50-foot contour to the west, which is landward of

other accessory improvements along this segment of Ocean Boulevard. Thus, the proposed project would conform to the predominant line of development. Further discussion regarding the predominant line of development can be found in Section IV. B. of the staff report.

3. Local Government Approval

On February 8, 2005, the City of Newport Beach City Council approved Variance No. 2003-01 and Modification Permit No. 2003-004 (PA 2003-006 amended) to allow a new single-family residence to exceed the 24-foot height limit and for the subterranean portion to encroach into the required 10-foot front yard (street-side) setback. The applicant requested changes to the building design that included an increase to the height on the bluff side of the proposed residence. The proposed residence will not exceed the height of the top of curb of Ocean Boulevard. The original variance and modification permit approval was for a previously designed project for the prior owner (Ensign). Since then, the property has changed ownership (Circle) and changed design.

4. Prior Commission Action at the Subject Site

a. CDP No. 5-96-096-[Nguyen]

At the September 1996 Commission Hearing, the Commission approved a De-Minimis Waiver for Coastal Development Permit Application No. 5-96-096-[Nguyen] for the demolition and construction of a three-story, 3,645 square foot single-family residence with an attached 400 square foot garage. Grading consisted of 173 cubic yards of cut. While the project was approved, the construction of this project never occurred.

b. CDP No. 5-01-112-[Ensign]

At the February 2002 Commission Hearing, the Commission approved Coastal Development Permit No. 5-01-112-[Ensign] for the after-the-fact approval of a 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. This approval also included a proposed irrevocable offer to dedicate (OTD) an easement for public lateral access upon the small portion of the sandy beach at the base of the bluff that is located within the applicant's property. **Six (6) Special Conditions** were imposed on the project: **1)** offer to dedicate a 1,528 square foot easement for public access at the base of the bluff; **2)** submittal of revised project plans showing that the outer railing on the lower portion of the stairway is relocated to the inner side of the stairway and that it shall be colored in a subordinate and complimentary manner and screened

with vegetation to minimize visibility from the beach; 3) submittal of landscape and irrigation plans that maintains the slope stability of the site ; 4) submittal of drainage and runoff control plans; 5) future improvements conditions regarding any proposed work to the stairway (expansion or alteration); and 6) condition compliance.

c. CDP No. 5-03-358-[Ensign]

On August 27, 2003, Curt Ensign submitted an application for demolition of the existing residence and construction of a new residence. On September 26, 2003, the applicant was notified of items missing in the application. On August 25, 2004, the application was returned to the applicant since no response to the September 26, 2003 was received.

5. Prior Commission Action in Subject Area

See Appendix A

B. VISUAL 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 along a coastal bluff face immediately inland of Corona Del Mar State Beach. Because of its' location the project site is highly visible from the sandy public beach. The pattern of development along this segment of Ocean Boulevard is such that structures (e.g. homes) are sited at the upper bluff face, while the mid and lower bluff face remains largely undisturbed and vegetated. Although several lots have stairways traversing the bluff face, such as the project site, and some have unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, thus giving it a "natural" look. Development at this site, if approved, must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms and seaward encroachment of development. The proposed project, as currently submitted, would be encroaching seaward approximately 17-feet (8-feet for the structural and 9-feet for the deck) from the existing residence located on the site. The proposed structural encroachment of 8-feet will occupy an area that is currently occupied by an existing deck. This seaward encroachment also raises concern over cumulative visual impacts, particularly with regard to the construction of structures upon the lower portion of the coastal bluff face. Although the proposed project encroaches seaward of the existing residence located on the site, it conforms to the predominant line of development and community character and will not affect public views of the vegetated lower bluff face from the adjacent public beach.

1. Stringline Analysis and other Controls on the Seaward Limit of Development

Seaward encroachment of new development can often have adverse impacts on a variety of coastal resources. For example, the seaward encroachment of private development toward a beach can discourage public utilization of the beach adjacent to such development. The seaward encroachment of structures can also have adverse visual impacts. In addition, the seaward encroachment of structures can increase the hazards to which the new development will be subjected (the hazard and access issues are discussed elsewhere in these findings). Therefore, the Commission has often used either 1) City-required setbacks from the seaward property line; 2) a string line evaluation; or 3) a minimal 25-foot bluff edge setback in areas where geologic conditions are such that the site can be presumed stable for the useful economic life of the development. If a stringline is used, two types of string lines are applied to evaluate a proposed project—a structural string line and a deck string line. A structural string line refers to the line drawn between the *nearest* adjacent corners of the adjacent structures on either side of the subject site. Similarly, a deck string line refers to the line drawn between the nearest adjacent corners of adjacent decks on either side of the subject site. As noted below, other types of limit lines can be established, such as a predominant line of development. Setbacks, development limit lines and geologic setbacks are applied to limit new development from being built any further seaward than existing adjacent development. If not properly regulated the continued seaward encroachment of development can have a significant cumulative adverse impact on coastal resources.

a. City Setback

The plans submitted by the applicants show that the project conforms to the City zoning setback requirement of 10-feet from the seaward property line. The Commission has not certified the City's zoning setbacks. Nevertheless, in certain areas of Newport Beach, such as on beachfront residential properties along the Balboa peninsula, the Commission has relied upon the City zoning setbacks to establish the seaward limit of residential development. However, in this area of the City (Corona del Mar) where topography, the relationship between property lines and topography, and the pattern of development is quite different from the peninsula, conformance to the City required zoning setback does not address the potential impacts that the seaward encroaching development will have on the project site. Adhering to the City setback of 10-feet from the seaward property line would allow development on the bluff face and would not protect public views and prevent landform alteration.

b. Stringline & Predominant Line of Development

Seaward encroachment of new development can often have adverse impacts on a variety of coastal resources. For example, the seaward encroachment of private development onto a beach can discourage public utilization of the beach. The seaward encroachment of structures can also have adverse visual impacts. In addition, the seaward encroachment of structures can increase the hazards that the new development will be subject to. Therefore, the Commission has often used a string line evaluation (or other limit line) to review seaward encroachment of development.

