

CALIFORNIA COASTAL COMMISSION

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Staff: Fernie Sy-LB
Staff Report: October 26, 2006
Hearing Date: November 14-17, 2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-06-035

APPLICANTS: Todd & Peggie Parrot

AGENT: Vincent Di Biasi

PROJECT LOCATION: 3130 Ocean Boulevard, Corona Del Mar (City of Newport Beach)
(Orange County)

PROJECT DESCRIPTION: Demolition of an existing two story single-family structure with an attached garage and construction of a new 5,920 square foot four-story duplex with two attached two-car garages totaling 1,205 square feet located at the base of a bluff and on the bluff face, approximately 29-feet above existing grade. Grading will consist of 1,360 cubic yards of cut, 20 cubic yards of fill and 1,340 cubic yards of export to a location outside of the Coastal Zone

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a coastal bluff lot that includes development located at the base of the bluff and on the bluff face and is immediately inland of a private street, a public parking lot and public beach (Corona Del Mar State Beach). The primary concerns 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 impacts of development in hazard prone locations is minimized.

Commission staff is recommending **APPROVAL** of the proposed project with **EIGHT (8) SPECIAL CONDITIONS** regarding: **1)** assumption of risk; **2)** submittal of revised final project plans; **3)** no future shoreline protective devices; **4)** additional approvals for any future development; **5)** an addendum and conformance to the geotechnical investigation; **6)** submittal of revised final drainage and run-off control plans; **7)** submittal of final landscaping plans; and **8)** a deed restriction against the property, referencing all of the special conditions contained in this staff report.

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. 2080-2005) from the City of Newport Beach Planning Department dated January 25, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-01-174-[Leonard]; Coastal Development Permit No. 5-05-157-[Ward]; Letter to Vincent Di Biasi from Commission staff dated February 24, 2006; Letter to Commission staff from Vincent Di Biasi received June 21, 2006; Letter from Dale Christian/Structural Engineer, Inc. to Vincent Di Biasi dated June 16, 2006; *Preliminary Geotechnical Investigation For 3130 Breakers Drive, Corona Del Mar, County of Orange, California (W.O. 5116-A1-OC)* prepared by GeoSoils, Inc dated May 5, 2006; and *Wave-Runup & Coastal Hazard Study, 3130 Breakers Drive, Corona Del Mar, CA* prepared by GeoSoils, Inc. dated February 2006.

LIST OF EXHIBITS

1. Vicinity Map
 2. Elevation Plans
 3. Predominant Line of Development Elevation Plan
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I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-035 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of 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 CONDCTIONS

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. **REVISED 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 revised final project plans (i.e. site plan, floor plans, elevations, cross-sections, grading, foundation, etc.). These revised final project plans shall show that the proposed duplex shall not extend above the 52-foot contour. No development above the 52-foot contour is allowed.

- 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 DEVICES

- 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. 5-06-035 including, but not limited to, the residential units and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, bluff and slope instability, landslides, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waive, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residential units, 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 landowner 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. 5-06-035. 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 residential units and appurtenances authorized by this permit, including a change in use from residential units 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. 5-06-035 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. ADDEDNDUM AND CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, two (2) copies of an addendum to the geotechnical investigation entitled: *Preliminary Geotechnical Investigation For 3130 Breakers Drive, Corona Del Mar, County of Orange, California (W.O. 5116-A1-OC)* prepared by GeoSoils, Inc dated May 5, 2006. All revised final design and construction plans, including foundations, grading

and drainage plans, shall be consistent with all recommendations contained in this submitted addendum and 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 addendum and 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. REVISED FINAL DRAINAGE AND RUN-OFF CONTROL PLANS

- 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 final drainage and run-off control plans. The drainage and run-off control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements shall be collected on site for discharge, without allowing water to percolate into the bluff face, to the bottomless catch basins and trench drains located near the street (Breakers Drive) at the base of the site.
- 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 permittees 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. FINAL LANDSCAPE PLANS

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, two (2) full size sets of final landscaping plans that demonstrates the following:
 - (1) The plan shall demonstrate that:
 - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;

- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (c) Landscaped areas not occupied by hardscape shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing or nearby native plant areas, all landscaping shall consist of native drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed;
- (d) No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed.

(2) The plan shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the temporary irrigation system, topography of the developed site, and all other landscape features, and
- (b) a schedule for installation of plants.

