

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**RECORD PACKET COPY****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-04-339

APPLICANT: Salvatore Palermo

AGENT: Brion Jeannette & Associates, Attn: Amy Creager

PROJECT LOCATION: 3317 Ocean Boulevard, Corona Del Mar
(Orange County)

PROJECT DESCRIPTION: 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 will be construction of new retaining walls, landscape planters, an outdoor barbeque area and modification of the existing stairway. Grading will consist of 280 cubic yards of cut, 129 cubic yards of fill and 151 cubic yards of export to a location outside of the coastal zone. Footings, retaining walls, slab on grade and a caisson foundation system are proposed to support the proposed project.

SUMMARY OF STAFF RECOMMENDATION:

The subject site is located between the first public road and the sea in Corona Del Mar (Newport Beach) and is immediately inland of Corona Del Mar State Beach, which is a public beach. The applicant proposes to remove an existing beach bathroom and construct a new 623 square foot pool house, pool, spa and patio area on the beach and the lower bluff face. In addition, there will be construction of new retaining walls, landscape planters, an outdoor barbeque area and modification of the existing stairway. The primary issues before the Commission are the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. Staff recommends that the Commission **DENY** the proposed project.

As submitted, the proposed project is inconsistent with the Sections 30251, 30240(b), and 30253 of the Coastal Act. The pattern of development along this segment of Ocean Boulevard consists of structures that are sited upon the upper bluff face, while the 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, or unpermitted stairways traversing the bluff face; 2) one pre-coastal structure and one structure permitted in the early 1970's located at the toe of the bluff; and 3) 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 certain cases, the Commission has approved a bluff face stairway, but only where it was demonstrated that a pre-coastal bluff access was present down the bluff face.

Finally, the toe of the bluff is immediately inland of Corona Del Mar State Beach, which is a public beach and is visible from Inspiration Point. While an existing 6-foot high fence encloses a portion of the property at the beach level, the proposed 14' foot high, 37' x 17' pool house and the +/- 12-foot tall retaining wall located behind the pool house on the lower bluff face will be visible from the public beach level and moreover will be clearly visible from the elevated public vantage point, Inspiration Point.

Commission staff notes that there has been an increased amount of development activity along this segment of Ocean Boulevard over the last several years. Denial of this project would be consistent with prior actions by the Commission where the Commission has prohibited significant encroachments upon the lower bluff face in the general area, and even at this very site. At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit No. 5-01-080-(Palermo) for the project site, which proposed similar development consisting of 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. In addition, the Commission denied a proposal that included development upon the lower bluff face at a property located 5 lots down coast of the project site (CDP No. 5-01-191-(Tabak)). Where the Commission has approved development upon the lower bluff, the Commission has limited those encroachments. For instance, in a recent proposal on the Tabak site (CDP No. 5-02-203-(Tabak)), living space additions were restricted to 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. Also, in a more recent proposal on the Halfacre site (CDP No. 5-03-100-(Halfacre)), the proposed new habitable space adhered to the 48-foot bluff elevation contour limit and, as conditioned, the proposed project also adhered to the 33-foot contour limit for accessory improvements. The project proposed in this application exceeds these previously defined limits.

Furthermore, alternatives to the proposed project exist. For example, the existing house could be remodeled to provide some of the recreational amenities that are part of the current proposed project by the applicant. Such an alternative would be consistent with the existing pattern of development, would preserve the integrity of the coastal bluff and would avoid the seaward encroachment. Therefore, staff recommends that the project be **DENIED**, as it would have adverse impacts on the naturally appearing landform and a cumulative adverse impact on visual and public access coastal resources.

LOCAL APPROVALS RECEIVED: Approval in Concept (#15372842-2002) from the City of Newport Beach Planning Department dated July 12, 2004.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-01-080-[Palermo]; *Update Geotechnical Investigation For New Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No/ 71483/Report No. 04-5364)* prepared by Geofirm dated July 7, 2004; *Wave-Runup Study Update and Response to California Coastal Commission Staff Report CDP#5-01-080, 3317 Ocean Boulevard, Corona Del Mar, California* prepared by Geosols Inc. (Skelly Engineering) dated August 16, 2004; Letter to Commission staff from Brion Jeannette & Associates dated August 18, 2004; Letter to Brion Jeannette Associates from Commission staff dated September 15, 2004; Letter to Commission staff from Brion Jeannette & Associates dated December 1, 2004; *Geotechnical Review of Integrated Shoring-Retaining Wall System, New Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No. 71483-01/Report No. 04-5464b)* prepared by Geofirm dated November 30, 2004; *Geotechnical*

Review of Conceptual Grading Plan, New Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No. 71483-01/Report No. 04-5464b) prepared by Geofirm dated December 20, 2004; and Structural Review of Shoring/Retaining Wall System, New Pool House, 3317 Ocean Boulevard, Corona del Mar, California, C.C.C. Application #5-01-080 (Project No. 2004-046.01) prepared by MVP Engineering, Inc. dated November 10, 2004.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Plan/Roof Plan
4. Floor Plans
5. Elevation Plans/Section Plans
6. Foundation Plan
7. Aerial Photo of the Project Site and Surrounding Pattern of Development

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

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

A. Motion

I move that the Commission approve Coastal Development Permit No. 5-04-339 for the development proposed by the applicant.

B. Staff Recommendation of Denial

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

C. Resolution to Deny the Permit

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

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

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

1. Project Location

The proposed project is located at 3317 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits #1-2). The lot size is 7,881 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 rectangular shaped bluff face property fronts approximately 70-feet on the Ocean Boulevard right-of-way and extends southwesterly approximately 123-feet to the rear of the property boundary located along Corona Del Mar State Beach. The lot consists of a generally natural sea bluff at the middle and lower portions and a portion of the beach. The bluff is approximately 80-feet high, while maximum relief across the property is approximately 63-feet and the slope ratio is variable, between 1:1 to 2:1 (horizontal: vertical). The project site is underlain locally at the surface and at depth by bedrock strata of the Monterey Formation, which is overlain along the upper bluff by marine terrace deposits and by a slopewash talus, which mantles the middle and lower bluff face. Beach deposits occur along the shoreline and are intertwined with the slopewash at the base of the bluff slope. The site is currently developed with a single-family residence with a two-car garage located at the upper bluff face. To the north, at the top of the bluff is Ocean Boulevard. To the west and east are existing residential development. To the southwest of the project site is the Breakers Drive street end, a quarry stone revetment covered with sand and vegetation (which terminates at the Breakers Drive street end and is near the southwest property line of the subject site), and further southwest is the Corona Del Mar State Beach Parking Lot. To the south, at the toe of the slope is a sandy beach and a normally 200-foot wide sandy public beach. The bluff face remains relatively undisturbed and vegetated, with the exception of an existing wooden stairway located along the eastern property line. At the bottom of the bluff is an existing 10' x 12' (120 square feet) bathroom located at the base of the stairs and a 6-foot high wooden fence at the rear and side property lines of the rear yard adjacent to the public beach area. The pattern of development along Ocean Boulevard primarily consists of structural development sited at the upper portion of the bluff face with minimal disturbance of the mid and lower bluff face and the toe of the bluff.