The applicants submitted a structural stringline plan. However, this submitted plan was incorrect as some of the nearest adjacent corners of structures and decks located on the plan were incorrect. Using a corrected plan, the structural stringline analysis shows that the proposed structural improvements extend further seaward than the existing adjacent residences by approximately 8-feet. The proposed structural encroachment of 8-feet will occupy an area that is currently occupied by an existing deck. In addition, the proposed decks would also extend further seaward compared with existing development by approximately 9-feet. The proposed project, as currently submitted, would be encroaching seaward approximately 17-feet (8-feet for the structural and 9-feet for the deck) from the existing residence located on the site. On the other hand, the seaward limit of proposed development is sited landward of the alignment of the enclosed living space and decks authorized by the Commission on the Tabak project (CDP No. 5-02-203) and the Halfacre project (CDP No. 5-03-100), both of which have not yet been constructed. Thus, the existing development doesn't provide a useful reference point considering the recent Tabak and Halfacre approvals. Rather, other points of reference must be used to establish a consistent limit of seaward encroachment along this section of Ocean Boulevard (i.e. from 3317 Ocean Boulevard. to 3431 Ocean Blvd). Accordingly, development on each lot must be independently evaluated to take into consideration the overall pattern of development in this section of Ocean Boulevard.

In this case, useful points of reference are the Tabak and Halfacre properties located downcoast from the project site. At the January 2002 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. The habitable area for CDP No.5-02-203 extended out to the 48-foot bluff elevation contour, while the pool and decks were required to be located landward of the 33-foot contour (the Commission placed a special condition limiting the to the 33-foot contour line). At the January 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-03-100-[Halfacre]. The new habitable space on the Halfacre project is aligned at the 46-foot contour line. Due to undulations in the topography of the bluff face, the Halfacre project's livable space was located landward of the Tabak livable area therefore not appearing to be encroaching seaward. As conditioned, the Halfacre project also adhered to the 33-foot contour that was used in CDP No. 5-02-203-[Tabak] for accessory improvements.

The currently proposed project's livable area aligns approximately with the 56-foot elevation contour line, while the basement level deck does not extend seaward from approximately 46-foot contour to the east and the approximately 50-foot contour to the west, thus is landward of the 48-foot and 33-foot contour lines (Exhibit #5). In effect, moving from the Tabak site on the downcoast side, to the Butterfield site on the upcoast side of the subject site, the residences and patios will step progressively landward. Thus, the proposed development would be consistent with the emerging pattern of development apparent from recent Commission approvals along this section of Ocean Boulevard.

As stated previously, the originally proposed project has been revised so that instead of realigning the stairway to connect to the proposed basement level deck of

the project, the existing stairway will remain in its' current alignment except for the northwestern portion of the stairway, an approximate 20-foot linear section, which will be removed in order to connect to the proposed basement level deck. While this revised project would be consistent with the area, the applicants have only submitted a site plan. Other necessary plans such as revised floor plans, elevation plans, cross-section plans, grading plans, or foundation plans were not submitted. Therefore, the Commission imposes **Special Condition No. 2** that requires submittal of revised plans showing that all proposed development conforms with the applicable limits of development. Thus, as conditioned, the proposed project is consistent with emerging pattern of development apparent from recent Commission approvals along this section of Ocean Boulevard.

The basis of the stringline is to prevent seaward encroachment of new development that can have adverse impacts on a variety of coastal resources. The proposed project would encroach seaward. However, the proposed project would be consistent with the distinct community character present in the area where development is located upon the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. Furthermore, the development would be consistent with the pattern of development recently approved by the Commission (CDP No. 5-02-203 and CDP No. 5-03-100).

Located along the bluff on the project site is a switchback wood beam (railroad tie) stairway (that follows the contours of the bluff) with 3' high railings along the bluff face from the rear yard patio at the top of the slope to the sandy public beach below that was the subject of Coastal Development Permit 5-01-112-[Ensign] at the February 2002 Commission Hearing. The Commission approved the project with Special Conditions (Exhibit #6), one of which required that the landscaping on the bluff face shall consist of drought-tolerant native plant species (to the maximum extent possible) and non-invasive plant species. No landscaping is currently proposed for the project and the areas previously required to be landscaped will not be affected by the current proposal. However, landscaping could be proposed in the future. Therefore, in order to verify that no impacts to previously required landscaping will occur in the future, the Commission imposes **Special Condition No. 4**, which would require a coastal development permit or amendment for any future development including but not limited to landscaping and improvements to the residence and decks.

c. Bluff Edge Setback

In cases where use of a stringline to limit seaward encroachment of development is not appropriate, the Commission may use a bluff edge setback for primary structures and accessory improvements. In addition to the visual benefits derived from establishing a bluff edge setback, geologic issues can also be addressed. Such a setback is derived for site-specific conditions and is designed to assure stability of the development for its useful economic life. A minimal setback may be warranted where those slopes are stable and historic bluff retreat has been minimal. In these cases, the Commission typically requires that structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual

impacts. However, the development site is located entirely on a coastal bluff face. Therefore, application of a bluff edge setback is not appropriate for this project.

2. Cumulative Impacts

The proposed project is located along a coastal bluff immediately inland of Corona Del Mar State Beach, a public beach. The site is highly visible from the sandy beach. Although several lots have stairways traversing the bluff face and some have unpermitted development at the toe of the bluff (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. Approval of the proposed project, as conditioned, would be consistent with the pattern of development in this area and would preserve scenic resources.