B. The permittees 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.

8. 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 AND PRIOR COMMISSION ACTION

1. Project Location

The subject site is located in a gated community at 3130 Breakers Drive between the Corona Del Mar beach access driveway and Breakers Drive within the City of Newport Beach, Orange County (Exhibit #1). The property has steep slopes as it is part of the coastal bluff and vehicular access is provided at the base of the bluff on Breakers Drive, a private street. The lot size is 6,896 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Medium Density Residential and the proposed project adheres to this designation. The project is located within an existing developed urban residential area and the historic bluff has been substantially altered by other similar residential structures. The bluff is approximately 80-feet in height and the slope gradient is 1:1 to 2:2 (H:V).

The subject site is currently developed with a 3,000 square foot, two (2) story single-family residence with an attached garage at the base of the bluff. Ocean Boulevard is located north of the proposed project at the top of the approximately 80-foot high bluff. South (i.e. seaward) of the project site is Breakers Drive, a wall, bushes and an approximately 200 foot wide parking lot for Corona Del Mar State Beach and then Corona Del Mar State Beach. West (upcoast) of the project site are existing residential structures and further west is a public street (Iris Avenue), which leads to the Corona Del Mar State Beach and public parking lot. East (downcoast) of the project site are existing residential structures and further east Breakers Drive ends.

2. Project Description

The applicants' proposal consists of demolition of an existing two story single-family with an attached garage and construction of a new 5,920 square foot four-story duplex with two attached two-car garages totaling 1,205 square feet located at the base of a bluff and on the bluff face, approximately 29-feet above existing grade (Exhibits #2-3). Also, there will be a total of 1,220 square feet of deck area. Grading will consist of 1,360 cubic yards of cut, 20 cubic yards of fill and 1,340 cubic yards of export to a location outside of the Coastal Zone. In addition, the project will include hardscape work consisting of hard-surface driveways, side yard walks, steps and planters, and landscaping. The foundation will consist of concrete slab on grad, retaining walls and caissons.

3. Prior Commission Action at the Subject Site

Coastal Development Permit No. P-79-5341-[Frasher]

At the June 1979 Commission Hearing, the Commission approved construction of a three-story, two bedroom single-family dwelling located on the bluff face. An existing two-story single-family dwelling located at the base of the bluff was to be converted to a duplex use. No Special Conditions were imposed. The Coastal Development Permit was issued on June 25, 1979. While the permit was issued, the construction of this project never occurred.

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 subject site is located on a gated street between the nearest public roadway and the shoreline, at the base of a bluff and on the bluff face, seaward of and below Ocean Boulevard. The predominant line of development along this segment of Breakers Drive (3100-3002 Breakers Drive) is such that residential structures are constructed along the base of the bluff, recessed into the bluff, and cascade up the bluff face, but where a significant portion of the upper bluff face remains undeveloped and vegetated, 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 significant portion of the bluff face. 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. The proposed project, as currently submitted, would be encroaching more upon the bluff face than what exists in the area (predominant line of development) and more than what was previously approved for an adjacent upcoast development (CDP No. 5-01-174-[Leonard]) located at 3124 Breakers Drive, . As currently proposed, the project is inconsistent with the predominant line of development, will affect public views of the vegetated bluff face from the adjacent public beach, and does not minimize landform alteration.

1. City Setback, Predominant Line of Development and Geologic Setback

Encroachment upon the bluff can often have adverse impacts on a variety of coastal resources. The encroachment of structures upon the bluff can 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 landward property line; 2) a predominant line of development 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 if a greater setback is not required for geologic purposes.

a. City Setback

The plans submitted by the applicants show that the project conforms to the City zoning rear yard setback (along the upper bluff face) requirement of 10-feet from the

rear yard property line. The Commission has not certified the City's zoning setbacks. Nevertheless, in certain areas of Newport Beach, the Commission has relied upon the City zoning setbacks to establish the predominant line 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 bluff encroaching development will have on the project site. Adhering to the City setback of 10-feet from the rear yard property line would allow development on the upper bluff face and would not protect public views and prevent landform alteration.