2. Project Description

The proposed project consists of removal of the existing 120 square foot beach-level bathroom and construction of a new 14' foot high, 623 square foot pool house (about 3-feet above the lower beach level), pool, spa and patio area on the beach and the lower bluff face. In addition, there will be construction of new retaining walls, landscape planters, an outdoor barbeque area and modification of the existing stairway (Exhibits #3-6). Grading will consist of 280 cubic yards of cut, 129 cubic yards of fill and 151 cubic yards of export to a location outside of the coastal zone. Footings, retaining walls, slab on grade and a caisson foundation system (10-24" in diameter caissons) (Exhibit #6) are

proposed to support the proposed project. The caissons will primarily be used to support the proposed approximately 12 foot tall retaining wall that will retain the bluff once the toe of the bluff is excavated and removed to create additional level space at beach level for construction of the proposed 623 square foot pool house.

The existing stairway, bathroom and fence have raised concerns since they may have been constructed after 1972 without a coastal development permit. According to information submitted by the applicant, the City approved a stairway in 1980 as stated in a Building Permit #576-80 dated June 12, 1980 from the City of Newport Beach Department of Community Development. The building permit states that the work to be done consisted of: *build new stairs*. Associated with these stairs is possibly the bathroom, since it is attached to the base of the stairs. Also, aerial photos from 1952 showed the existing residence, but did not show the existing stairway, bathroom or fence. However, aerial photos from 1972 show an existing footpath supported possibly with railroad ties; however, the location is more toward the center of the lot from the top of the bluff to the toe of the bluff as opposed to the current stairway configuration where the stairway is located along the eastern property line. The 1972 aerials also show a fence, but it appears that the fence has been altered since that time. If the stairway, bathroom and fence are determined not to be pre-coastal, then enforcement action would be recommended to remove the existing stairway, bathroom and fence.

3. Prior Commission Action at the Subject Site

a. CDP No. 5-88-798-(Benedict)

On November 15, 1988, the Commission approved De Minimus Waiver No. 5-88-798 (Benedict) for the remodel and addition of 493 square feet of living area to a single-family dwelling located at 3317 Ocean Boulevard. No increases in height or construction beyond the existing structural stringline was proposed.

b. 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 864 square foot pool house, pool, spa and exercise room on the beach and the lower portion of the bluff face. In addition, two (2) retaining walls were proposed. One was to be a 6-foot high wall located along the western perimeter of the swimming pool at the beach level and one was to be a 12-foot high wall at the rear of the pool house on the lower bluff face. These walls varied from approximately 6 to 12 feet in height. The primary issues raised by the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

4. Prior Commission Action in Subject Area

- a. CDP No. 5-01-199-(Butterfield), 3401 Ocean Boulevard (Located down-coast from subject site)

At the December 2001 Commission Hearing, the Commission approved in part and denied in part Coastal Development Permit No. 5-01-199-(Butterfield) for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels on the existing pre-Coastal Act bluff face stairway. The Commission denied the toe of slope cut-out and approved the portion of the lattice work and gate located on a previously approved landing area. The Commission found that the gate replacement and lattice enclosures on the previously permitted landing areas to be consistent with the scenic and visual resources policies of the Coastal Act, as they will not obstruct views to or along the shoreline and are in keeping with the pattern of development in the area and therefore is consistent with Section 30251 of the Coastal Act. However, the Commission found that the proposed sand pit cut-out would not minimize alteration of natural landforms, was not visually compatible with the character of surrounding development and would affect the scenic and visual qualities of the subject area. As such, the portion of the proposed project involving the establishment of a sand pit cut-out area was inconsistent with Section 30251 of the Coastal Act. The development proposed in the subject application includes structures that are larger and more visually prominent than those elements of the Butterfield project the Commission denied.

- b. CDP No. 5-01-191-(Tabak), 3431 Ocean Boulevard (Located down-coast from subject site)

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

- c. CDP No. 5-01-112-(Ensign), 3415 Ocean Boulevard (Located down-coast from subject site)

At the February 2002 Commission Hearing, the Commission approved Coastal Development Permit No. 5-02-112-(Ensign) for the after-the-fact approval of a

new switchback bluff face stairway with keystone-type earth retention blocks, landscaping and in-ground irrigation. The primary issues before the Commission were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, community character and impacts to public access. As submitted, the proposed project raised issues with Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The Commission found that the proposed stairway that may have followed a pre-Coastal Act pathway, as conditioned, does not present an adverse visual impact because it follows the natural topography of the bluff, was effectively screened with vegetation and was consistent with the character of the surrounding area. The development proposed in the subject application includes structures that are larger and more visually prominent than those elements approved by the Commission in the Ensign project.

d. CDP No. 5-02-203-(Tabak), 3431 Ocean Boulevard (Located down-coast from subject site)

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

e. CDP No. 5-03-100-(Halfacre), 3425 Ocean Boulevard (Located down-coast from subject site)

At the January 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-03-100 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 two 2nd floor after-the-fact 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. 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.

C. SCENIC RESOURCES

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

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

The proposed project is located along a coastal bluff face immediately inland of Corona Del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated (Exhibit #7). Although several lots have stairways traversing the bluff face, and some have permitted and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. 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, minimize the alteration of existing landforms, and limit the seaward encroachment of development. The proposed project, as submitted, would be a significant new development encroaching seaward. This seaward encroachment also raises the concern over cumulative impacts if others propose to develop the coastal bluff face in a similar manner.