3. Landform Alteration

Originally, the proposed project required grading consisting of 510 cubic yards of cut, 60 cubic yards of fill and export of 450 cubic yards to an area outside of the coastal zone. The original grading was necessary for the realignment of the existing stairway and the basement. The amount of grading required for the revised project is unknown and this staff report has been conditioned for submittal of this information (**Special Condition No. 2**). Nonetheless, since the project has been revised (realignment of the existing stairway is no longer proposed), the amount of grading should be less or at least equivalent to the previously proposed amount. In addition, a large amount of the grading would be for the basement level. None of the grading will encroach beyond the predominant line of development. Thus, the amount of grading is minimal and does not result in extensive visible landform alteration.

CONCLUSION

The Commission finds that the proposed project, as conditioned, is sited and designed to protect scenic and visual qualities of coastal areas. Approval of the proposed project, as conditioned, would preserve existing scenic resources and would be consistent with preserving the existing community character where structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. The alteration of the already developed upper bluff face would not result in a significant adverse visual effect when viewed from public vantage points such as the beach and would be visually compatible with the character of the surrounding area. Furthermore, the development would be consistent with the pattern of development recently approved by the Commission (CDP No. 5-02-203 and CDP No. 5-03-100). Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites.

C. **GEOLOGIC HAZARD**

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

New development shall:

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

The findings in this section of the staff report include generalized findings regarding the susceptibility of coastal bluffs to erosion and site-specific findings from the geological investigation.

1. General Findings on Bluff Erosion

The proposed development is located on a coastal bluff, which is 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 residence (the proposed work on the existing pathway to the public beach was not reviewed by the geologist), the applicants have submitted an investigation: *Update Preliminary Geotechnical Investigation For New Single Family Residence, 3415 Ocean Boulevard, Corona Del Mar, California (Project No. 71458-01/Report No. 05-5555)* prepared by Geofirm dated May 5, 2005. The information provided states that the stability analyses performed utilizing shear strength data from laboratory testing of onsite materials, indicates that deep-seated failure of the bluff is unlikely. Calculated factors of safety exceed 1.5 and 1.1 for static and pseudostatic conditions, respectively. However, the investigation also raises concerns regarding development on the site. For instance, the investigation states that the slopewash mantling the bluff face is considered potentially unstable. Furthermore, the investigation states that a foundation system along the rear perimeter of the proposed residence, designed to isolate proposed improvements from potential surficial instability of the sea bluff, is recommended. A foundation plan for the originally submitted project shows that the most seaward located caisson would be located at approximately the 56-foot contour line.

However, since the original project submittal, the project has been altered and thus the foundation system may change. The investigation also notes that such instability will not affect the proposed development in consideration of appropriate foundation design. In addition, the investigation states that the proposed residence may be supported by caissons and/or deepened conventional footings utilizing the minimum embedment and slope setback recommendations provided. The investigation submitted ultimately concludes the coastal bluff on the site is grossly stable and that the project is feasible from an engineering perspective provided the applicants comply with the recommendations contained in the investigation.

Since the stairway component of the proposed project has changed and also was not previously reviewed by the geologist, a revised and up-to-date geotechnical investigation needs to be submitted. Given the reduced work proposed on the existing stairway, the Commission does not anticipate that the revised plan will be subject to any greater hazards than the previous design.

3. Coastal Hazards

To analyze the suitability of the site for development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). 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 applicants have provided *Wave-Runup & Coastal Hazard Study, 3415 Ocean Boulevard, Corona Del Mar, CA* prepared by Geosoils, Inc. dated April 2005, which addresses the potential of hazard from flooding and wave attack at the subject site. The study states that there is a wide (100 feet 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 headland to the east, and as long as the jetty and headland are present the beach should be fairly stable. Various other findings are discussed in this study and it concludes by stating: " ... coastal hazards will not significantly impact this property over the life of the improvements at the base of the slope. The improvements 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 risk from flooding."

Although the applicants' investigations indicate that the site is safe for development 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.

4. Conclusions and Special Conditions

Section 30253 of the Coastal Act states that new development shall minimize the impacts of the proposed development on bluff erosion and instability, and prevent the necessity for bluff protective structures. William Kockelman, U.S. Geological Survey, wrote an article entitled "Some Techniques for Reducing Landslide Hazards" that discusses several ways to minimize landslide hazards such as bluff erosion and instability, including:

- (A) Require a permit prior to scraping, excavating, filling, or cutting any lands.
- (B) Prohibit, minimize, or carefully regulate the excavating, cutting and filling activities in landslide areas.
- (C) Provide for the proper design, construction, and periodic inspection and maintenance of weeps, drains, and drainage ways, including culverts, ditches, gutters, and diversions.
- (D) Regulate the disruption of vegetation and drainage patterns.
- (E) Provide for proper engineering design, placement, and drainage of fills, including periodic inspection and maintenance.

Kockelman also discusses the option of disclosure of hazards to potential buyers by the recordation of hazards in public documents. The recordation of hazards via the assumption of risk is one means the Commission utilizes to inform existing and future buyers of property of the potential threat from soil erosion and slope failure (landslide) hazards. Several of these recommendations are routinely required by local government, including requiring permits for grading, minimizing grading, and requirements for proper engineering design.

The Commission has imposed many of these same recommendations, including requiring the consulting geologist to review foundation and drainage plans in order to confirm that the project conforms to the policies of the Coastal Act. The findings in the staff report regarding the general causes of bluff erosion and the specific findings from the geotechnical investigation confirm that the coastal bluff at this location is eroding and that measures to minimize bluff erosion are necessary. The following Special Conditions will mitigate the impacts of the proposed development on bluff erosion and instability, and will prohibit bluff protective structures, as required by Section 30253 of the Coastal Act.

a. Assumption of Risk

Coastal bluffs in southern California are recently emergent landforms in a tectonically active environment. Any development on an eroding coastal bluff involves some risk to development.

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings in sections 1-3 above, including site-specific geologic information, support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, the standard waiver of liability condition has been attached via **Special Condition No. 1**.