b. Predominant Line of Development

As discussed earlier, the project, as proposed, would be incompatible with the surrounding development. The predominant line of development along this segment of Corona Del Mar (3100-3002 Breakers Drive) is such that residential structures are constructed along the base of the bluff, recessed into the bluff, and cascade up the bluff face, but where a significant portion of the upper bluff face remains undeveloped and vegetated, thus giving it a "natural" look. The proposed project would occupy basically the entire portion of the bluff face unlike the other development in this area (Exhibits #2-3). The proposed project would be 25-feet taller than the development located adjacent downcoast of the site at 3150 Breakers Drive and 18-feet taller than the development located adjacent upcoast of the site at 3124 Breakers Drive (Exhibit #3). In addition, the proposed project would be inconsistent with the Commission's recent action in the area. In July 2002, the Commission approved Coastal Development Permit No. 5-01-174-[Leonard] located at 3124 Breakers Drive, which is located adjacent upcoast of the project site. Coastal Development Permit No. 5-01-174-[Leonard] was for the demolition of an existing two (2) story duplex and construction of a new 4,588 square foot four (4) story duplex with two attached two (2) car garages totaling 1,986 square feet and the maximum height of the roof was at the 52-foot contour line. The proposed project's maximum roof height would be at the 70-foot contour line. Thus, there would be an 18-foot difference in height between the proposed project and the recently approved Leonard project. In addition, a retaining wall located in the bluff behind the house would also have a maximum height located at the 70-foot contour line (the retaining wall will be 27-feet in height). Development at this site, if approved, must be sited and designed to be visually compatible with the undisturbed character of the surrounding area.

Besides being consistent with the predominant line of development in the area, it is also necessary to ensure that new development be sited and designed to protect views to and along the beach area. The proposed project would not affect public coastal views from Ocean Boulevard located above the project site as the project, as proposed, is 13'-6" below Ocean Boulevard. As to views from the beach towards the bluff, there is an approximately 200-foot wide parking lot for the Corona Del Mar State Beach, a wall and bushes and Breakers Drive across from the subject site. The wall and bushes would partially screen the lower portion of the proposed development. However, the upper portion of the proposed development that would encroach upon the upper bluff face up to the 70-foot contour line would be seen

from the public beach and would thus degrade the natural appearance of the bluff. This would result in adverse visual impacts from the beach.

Therefore, in order to make the project consistent with the predominant line of development and avoid adverse visual impacts of the bluff from the public beach, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires the applicants to submit revised final plans showing that the proposed development is limited to the 52-foot contour line. No development is allowed above the 52-foot contour line.

c. Geologic Setback

In cases where use of a predominant line 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 at the base of the bluff and on the coastal bluff face. Therefore, application of a bluff edge setback is not appropriate for this project.

2. Landform Alteration

Besides being consistent with the predominant line of development and minimizing adverse visual impacts, the proposed project must also minimize the alteration of existing landforms to be consistent with Section 30251 of the Coastal Act. Grading for the proposed project will result in 1,360 cubic yards of cut, 20 cubic yards of fill and 1,340 cubic yards of export to a location outside of the Coastal Zone. A significant portion of this grading is required for the installation of the 27-foot high retaining wall and associated development. By conditioning the project for revised project plans (**SPECIAL CONDITION NO. 2**), the amount of grading will be minimized and thus would reduce the amount of landform alteration associated with the proposed project. The resultant amount of grading would be the minimal amount necessary to construct the project.

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 the predominant line of development where residential structures are constructed along the base of the bluff, recessed into the bluff face and rising to the mid-bluff level, but where a significant portion of the upper bluff face remains undeveloped and vegetated, thus giving it a "natural" look. In addition, as conditioned, landform alteration would be minimized. Furthermore, the development would be consistent with the development recently approved by the Commission (Coastal Development Permit No. 5-01-

174-[Leonard]). Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

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.*

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 issues, the applicants have submitted a geotechnical investigation, which evaluates the current proposal: *Preliminary Geotechnical Investigation For 3130 Breakers Drive, Corona Del Mar, County of Orange, California (W.O. 5116-A1-OC)* prepared by GeoSoils, Inc dated May 5, 2006. The information provided states there is no evidence of surficial or global instability within or adjacent to the site. Overall bedrock orientation is neutral and the rear natural slope is marginally stable. The investigation further states that the construction of the rear retaining wall would increase the permanent stability of the slope. However, the investigation also states that the beach deposits at the front of the site are likely liquefiable under seismic accelerations. Furthermore, it states that

portions of the building encroaching onto the liquefiable zone should be supported by a deep foundation (caisson) system embedded into the competent bedrock. 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. As discussed previously, some of the recommendations for construction of the project site include: retaining walls and a foundation system consisting of deep foundations (caissons).