The proposed project will result in significant landform alteration and affect public views of the vegetated bluff from the adjacent public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point, and would be inconsistent with the pattern of development in the subject area. Except for the 6-foot tall fence, stairs and small restroom previously noted, the lower bluff face and beach on this site are largely undeveloped. The proposed project involves 280 cubic yards of cut and 129 cubic yards of fill and 151 cubic yards of export. The proposed grading will excavate the lower bluff face and substantially remove the bluff toe and will result in a significant alteration to the bluff landform to create space for construction of the 14-foot high, 623 square foot pool house, retaining wall and other components (Exhibit #5, page 2). The proposed retaining wall, which will rely on caissons for support, will be constructed to protect the proposed 623 square foot pool house.

As stated previously, the predominant pattern of development along this segment of Ocean Boulevard includes structures sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. The proposed project results in development that is inconsistent with this characteristic of this area. The proposed project will affect public views of

the vegetated bluff from the adjacent public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. From the public beach, views will be impacted, but may be limited to the development located on the lower bluff face consisting of the 12-foot tall retaining wall, stairs and 14-foot tall pool house as opposed to development such as the pool and spa, which would be located behind an existing wooden fence at the beach level. Moreover, impacts to views from Inspiration Point would be significant since the entire project site (including those elements below the elevation of the fence) can be viewed from this elevated public vantage point. Inspiration Point provides sweeping views of the ocean and shoreline and the proposed project would impact these views. The views from Inspiration Point of the natural vegetated bluff and the beach at the project site would be marred by development located on the lower bluff face and on the beach. The Commission finds that the proposed project does not minimize alteration of natural landforms, is not visually compatible with the character of surrounding development and will affect the scenic and visual qualities of the subject area. As such, the proposed project is inconsistent with Section 30251 of the Coastal Act as discussed below.

1. Landform Alteration

The Coastal Act requires new development to be sited to "*protect views to and along the ocean and scenic coastal areas*" and "*minimize the alteration of natural land forms.*" The proposed project would be located along the lower coastal bluff face and beach. The existing bluff face is a natural landform visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. Any alteration of this landform would affect the scenic views of the coastline when viewed from public vantage points such as the State beach and Inspiration Point. The proposed project would significantly alter the appearance of the vegetated bluff. As such, the proposed development at the subject site is not appropriately sited to minimize adverse effects to existing scenic resources.

2. City Setback, Stringline Analysis and Geologic Setback

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 setback in areas where geologic conditions are such that the site can be presumed stable for the useful economic life of the development so that a greater setback is not required for geologic purposes. 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. Setbacks, string lines and geologic setbacks are applied to limit new development from being built any farther 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

Section 30251 of the Coastal Act states that permitted development shall be designed "*to be visually compatible with the character of the surrounding area.*" Therefore, proposed development must be compatible with its' surroundings. The plans submitted by the applicant shows that the project conforms to the 10-foot rear property line setback required by City zoning, but conformance to the City required setback does not address the potential impacts that the seaward encroaching development will have on the project site, as development in this area is generally set back much farther than the generally-applicable City setback would require. Adhering to the City setback of 10-feet would allow development on the beach and the lower bluff face and would not achieve the objectives of Coastal Act Section 30251. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration, visual impacts and the cumulative adverse impact that would occur if other lots develop the bluff face in the manner proposed.

b. Stringline

As noted above, one tool the Commission has often used is the string line evaluation to review seaward encroachment of development. String lines are applied to limit new development from being built any further seaward than existing adjacent development.

The predominant pattern of development along this segment of Ocean Boulevard where the proposed project is located includes the primary living structure sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. However, there are limited exceptions where development is located at the lower bluff face and toe and is in contrast to the pattern of development. These exceptions complicate application of a stringline. When reviewing development adjacent to one of these exceptions, application of the stringline doesn't yield a development limit that is consistent with the overall pattern of development observable in the area.

In this case, there is a permitted enclosed living structure located upon the lower bluff face and toe on the property immediately adjacent and upcoast (west) of the subject site. That structure on the adjacent property is located so much further seaward than the predominant line of development in the area that applying the stringline yields a development limit that is significantly out of character with the remaining pattern of development. While stringlines can be drawn, they don't yield useful results.

The purpose of the stringline is to prevent seaward encroachment of new development such that adverse impacts on a variety of coastal resources is minimized or avoided. In cases where stringlines and setbacks don't yield useful development limits, the Commission must look to other points of reference. The existing homes at the upper bluff face form a line of development, which establishes the community character and can be used to identify the applicable limits of seaward encroachment. More specifically, the proposed improvements

extend further seaward than the predominant pattern of development, and seaward of the Tabak residence (CDP No. 5-02-203-[Tabak]) recently approved by the Commission in January of 2002, at a lot located 5 lots down coast of the project 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 contour, while the proposed pool extended to the 33-foot contour (the Commission placed a special condition limiting the pool to extend to the 33 foot contour line). Also, in a more recent proposal on the Halfacre site (CDP No. 5-03-100-(Halfacre) approved by the Coastal Commission in January 2005, the proposed new habitable space adhered to the 48-foot bluff elevation contour and as conditioned, the proposed project also adhered to the 33-foot contour for accessory improvements. The proposed project's livable area extends substantially seaward of the 48-foot contour line, beginning approximately from the 23-foot contour line to beach level, while the accessory structures are located at the lower bluff face and on the beach. Thus, the proposed project includes significant development on the lower bluff face and beach, entirely seaward of and inconsistent with the predominant pattern of development in the community and inconsistent with recent Commission approval near the site.

As stated previously, 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 substantially seaward of the predominant line of development. There is a distinct community character where development is located upon the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. While the developments (CDP No. 5-02-203-[Tabak] and CDP No. 5-03-100-[Halfacre]) downcoast of the project site has been approved by the Commission and do allow some further encroachments upon the lower bluff face, those encroachments were limited to the 48-foot/33-foot contour lines which are substantially landward of the developments proposed in this application. The proposed project would result in seaward encroachment and also be a visible intensification of use of the site, inconsistent with the surrounding undeveloped area. Thus, the proposed project must be denied because it proposes seaward encroachment, which would have adverse impacts on coastal resources and would violate Section 30251 of the Coastal Act.

c. Geologic Setback

Regardless of whether a stringline setback is applied, Section 30253 of the Coastal Act requires that new development be sited to assure stability for its economic life. Such a "geologic setback" is derived for site-specific conditions.. The Commission's staff geologist concurs with the applicant that the subject slope is stable and that no historic bluff retreat can be detected from examination of aerial photographs. A minimal setback may be warranted in situations such as this where 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 allow for future changes in geologic processes operating at the site and to minimize the potential that the development will contribute to visual impacts. However, the proposed development is almost entirely on the bluff face, inconsistent with a policy of siting development away from eroding bluff edges.