By this means, the applicants and future buyers are notified that the proposed development is located in an area that is potentially subject to bluff erosion that can damage the applicants' property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the Coastal Development Permit.

b. Revised Plans

As stated previously, the applicants revised the project plan. The applicants only submitted a site plan depicting the revisions. Other necessary plans such as revised floor plans, elevation plans, cross-section plans, grading plans, or foundation plans were not submitted. Changes to these plans were necessary due to the redesign for the project. In addition, the revised grading amounts or square footages of the livable area or decks were not submitted. Therefore, the Commission is imposing **Special Condition No. 2**, which requires the applicants to submit revised final project plans such as site plans, floor plans, elevation plans, cross-section plans, grading plans, and foundation plans that substantially conform to the preliminary plans submitted by the applicant and all of the requirements of the special conditions.

c. Shoreline Protective Devices

Although the applicants' report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach and a revetment at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those, which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

No shoreline protection device is proposed. However, because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicants' geotechnical consultant has indicated that the site is stable and that no shoreline protection devices will be needed. If not for the information provided by the applicants that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural

landforms along bluffs and cliffs." However, as stated previously, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicants to their information, which states that the site is safe for development without the need for protective devices. Therefore, the Commission imposes **Special Condition No. 3** which states that no shoreline protective devices shall be permitted to protect the proposed development and that the applicants waive, on behalf of themselves and all successors and assigns on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

d. Future Development

The development is located within an existing developed area and, as conditioned, is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicants could construct future improvements to the single-family house, including but not limited to landscaping, improvements to the residence and decks, that would have negative impacts on coastal resources, and could do so without first acquiring a coastal development permit, due to exemption for improvements to existing single-family residences in Coastal Act Section 30610 (a). In order to prevent the current authorization from allowing such future negative effects, it is necessary to ensure that any future development -- including the development of amenities that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 4**, a future improvements special condition. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

e. Conformance with Geologic Recommendations

The geotechnical consultant has found that development is feasible provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in regards to the design and construction of the project. The geotechnical recommendations address things such as foundations and runoff on site. However, since the project has been redesigned in regards to the stairway and that the geologist never initially reviewed the stairway work, an addendum to the geotechnical investigation needs to be prepared. Given the reduced work on the stairway, the Commission does not anticipate that the revised plan will be subject to any greater hazards than the previous design. However, in order to assure that risks of development are minimized, as per Section 30253, the Commission imposes **Special Condition No. 5**, which requires the applicants to submit an addendum to the geotechnical investigation and evidence that the geotechnical consultants' recommendations are incorporated into the design of the project. If the addendum to the geotechnical investigation recommends use of any deep foundation elements (e.g. caissons) seaward of the 56-foot contour or as an element that is apart from the residential structure, or any stabilization, soil recompaction or other grading seaward of the existing 46-foot elevation contour, an

amendment to this permit or a new permit shall be required in order to implement such recommendations.

f. Drainage and Run-Off Control

The applicants previously submitted a drainage and runoff control plan and it shows that drainage on site will be directed to the street drainage system at Ocean Boulevard with piping and pumps. Therefore, adverse impacts caused by possible infiltration of the bluff are avoided. In addition, trenching in the bluff face to install a drain line to the toe of the bluff is avoided. However, since the project has been revised, no updated drainage and run-off control plans were submitted. Also, no landscaping is currently proposed on site; however, landscaping may possibly be proposed in the future and may possibly have adverse impacts upon the bluff. Therefore, the Commission is imposing **Two (2) Special Conditions**. **Special Condition No. 6**, requires that the applicants shall prepare prior to issuance of this permit a revised drainage and run-off control plan. **Special Condition No. 4**, requires that any future development on site, including landscaping, shall require an amendment to Permit No. 5-05-095 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government to assure that future development is consistent with the Chapter 3 policies of the Coastal Act.

g. Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 7** requiring that the property owners record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

CONCLUSION

The Commission has required several Special Conditions, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These **Seven (7) Special Conditions** include: **1)** assumption of risk; **2)** final project plans; **3)** no future shoreline protective device; **4)** additional approvals for any future development; **5)** an addendum to the geotechnical investigation; **6)** a revised drainage and run-off control plan; and **7)** a deed restriction against the property, referencing all of the special conditions contained in this staff report. Only as conditioned to comply with the provisions of these Special Conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

D. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project takes place on a coastal bluff. Any development on a bluff involves some risk to development. The applicants previously submitted a drainage and runoff control plan and it shows that drainage on site will be directed to the street drainage system. Therefore, adverse impacts caused by possible infiltration of the bluff are avoided. Furthermore, this design addresses potential erosion issues. However, since the project has been revised, no updated drainage and run-off control plans were submitted. No landscaping is currently proposed for the project and the areas previously required to be landscaped pursuant to CDP 5-01-112-[Ensign] will not be affected by the current proposal (the previously imposed conditions related to this other permit – see Exhibit #6 - remain in effect). However, landscaping could be proposed in the future.

Therefore, in order to protect water quality, the Commission imposes **Two (2) Special Conditions**. **Special Condition No. 6**, requires that the applicants shall prepare prior to issuance of this permit a revised drainage and run-off control plan. **Special Condition No. 4**, requires that any future development on site shall require an amendment to Permit No. 5-05-095 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government to assure that future development is consistent with the Chapter 3 policies of the Coastal Act.

E. PUBLIC ACCESS AND RECREATION

Section 30212 of the Coastal Act states, in relevant part states:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (2) *adequate access exists nearby.*

Section 30252 of the Coastal Act states, in relevant part states:

The location and amount of new development should maintain and enhance public access to the coast by...