In addition to the previously stated geotechnical investigation, the applicant has also submitted a letter from Dale Christian/Structural Engineer, Inc. that discusses the proposed deepened foundation system. The letter dated June 16, 2006 states that he anticipates the entire structure to be founded on caissons and grade beams per the "Deep Foundation" recommendations found in the geotechnical investigation. While the foundation for the proposed structure has been determined, no foundation plans have been submitted.

The Commission's staff geologist has reviewed the project and agrees with the investigations' conclusions. While possible liquefiable conditions exist on site, the geotechnical report makes recommendations that should assure safety of the development. The project can be built, but only with the support of a significant engineering effort.

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, 3130 Breakers Drive, Corona Del Mar, CA* prepared by GeoSoils, Inc. dated February 2006, which addresses the potential of hazard from flooding and wave attack at the subject site. The study states that there is a 3-1/2 foot high berm/revetment (constructed of quarry stone) and 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 south jetty at the entrance to Newport Bay and the rocky headland to the southeast, 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 proposed improvements. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave or wave runup protection. No shore protection is proposed or should be necessary in the next 75 years. The improvements minimize 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 proposed project does not adhere to the predominant line of development, has adverse visual impacts and does not minimize landform alteration. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 2**, which requires the applicants to submit revised final plans showing that the proposed development is limited to the 52-foot contour line. No development is allowed above the 52-foot contour line.

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 residential units, including but not limited to landscaping, improvements to the residences 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 residential units 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.

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 conditioned to be redesigned, an addendum to the geotechnical investigation needs to be prepared. Given the reduced development, 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

f. Drainage and Run-Off Control and Landscape

The applicants previously submitted a drainage and run-off control plan and it shows that drainage on site will be directed to bottomless catch basins and trench drains located adjacent to Breakers Drive, which is at the base of the bluff. Therefore, adverse impacts caused by possible infiltration of the bluff are avoided. However, since the project has been conditioned for revised project plans, no

updated drainage and run-off control plans have been submitted. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 6**, which requires the applicants to submit a revised final drainage and run-off control plan.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The applicant has stated that landscaping is part of the proposed project. However, a detailed landscaping plan has not been submitted. Any proposed vegetated landscaped areas located on site should only consist of native drought tolerant plants, which are non-invasive. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Due to the potential impacts to the bluff from infiltration of water into the bluff, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires that the applicant shall prepare prior to issuance of this permit a final landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a final landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the ground, no permanent in-ground irrigation shall be permitted, any existing in-ground irrigation system shall be disconnected and capped, temporary above ground irrigation to establish the plantings is permitted; and 2) landscaping shall consist of native drought tolerant plants, which are non-invasive. Invasive, non-indigenous plant species, which tend to supplant native species shall not be used.

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. 8** 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 **EIGHT (8) SPECIAL CONDITIONS** include: **1)** assumption of risk; **2)** submittal of revised final project plans; **3)** no future shoreline protective devices; **4)** additional approvals for any future development; **5)** an addendum and conformance to the geotechnical investigation; **6)** submittal of revised final drainage and run-off control plans; **7)** submittal of final landscaping plans; and **8)** 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.

E. PUBLIC ACCESS

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 subject site is located on a gated street (Breakers Drive) adjacent to the Corona Del Mar Street Beach parking lot. The nearest public roadway is the beach access road, which meets with Breakers Drive at an intersection. Corona Del Mar State Beach provides public access and recreational opportunities. The proposed development would not interfere with access to or use of the beach. 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. A total of four (4) parking spaces will be provided on site for the duplex (two parking spaces for each unit). Therefore, the Commission finds that the proposed development would be consistent with Section 30240 (b) 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 that 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. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. 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:

Scenic and Visual Resources, Policy 4.4.1-1 states,

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Scenic and Visual Resources, Policy 4.4.1-3 states,

Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

Natural Landform Protection, Policy 4.4.3-8 states,

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Natural Landform Protection, Policy 4.4.3-9 states,

Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Coast Drive in Corona Del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

Natural Landform Protection, Policy 4.4.3-15 states,

Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.

Public Access and Recreation, Policy 3.1.2-1 states,

Protect, and where feasible, expand and enhance public access to and along coastal bluffs.