3. 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 public vantage points such as the sandy public beach and from elevated vantages such as Inspiration Point. Although several lots have stairways traversing the bluff face, permitted and unpermitted development at the toe of the bluff and some have unpermitted development at the toe of the bluff, the overall appearance of the bluff in this area is natural and undeveloped. Approval of the proposed project would set a precedent for the construction of substantial new development along the beach and the lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward. Scenic resources would not be preserved. Development at this site must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. Therefore, the Commission cannot allow the proposed project to be constructed as submitted.

Conclusion

The Commission finds that the proposed project, as currently proposed, is not sited and designed to protect scenic and visual qualities of coastal areas as a source of public importance. Denial of the proposed project would preserve existing scenic resources and would be consistent with preserving the existing community character where development occurs at the upper bluff face. The alteration of the bluff would result in an adverse visual effect when viewed from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. Allowing the proposed project would also lead to seaward encroachment of new development in an area where extensive unpermitted development has occurred that has encroached seaward and affected the community character. These are matters the Commission is presently trying to resolve through the coastal development permit process, and enforcement actions as necessary. The Commission finds that the proposed project would result in the alteration of natural landforms and would not be visually compatible with the character of the surrounding area. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites and therefore must be denied.

D. PUBLIC RECREATION

Section 30240 (b) of the Coastal Act states:

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

The project site contains beach area and bluff face on the seaward side of Ocean Boulevard, which is the first public road immediately inland of Corona del Mar State Beach. The project site is highly visible from public vantage points, such as the sandy public beach and from elevated vantages such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the upper bluff face, while the lower bluff face

remains largely undisturbed and vegetated. Although several lots have stairways traversing the bluff face and some have permitted and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. Public access is available directly seaward of the toe of the bluff on the sandy public beach (Corona del Mar State Beach). Development at this site, if approved, must be sited and designed to be compatible with Section 30240(b) of the Coastal Act. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts, which would significantly degrade those areas. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to recreational coastal resources. The proposed project, as submitted, would be a significant new development encroaching seaward.

The proximity of the proposed project to Corona Del Mar State Beach, a public beach, and Inspiration Point, an elevated public vantage point, raise Coastal Act concerns, as it would be new seaward encroaching development that would discourage use of the public beach. While an existing 6-foot high fence encloses a portion of the property at the beach level and separates the proposed private development from the publicly owned areas of the beach, the proposed project would still result in adverse impacts to public recreation by creating a much more significant 'presence' on the beach than currently exists as a result of the fence, which results in effectively privatizing public areas of the beach. Project components such as the proposed 14' foot high, 37' x 17' pool house and the approximately 12-foot tall retaining wall located behind the pool house on the lower bluff face would be imposing structural features visible from the public beach and even more so from the elevated public vantage location, Inspiration Point. These structures would affect public use of the beach by discouraging the public from using the public beach area intended for public use adjacent to the fence. This would compel the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project would adversely impact recreation on the public beach.

The Commission finds that the proposed project, as currently proposed, is not sited and designed to protect public access to recreational coastal resources. Denial of the proposed project would preserve existing public recreational resources and would be consistent with preserving the existing community character where development occurs at the upper bluff face. Allowing the proposed project would also lead to seaward encroachment of new development in an area where extensive unpermitted development has occurred that has encroached seaward and adversely effects community character. The Commission finds that the area in front of the development is a recreation area and that the proposed project would degrade that area and, by discouraging public use of the area, would be incompatible with its recreational character, and thus, with Section 30240(b). Therefore, the Commission finds that the proposed project is inconsistent with Section 30240 (b) of the Coastal Act and must be denied.

D. HAZARDS

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

New development shall:

- (l) *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 principal Coastal Act policy relative to hazards is Section 30253. Section 30253 of the Coastal Act mandates that development minimize risks to life and property in areas of high geologic, flood, and fire hazard. It also requires that development assure stability and structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs or cliffs.

1. Bluff Protective Devices that Alter Natural Landforms

As described more fully below, the proposed development is sited such that a retaining wall is necessary to protect the development from surficial instability on the face of the bluff. More specifically, the proposed 623 square foot pool house is sited in a location that requires some type of stabilization of the bluff. As recommended by the applicant's geologist, such stabilization would either entail grading and laying back the bluff, or the construction of a retaining wall. The applicant has proposed to excavate the toe of the bluff (to create adequate space at beach level for the pool house) and the construction of a caisson-founded retaining wall to stabilize the bluff. The excavation of the bluff and the construction of the retaining wall alters the natural bluff landform and would result in the substantial alteration of the natural landform. Furthermore, the proposed retaining wall constitutes a bluff "protective device". Since the project requires the construction of a protective devices that would substantially alter natural landforms along the bluff, the proposed development is inconsistent with Section 30253 of the Coastal Act. Therefore, the Commission finds that the proposed development must be denied.

2. Minimizing Risks in High Geologic Hazard Areas

Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to humans that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, and breaks in water or sewage lines.

A previously completed geotechnical investigation was associated with a previous design that was submitted for coastal development permit No. 5-01-080-(Palermo), which was ultimately denied at the January 2002 Commission Hearing. An updated geotechnical investigation, which evaluates the current proposal, has been submitted: *Update Geotechnical Investigation For New Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No/ 71483/Report No.*

04-5364) prepared by Geofirm dated July 7, 2004. The information provided states that stability analyses performed herein, utilizing shear strength data from laboratory testings of onsite materials, indicate that deep-seated failure is unlikely. However, slopewash deposits which mantle the bluff slope face are considered surficially unstable and may be prone to failure under conditions of saturation or seismic acceleration. The information submitted ultimately concludes the coastal bluff on the site is grossly stable and that the project is feasible from an engineering perspective provided the applicant complies with the recommendations contained in the investigation. Some of the recommendations for construction of the project site include: footings and retaining walls in conjunction with a caisson and lagging shoring/retaining wall along the westerly property line and possibly at the northern wall and use of a debris barrier along the rear perimeter of the proposed pool house designed to mitigate possible surficial instability from affecting proposed improvements.