- (4) *providing adequate parking facilities or providing substitute means of serving the development with public transportation...*

The subject site is located between the nearest public roadway and the shoreline. Adequate access and public recreation opportunities exist adjacent to the site at Corona Del Mar State Beach. The site is currently developed with a single-family residence. Upon completion of the

project, the development will remain as a single-family residence. The proposed development would provide adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit. Therefore, the Commission finds that the proposed development would be consistent with Section 30212 and 30252 of the Coastal Act regarding public access.

F. 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 Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

The City of Newport Beach certified Land Use Plan includes policies regarding the development on coastal bluffs. Pages 25-27 of the LUP contain policies regarding definition of a bluff, grading, provision of geologic investigations, setbacks and building in hazardous areas.

The policy on grading requires that the alteration of natural coastal landforms be minimized and that waivers of liability are required in areas of geologic hazard. Another LUP requirement is the submittal of a site-specific geologic investigations to assess areas of potential geologic instability.

The certified LUP includes a discussion of hazardous areas, which it defines as areas where natural processes can pose a threat to the public health, safety, and welfare. It further defines specific geologic hazards as earthquake faults, existing or potential landslides, areas with expansive or collapsible soil, excessive settlement and subsidence, flood hazard areas, and areas subject to potential erosion and siltation. Coastal bluffs qualify as areas of geologic hazard and areas subject to erosion.

The certified LUP also contains a discussion of bluff top setbacks. However, the setback policies pertain only to all new tracts and subdivisions, residential developments greater than four residences, and commercial development. This policy states: "*As a general guideline, the property line setback from the edge of a bluff should be no closer to the edge of the bluff than the point at which the top of the bluff is intersected by a line drawn from the solid toe of the bluff at an angle of 26.6 degrees to the horizontal.*"

The intent of this policy section, as stated in the certified LUP, is to require setbacks in new subdivision development for public access purposes. Because the proposed development is a single-family residence it is exempt from this policy. Therefore, there are no specific LUP policies, which would provide guidance as to bluff setbacks in this instance.

Minimal grading is proposed in conjunction with the project and therefore no extensive landform alteration will take place. As per the LUP requirements, an assumption of risk special condition is being required and a comprehensive geological investigation was supplied with the application.

Therefore, the proposed development is consistent with the guidance as provided by certified LUP policies.

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, 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.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard, visual resource, water quality, and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include special conditions requiring conformance with geotechnical recommendations and setback requirements and submittal of a revised drainage and run-off control plan.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A

A. 3431 Ocean Boulevard (Located 2 lots down-coast from the Subject Site):CDP No. 5-01-191-[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.

B. 3431 Ocean Boulevard (Located 2 lots down-coast from the Subject Site): CDP No. 5-02-203-[Tabak]

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 (CDP No. 5-01-191). 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 located landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. However, no other additions were allowed below the 33-foot elevation contour upon the lower bluff face.

C. 3431 Ocean Boulevard (Located 2 lots down-coast from the Subject Site): CDP No. 5-02-203-A1-[Tabak]

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).

D. 3425 Ocean Boulevard (Located adjacent 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.

E. 3401 Ocean Boulevard (Located adjacent up-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 Application 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 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.

F. 3329 Ocean Boulevard (Located 4 lots 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 were 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.

G. 3317 Ocean Boulevard (Located 4 Lots up-coast of Subject Site): CDP No. 5-01-080-[Palermo]

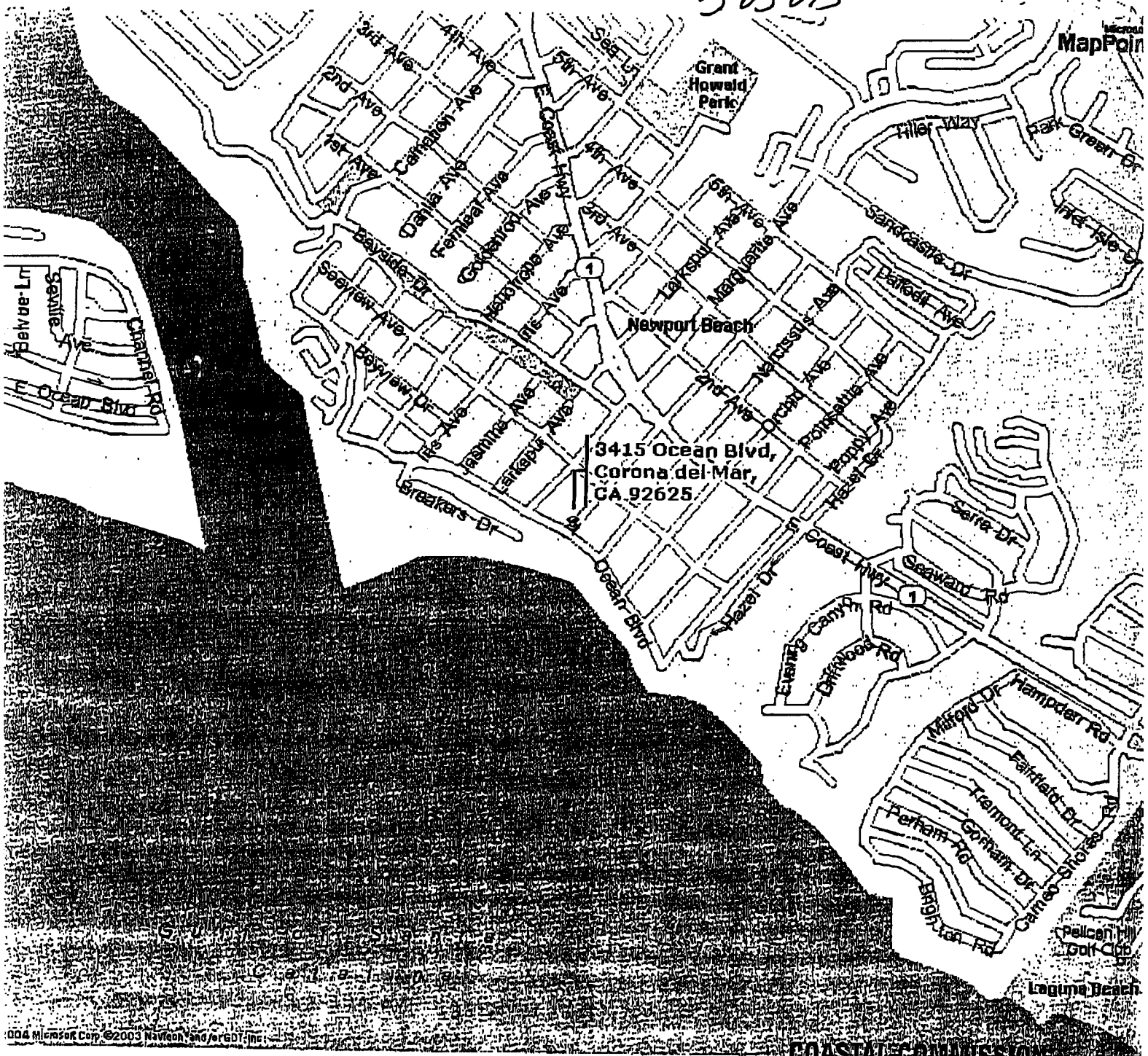
At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-01-080-[Palermo] for the construction of a pool house, pool, spa and exercise room on a lower portion of the bluff face down to the toe of the bluff. The primary issues of the proposed project were 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.