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.

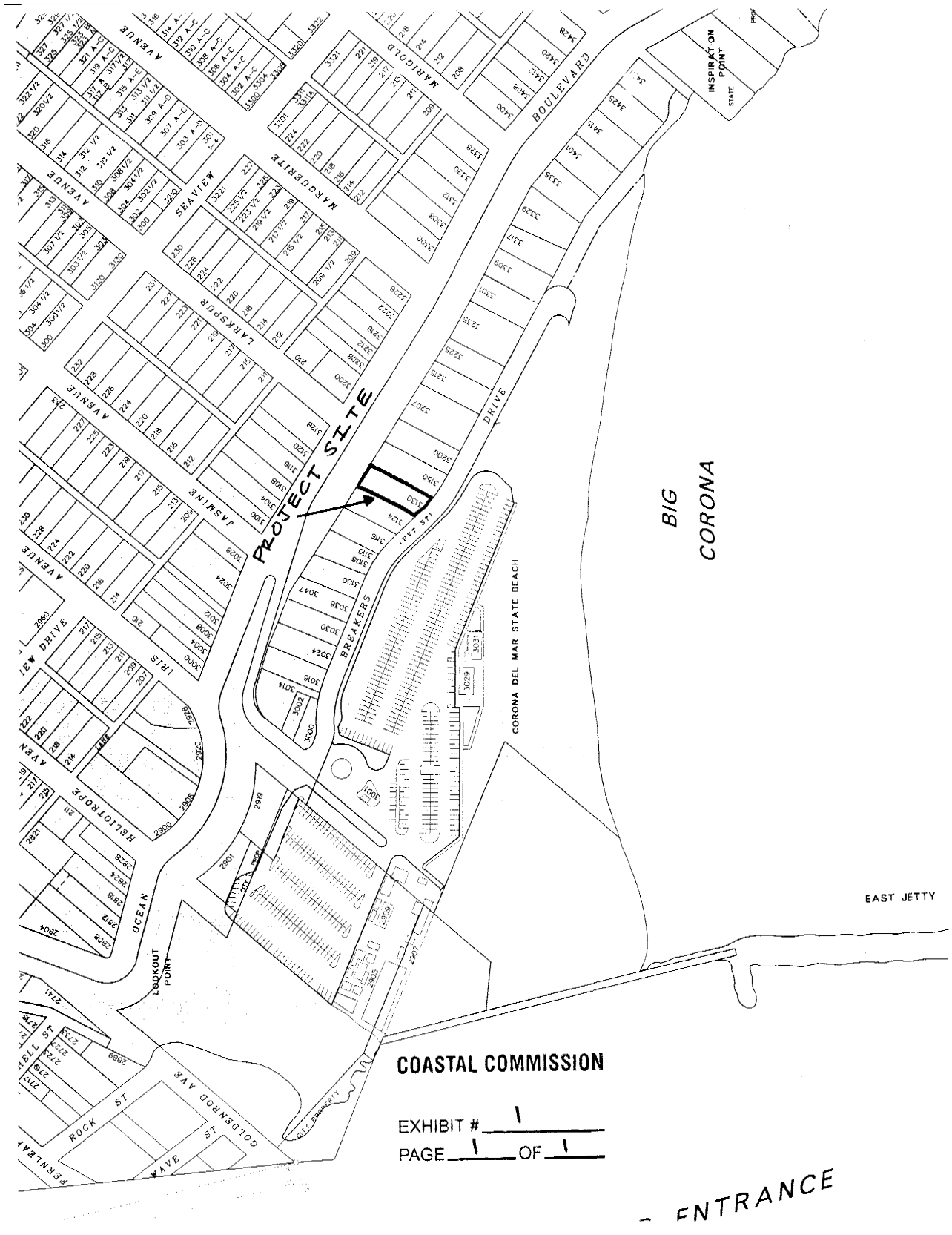
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

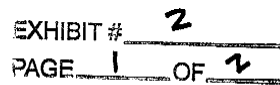
Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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

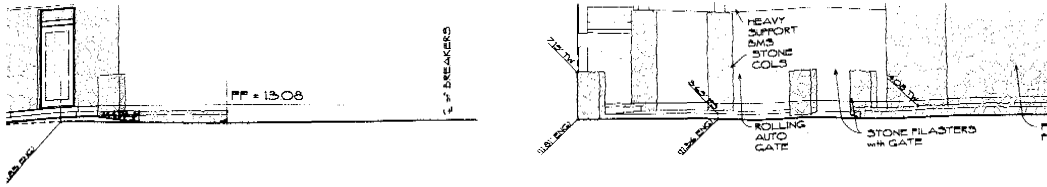
mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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, and water quality policies of Chapter 3 of the Coastal Act. Mitigation measures include special conditions requiring submittal of revised final project plans and of a revised final 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.