In addition to the previously stated geotechnical investigation, the applicant has also submitted additional letters from Geofirm and MVP Engineering, Inc. that discuss the proposed caisson and retaining wall system. The letter from Geofirm dated November 30, 2004 states that the proposed caisson and retaining wall system based on the plans provided by the architect is geotechnically preferred to a slope layback and conventional wall system for a number of reasons such as this system limits the construction activities to within the limits of the proposed improvements. The letter from MVP Engineering, Inc. dated November 10, 2004 also states that the proposed caisson and retaining wall system is preferred to a slope layback and conventional wall system.

The Commission's staff geologist has reviewed the project and agrees with the investigations' conclusions relative to the adequacy of the engineered stability system. The slope will be subject to subaerial erosion and surficial instabilities, but the geotechnical report makes recommendations the should assure safety of the development against such instabilities as soil creep.

3. Coastal Hazards

To analyze the suitability of the site for the proposed 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.

A previously completed wave run-up analysis was completed some time ago and was associated with a previous design that was submitted for coastal development permit No. 5-01-080-(Palermo), which was ultimately denied at the January 2002 Commission Hearing. The applicants have since submitted an updated *Wave-Runup Study Update and Response to California Coastal Commission Staff Report CDP#5-01-080, 3317 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. (Skelly Engineering) dated August 16, 2004 that has reviewed and evaluated the new revised project. This study states that since the original study, information concerning the local coastal processes and historical shoreline changes have become available and thus was included in their updated review of the project site. Ultimately, this updated study makes a similar conclusion as the previously submitted study: "... wave runup and overtopping

will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runup protection. The proposed project minimizes risks from flooding."

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.

Conclusion

To meet the requirements of the Coastal Act, new development must be sited and designed to: *"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 [Emphasis added]."* The geologic analysis submitted by the applicant indicates that, with appropriate engineering, the development can be constructed such that hazards are addressed. However, as proposed, the new development is reliant upon a protective device (caisson-founded retaining wall). Furthermore, construction of that retaining wall will result in the substantial alteration of the natural landform. Thus, the Commission finds that the project, as currently proposed, is not consistent with the geologic hazards policy of the Coastal Act. There are alternatives to the proposed project (see Section II.E. of these findings) that would lessen or avoid the identified impacts. Denial of the proposed project would avoid impacts to landforms. New development should be sited and designed so that no protective device and landform alteration is necessary to protect the structure over its anticipated life (usually taken to be 75 years). Therefore, the Commission finds that the proposed project is inconsistent with Section 30253 of the Coastal Act and therefore must be denied.

E. ALTERNATIVES

Due to the project's impact on coastal views and the alteration of natural landforms, possible project alternatives were requested from the applicant in order to find an approvable project that would limit impact on coastal views and alteration of natural landforms. The applicant has stated that they have looked at other alternatives, however, the applicant feels that the current project proposal is the best and least impacting. One alternative looked into was placing the proposed addition near the existing residence, but the applicant states that the location of the existing residence at the upper bluff face leaves no other buildable areas for development. Another alternative looked into was moving the improvements to the sloped bluff adjacent to the rear of the existing residence. However, this would drastically alter the bluff appearance. Additional alternatives are discussed below.

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant already possess a substantial residential development of significant economic value of the property. In addition, several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. As such, there would be no disturbance of the bluff face. The bluff face would remain as an undeveloped vegetated slope and would be consistent with community character. The applicants would still have full use of the residence. This alternative would result in the least amount of effects to the environment and also would not have any adverse effect on the value of the property.

2. Remodeling of the Existing Home

The proposed project entails construction of recreation facilities located on the beach and the lower portion of the bluff face. An alternative to the proposed project would be remodeling of the existing home located at the upper bluff face to allow for recreational facilities consistent with the recent Commission actions on downcoast sites. As discussed previously, the Commission has recently approved CDP No. 5-02-203-[Tabak] and CDP No. 5-03-100-[Halfacre] (located downcoast of the project site), which were required to adhere to development limits so that habitable area would not extend past the 48-foot contour and that accessory improvements would not extend past the 33-foot contour. As proposed, the proposed project's livable area extends seaward beginning approximately from the 23-foot contour line, while the accessory structures are located at the toe of the bluff and on the beach. Thus, the proposed project is a significant development on the lower bluff face and beach inconsistent with a recent Commission approval adjacent to the site and results in a significant adverse impact on coastal resources. This above-described alternative would accommodate the applicant's interest in adding recreational elements, but there would be no disturbance of the beach and the lower bluff face. The beach and the lower bluff face would remain as an undeveloped vegetated slope and would be consistent with community character as development occurs at the upper bluff face.

3. Demolishing and Rebuilding the Existing Home

The proposed project entails construction of recreation facilities located on the beach and the lower portion of the bluff face. An alternative to the proposed project would be demolishing and rebuilding the existing home, consistent with the recent Commission actions on downcoast sites (CDP No. 5-02-203-[Tabak] and CDP No. 5-03-100-[Halfacre]). This could be done in a manner that would accommodate the applicant's interest in adding the proposed elements, but there would be no disturbance of the beach or the lower bluff face. The bluff face would remain as an undeveloped vegetated slope and would be consistent with community character as development occurs at the upper bluff face.

E. LOCAL COASTAL PROGRAM

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

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

Public Access, Policy 4 states,

Public access in coastal areas shall be maximized consistent with the protection of natural resources, public safety, and private property rights.