H. 3317 Ocean Boulevard (Located 4 Lots up-coast of Subject Site): CDP No. 5-04-339-[Palermo]

At the May 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-339-(Palermo) for the construction 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 proposed project was similar to a previously denied project for the project site (CDP No. 5-01-080). 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. 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.

CIRCLE RESIDENCE
3415 OCEAN BLVD.
CORONA DEL MAR, CA

5-05-095



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COASTAL COMMISSION

VICINITY MAP
NOT TO SCALE

EXHIBIT # 1
PAGE 1 OF 1



ADVANCED LISTING SERVICES

Ownership Listings & Radius Maps

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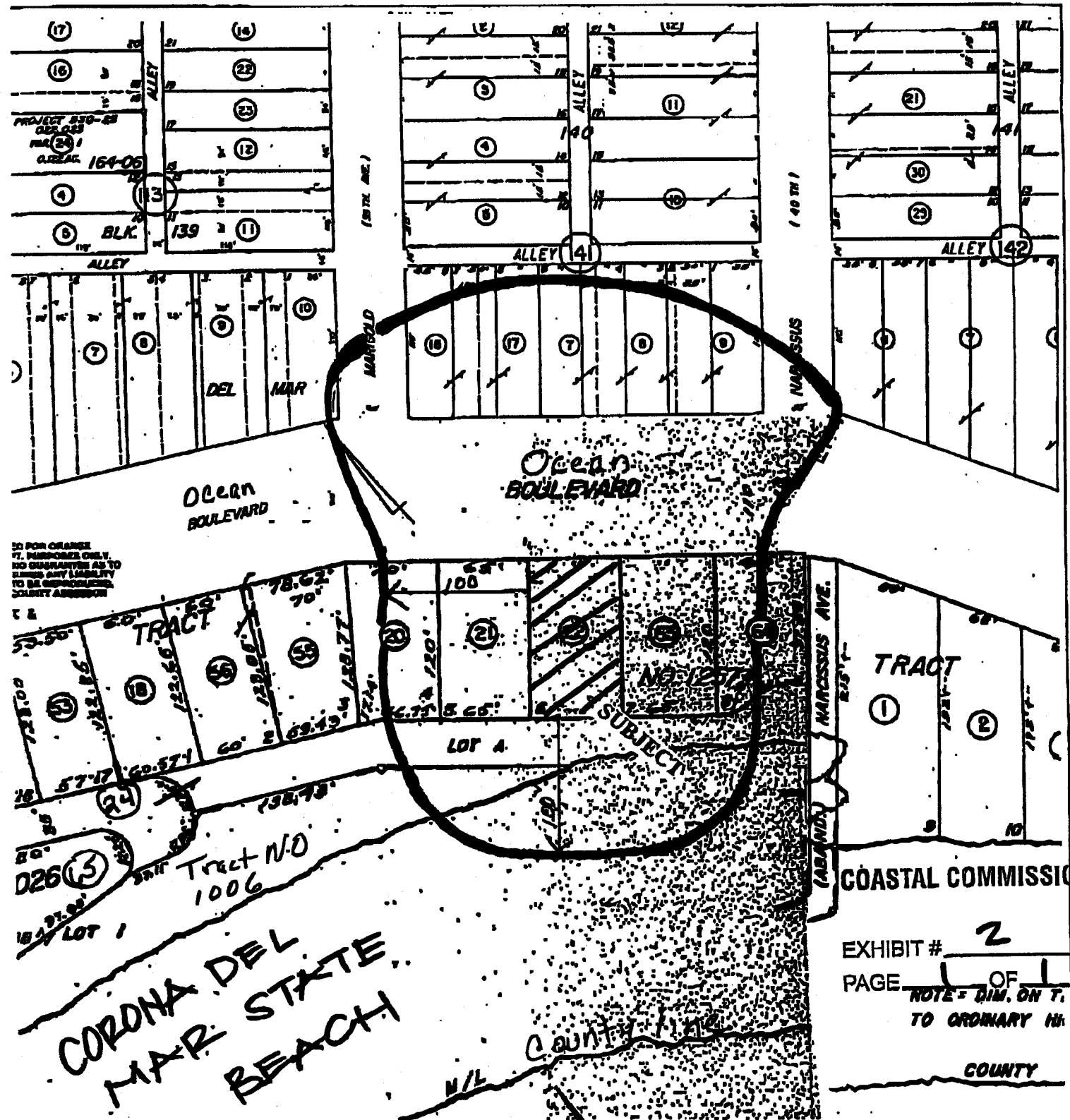
APN: 052-120-22

100' radius (excluding roads)

Subject Address:

3415 Ocean Blvd.

Corona Del Mar, Ca 92625



OCEAN BLVD.