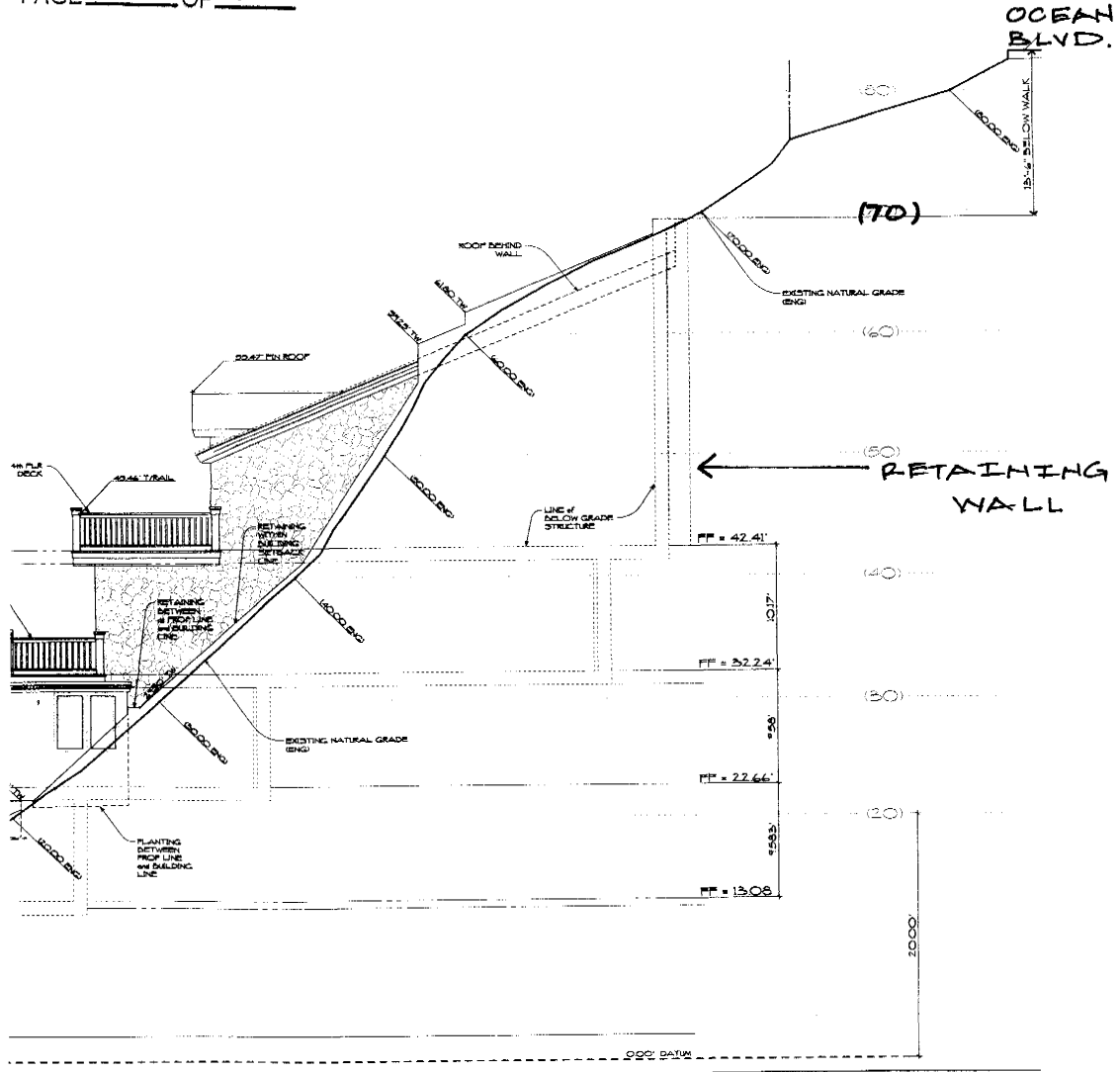




COASTAL COMMISSION

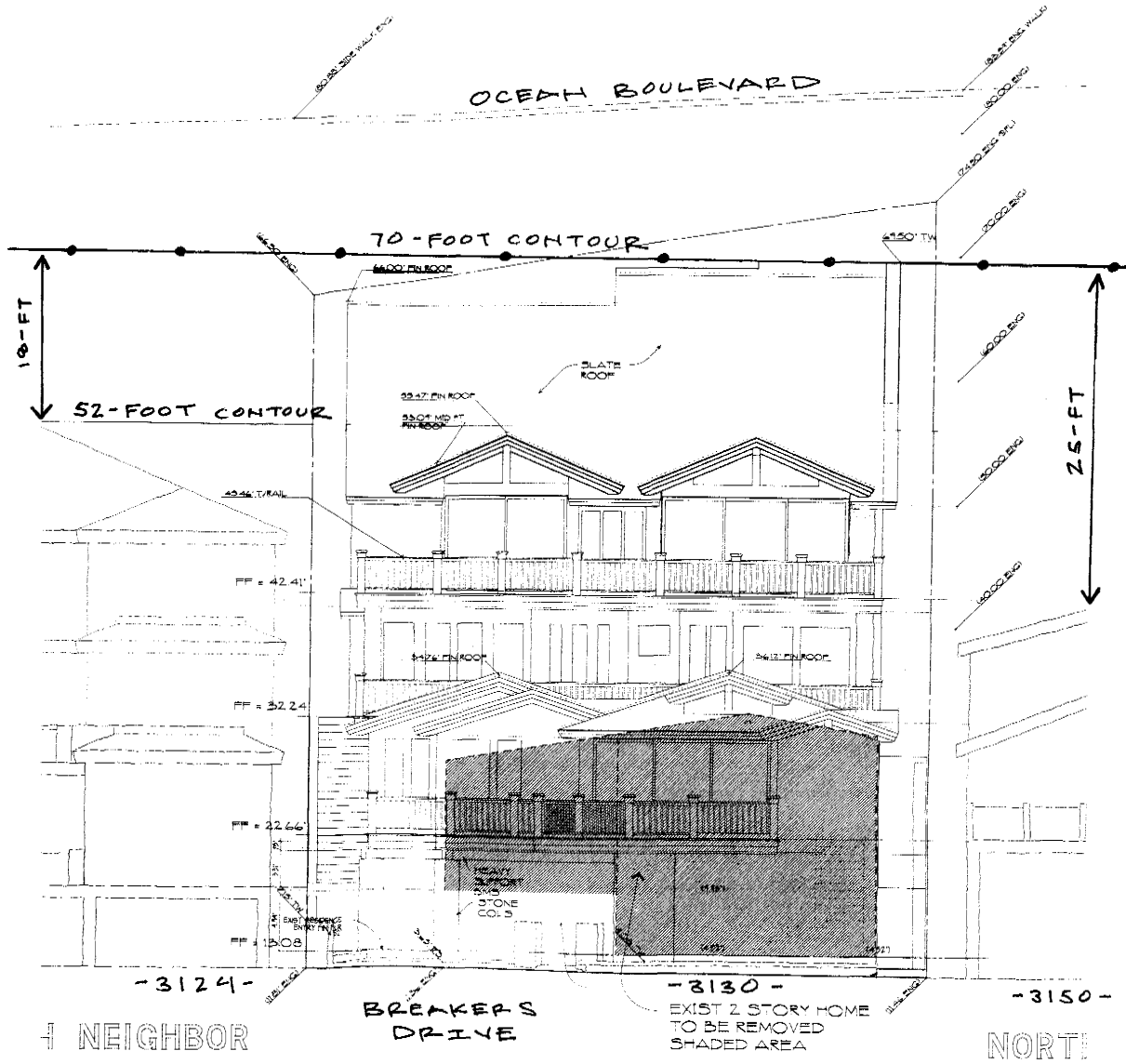
EXHIBIT # 2
PAGE 2 OF 2

BREAKERS DR (SOUTH-WEST)
1/8" = 1'-0"



COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 1



ERS DR (SOUTH-WEST) - CO-ORDINATE ELEVATIONS