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

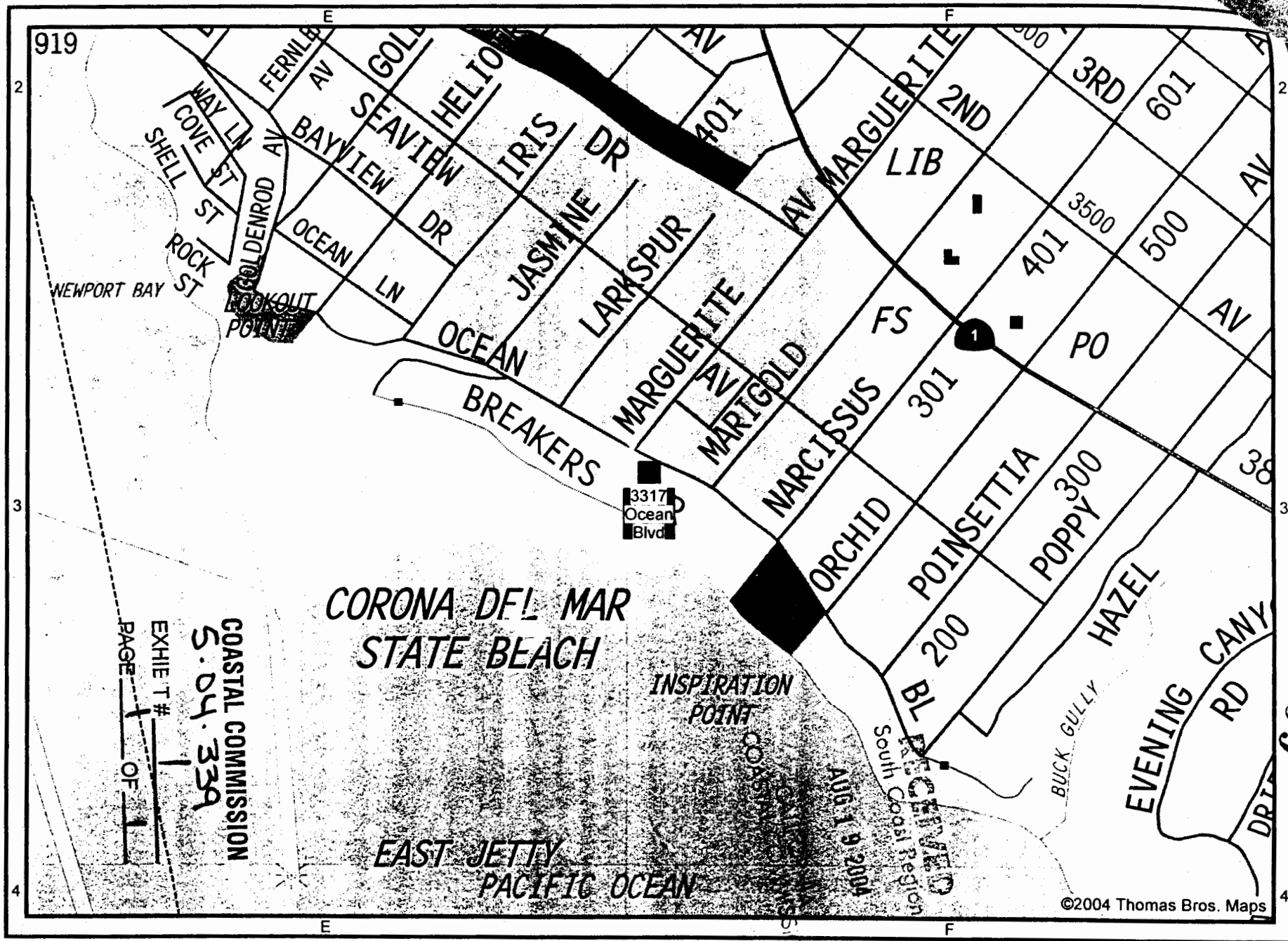
Public Views. The location and design of a proposed project shall take into account public view potential.

The construction of the proposed project is inconsistent with the policies in the City's certified LUP and as well as Chapter 3 policies of the Coastal Act discusses previously, specifically Sections 30251 and 30240(b). Development on the coastal bluff would cause adverse impacts to the natural landform, the coastal scenic resources and public access, which is inconsistent with these Sections of the Coastal Act. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration, visual impacts and the cumulative adverse impact that would occur if other lots develop the bluff face in the manner now proposed at the subject site. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts, which would significantly degrade those areas and be incompatible with their recreational use. The proposed development is inconsistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal Act and would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the project must be denied.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as remodeling of the existing home. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.