PROJECT SITE
TOPOGRAPHIC SURVEY
LEGAL DESCRIPTION:
LOT 6, TR. 1237

CORONA DEL

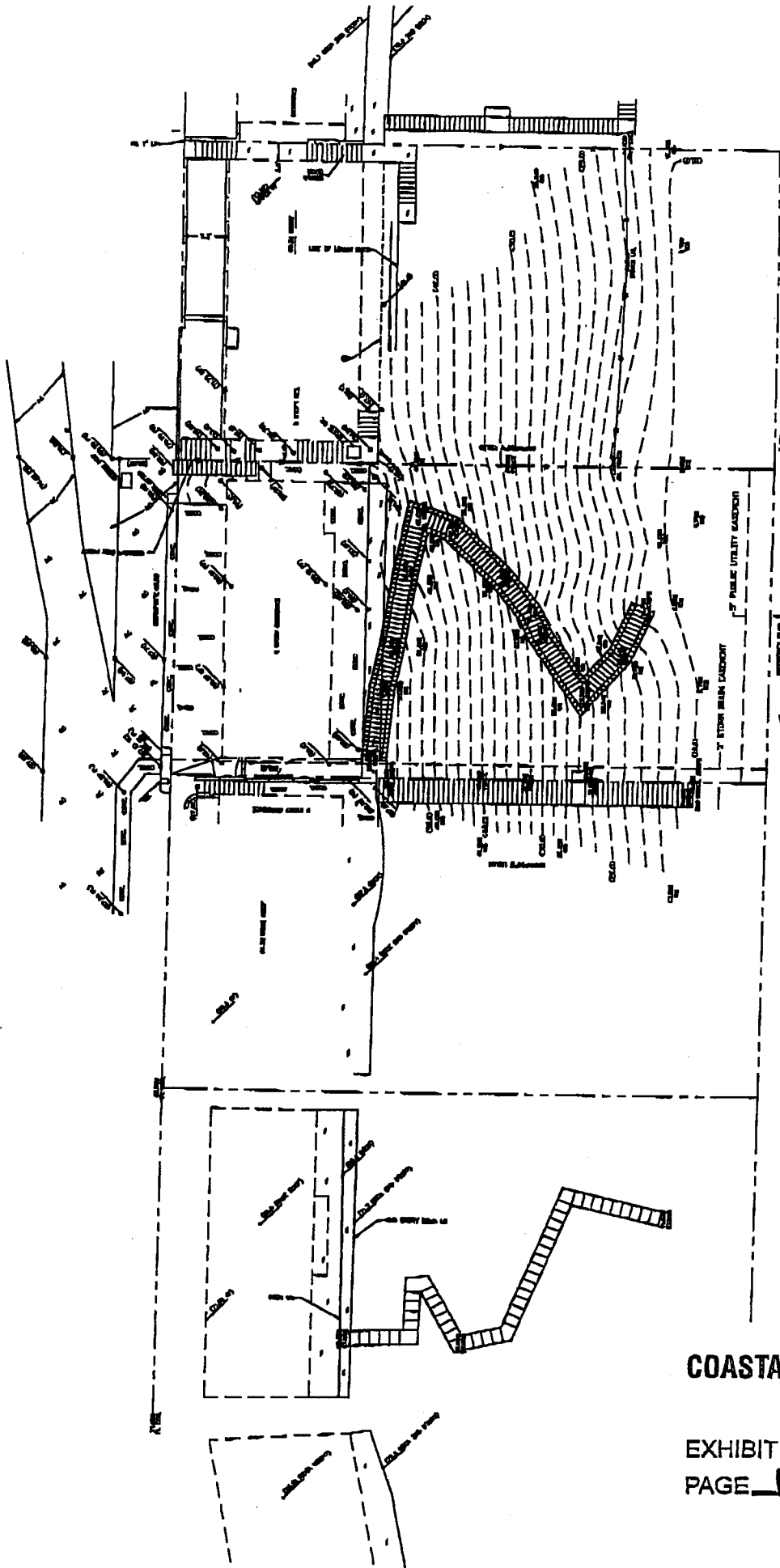
MAR STATE BEACH

COASTAL COMMISSION

EXHIBIT # 3

PAGE 1 OF 1

PROJECT	3415 OCEAN BLVD, NEVPO
CIR-571-38-58)	
APR 19-2004	
APR 19-2004	



P.I.Q.

TABAK RESIDENCE
3431 OCEAN BLVD.

HALFACRE RESIDENCE
3425 OCEAN BLVD.

CIRCLE RESIDENCE
3415 OCEAN BLVD.

BUTTERFIELD
RESIDENCE
3401 OCEAN BLVD.