PALEMO POOL HOUSE
3517 OCEAN BLVD
CORONA DEL MAR, CA

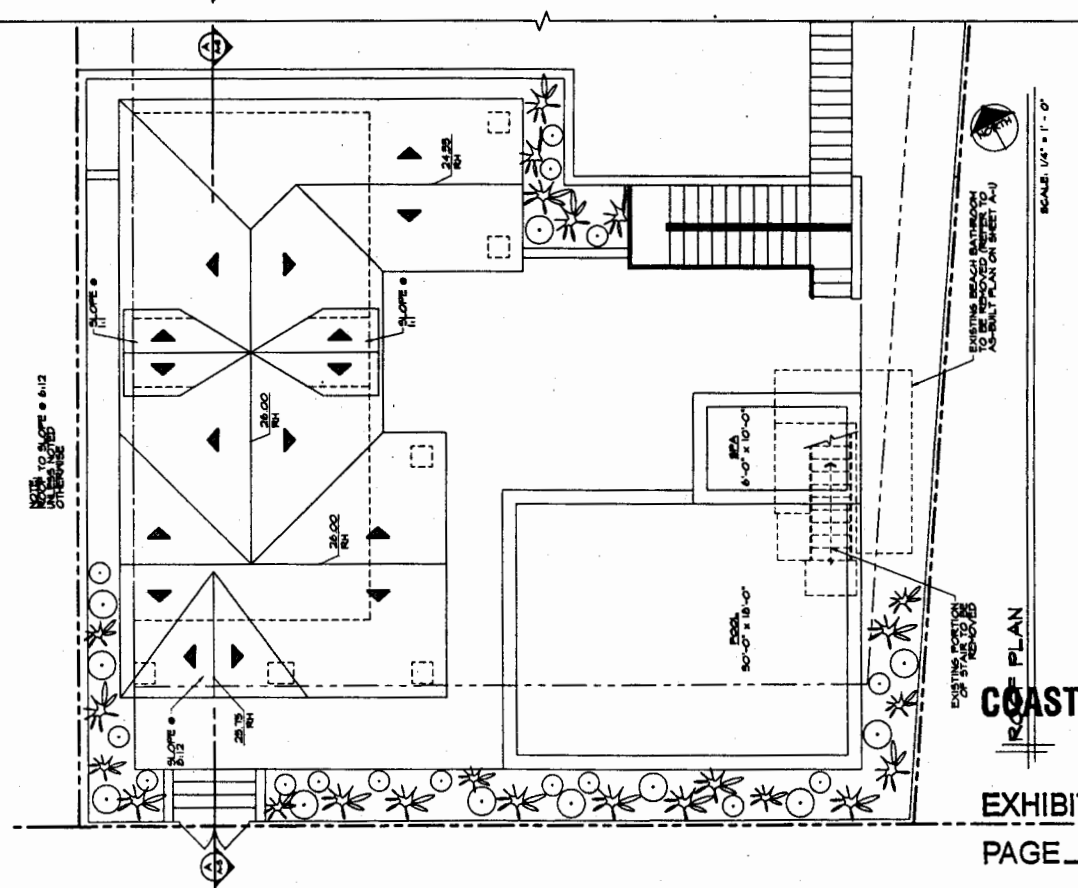
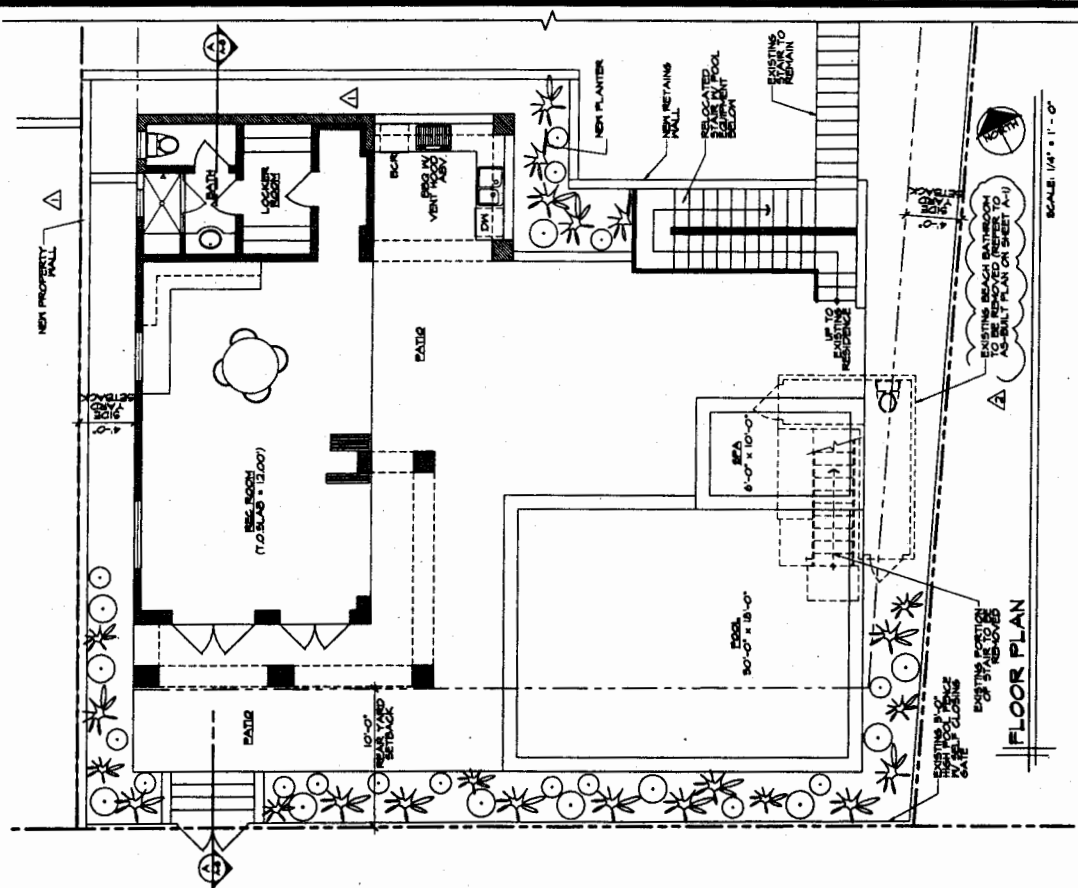
Brian Jeannette Architecture

FLOOR PLAN

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COASTAL COMMISSION

EXHIBIT #

4

PAGE

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OF

1

PALERMO POOL HOUSE
3917 OCEAN BLVD
CORONA DEL MAR, CA

Brian Jeannette Architecture

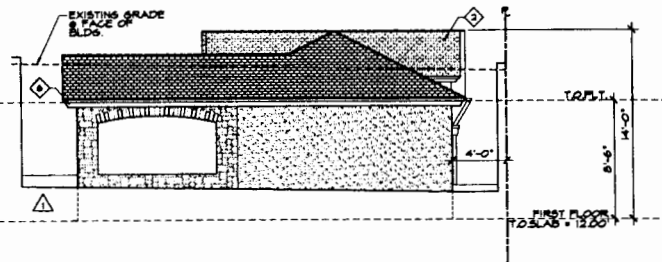
EXTERIOR ELEVATIONS
& SECTION 'A'

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AS CORRECTIONS
Revision: 3/04
2/22 CORRECTIONS
Revision: 2/04
Revision: _____
Revision: _____
Job No. 04-050



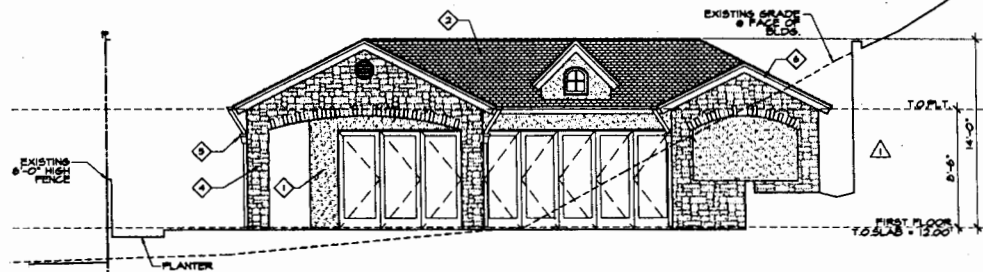
A-3

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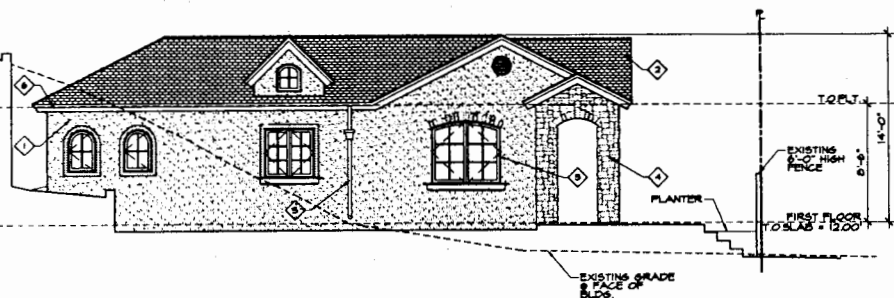
NORTH ELEVATION