COASTAL COMMISSION

EXHIBIT # 5

PAGE 1 OF 1

ELEVATED STAIR

33' ELEVATION
CONTOUR

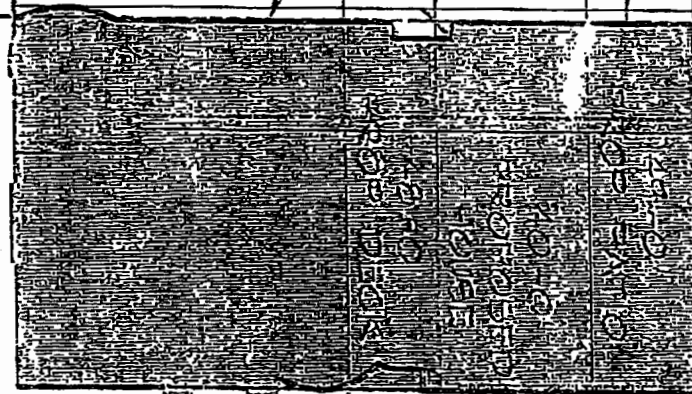
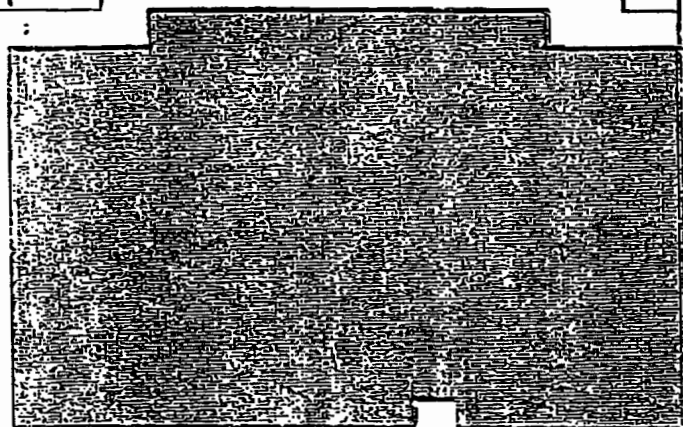
ON-GRADE STAIR

ELEVATED STAIR

IMPROVEMENTS ON
GRADE STRINGLINE

DECK STRINGLINE

STRUCTURE
STRINGLINE



Brion Jeannette Architecture

CIRCLE RESIDENCE
SEPTEMBER 23, 2005

SITE PLAN
SCALE: 1/4"=1'-0"

CALIFORNIA COASTAL COMMISSION

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

RECEIVED
South Coast Region

DEC 10 2002

Page 1 of 5

Date: December 2, 2002

Permit No: 5-01-112



**CALIFORNIA
COASTAL COMMISSION
COASTAL DEVELOPMENT PERMIT**

On February 6, 2002, the California Coastal Commission granted to Curt W. Ensign Coastal Development Permit 5-01-112, subject to the attached Standard and Special Conditions, for development consisting of: Request for after-the-fact approval of a switchback bluff face stairway with keystone-type earth retention blocks and landscaping on a beachfront lot. More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Orange County at 3415 Ocean Boulevard, Corona Del Mar.

Issued on behalf of the California Coastal Commission on December 2, 2002

PETER DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT


The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

***IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a)

12.5.02

Date


Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 5

COASTAL DEVELOPMENT PERMIT**No. 5-01-112****Page 2 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 on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. **Offer of Dedication**
 - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** and in order to implement the applicant's proposal, the applicant shall submit to the Executive Director for review and approval evidence that the applicant has recorded an irrevocable offer to dedicate (OTD) a 1528 square foot easement for public lateral access at the base of the bluff in accordance with the terms of the project description as proposed by the applicant and depicted in Exhibit 4 of the staff report dated January 17, 2002.
 - B. Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this permit. The requirement shall be reflected in the provision of the recorded offer.

COASTAL COMMISSIONEXHIBIT # 6
PAGE 2 OF 5

COASTAL DEVELOPMENT PERMIT**No. 5-01-112****Page 3 of 5****2. Submittal of Revised Project Plans**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of revised project plans which demonstrate the following:

- 1) The outer railing on the lower portion of the stairway shall be relocated to the inner side of the stairway, and
- 2) The relocated railing on the inner portion of the stairway shall be colored in a subordinate and complimentary manner and screened with vegetation to minimize its visibility from the beach. All landscaping shall be carried out in conformance with Special Condition 3.

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

3. Submittal of Landscaping and Irrigation Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a landscaping and irrigation plan prepared by an appropriately licensed professional which demonstrates the following:

- (a) The subject site shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation, landscaping on the bluff face shall consist of drought-tolerant native plant species (to the maximum extent possible) and non-invasive plant species;
- (b) Revegetation of the bluff slope shall be phased over a two year period from date of permit issuance to minimize potential erosion;
- (c) The existing above-ground irrigation system on the bluff slope shall be removed three (3) years from the time of planting completion. The applicant shall notify the Executive Director when planting has been completed. No new irrigation system shall be placed on, or installed in, the bluff face; and
- (d) All ice plant shall be removed from the public access easement area referenced in Special Condition 1 of this permit. The area shall be restored as a sandy beach and maintained free of vegetation in perpetuity.

COASTAL COMMISSIONEXHIBIT # 6PAGE 3 OF 5

COASTAL DEVELOPMENT PERMIT**No. 5-01-112****Page 4 of 5**

- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- C. Five (5) years from the date of issuance of Coastal Development Permit No. 5-01-112, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

4. Submittal of Drainage and Runoff Control Plan

- A. The applicant shall submit two (2) sets of a drainage and runoff control plan prepared by an appropriately licensed professional which demonstrates the following:
- (a) Runoff from all roofs, decks, driveways and other impervious surfaces on the site shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street;
 - (b) Runoff from impervious surfaces shall not be allowed to pond adjacent to the structure or sheet flow directly over the sloping surface to the beach below;
 - (c) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

COASTAL COMMISSION

EXHIBIT # 6
PAGE 4 OF 5

COASTAL DEVELOPMENT PERMIT**No. 5-01-112****Page 5 of 5**

Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Future Improvements/Stairway Expansion or Alteration

This coastal development permit (5-01-112) is only for the development, located at 3415 Ocean Avenue, Corona del Mar, County of Orange, as expressly described and conditioned herein. Any future improvements or development as defined in Section 30106 of the Coastal Act, including an expansion or alteration of the existing bluff face stairway, shall require an amendment to this permit or a new coastal development permit from the Coastal Commission or its successor agency.

6. Condition Compliance

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit including the submittal of revised plans and recordation of the offer of dedication. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

COASTAL COMMISSIONEXHIBIT # 6PAGE 5 OF 5