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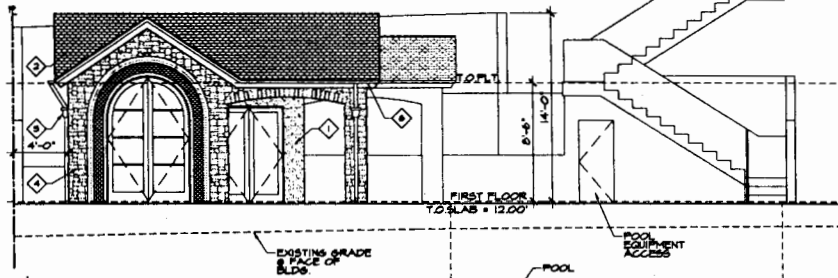
EAST ELEVATION

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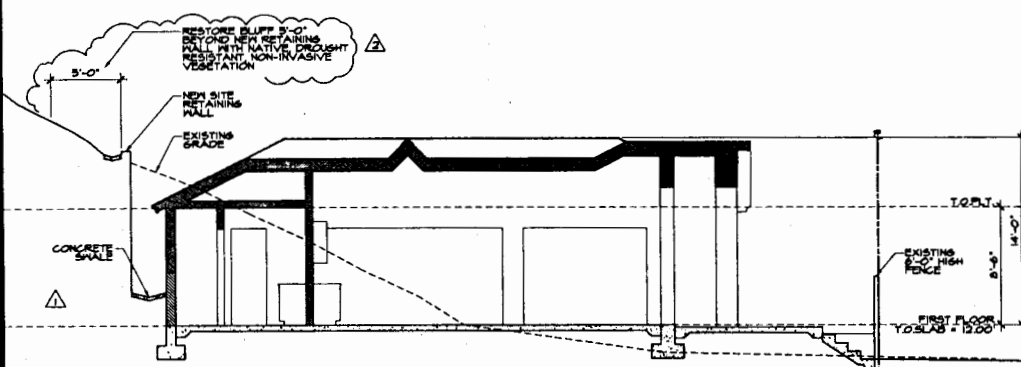
WEST ELEVATION

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SOUTH ELEVATION

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



SECTION 'A'

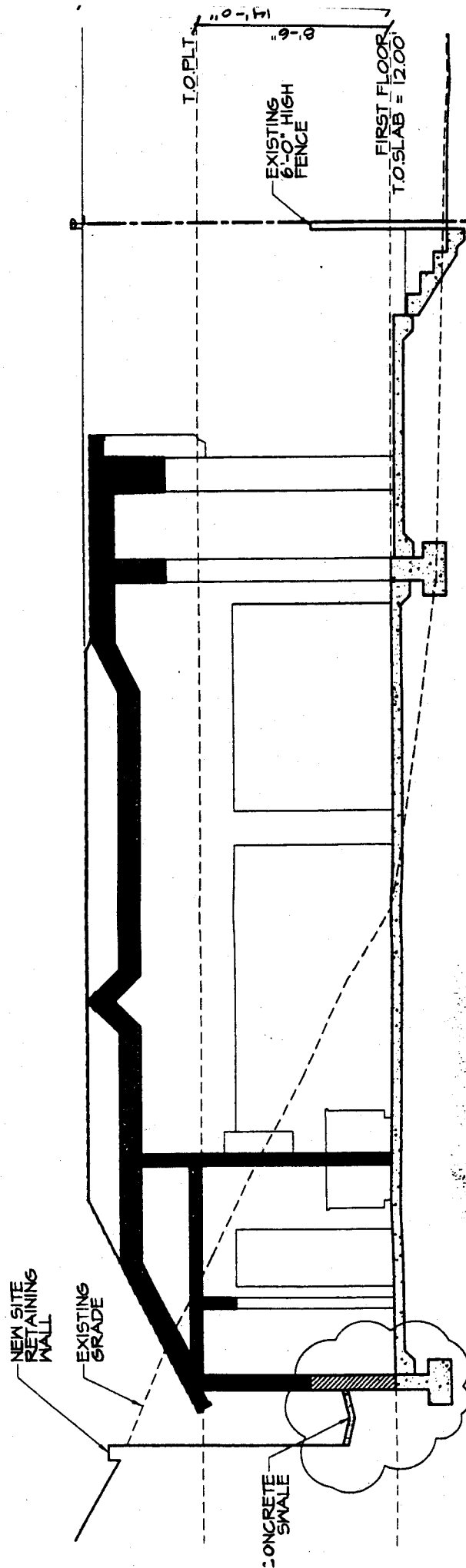
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EXHIBIT # 5
PAGE 1 OF 1

COASTAL COMMISSION

EXTERIOR FINISH NOTES

- ◇ EXTERIOR PLASTER: EXTERIOR PLASTER AT BUILDING FIELD TO RECEIVE A SMOOTH FINISH O/ HIS FELT. COLOR TO MATCH EXISTING RESIDENCE. CONTACT CHESA PRODUCTS INTERNATIONAL, INC. (714) 459-0400
- ◇ ROOFING: ROOF TILE TO BE CHINA SLATE (MATCH EXISTING RESIDENCE)
- ◇ WINDOWS: WINDOWS TO BE BY COLOR TO MATCH EXISTING RESIDENCE.
- ◇ STONE: EXTERIOR STONE VENEER TO BE FARMER STONE OR ARCHITECT APPROVED EQUAL (1/2" THICK). CONTACT SEPULVEDA BUILDING MATERIALS FOR MORE INFO. REFER TO DETAIL
- ◇ COPPER: 16 OZ COPPER @ ALL BUTTERS, DOWNSPOUTS, & COLLECTION BOXES.
- ◇ RAFTERS: ALL FASCIA AND BARGE SHALL BE 2x6 S4S WITH 1x5 S4S TRIM. USE REDWOOD.



COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 2

EXHIBIT # 9
PAGE 1 OF 1

