CALIFORNIA COASTAL COMMISSION

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W25b

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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-06-112

APPLICANTS: Boca del Canon LLC, Attn: David Schneider & Carl Grewe

AGENTS: Stephan Cohn, Attorney
David York, Architect

PROJECT LOCATION: 317 La Rambla (Lot No. 5, Tract No. 4947)
San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a 4,468 square foot, 26 foot high, single family residence including 1,040 cubic yards of grading on a vacant parcel of land.

LOCAL APPROVALS RECEIVED: City of San Clemente Approval in Concept, dated March 13, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente certified Land Use Plan (LUP)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **DENIAL** of the proposed project due to adverse impacts upon public access and visual resources. The subject site is one of 9 vacant lots located seaward of the first public road inland of and parallel to the sea ("first public road"), at the mouth of Toledo Canyon, along coastal bluffs within and adjacent to the La Ladera residential community in the southerly area of the City of San Clemente. Seven (7) of these nine lots, including the subject site, were identified on Tract No. 4947, which was filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map. Two (2) of the nine vacant lots (part of separate Tract No. 822) were once developed with single family residences, but those residences were destroyed in a landslide in 1966, and the lots have remained vacant since that time. The entire nine-lot area and the privately owned street, Boca del Canon, is the subject of an ongoing prescriptive rights survey. Surveys submitted to date show substantial public use of the subject site, the other eight lots, and Boca del Canon, for the past several decades for access to the beach and ocean. The survey also indicates substantial public use of these properties for public viewing to and along the bluffs, beaches and ocean (i.e. visual access).

Public use across the subject site (Lot No. 5, Tract No. 4947) follows a pathway that roughly bisects the property lengthwise. The proposed residence would be constructed in a location that would completely remove this existing pathway, and would have significant, direct adverse impacts upon public access.

Furthermore, the site is visually prominent as one approaches the bluffs from inland public streets. Presently, an individual walking from West Paseo de Cristobal toward the site along La Rambla street sees an existing vehicular gate at the head of Boca del Canon street, which is the entryway

to the La Ladera residential community. The subject site is located to the right side (west) of the gated entry. The existing gate is a visual deterrent to public access. However, the individual approaching the site can see across the subject lot toward the bluffs and ocean beyond. In the current condition, not only does the subject lot provide a corridor through which the public can view the ocean, but there are clear visual cues available to guide individuals across the subject lot toward the bluffs and beach access beyond. However, the proposed development of this lot will significantly and adversely affect the public's perception regarding their ability to access the coast and will degrade existing public views. The existing views across the lot toward the bluffs and beach/ocean beyond would be eliminated. Thus, there would be significant adverse impacts upon public physical and visual access and the visual quality of the area. Alternatives are available that would address these adverse impacts, as discussed in Section II.E. However, the range of alternatives is sufficiently large that Commission staff does not recommend a conditional approval of this project, which would require selection of a specific alternative among the many available options. Therefore, Commission staff is recommending denial of the current proposal.

There are several constraints associated with the development of the subject lot, as well as the other eight vacant lots. These constraints include the need to reserve areas to accommodate the existing and historic public use of the properties for public access and viewing and the need to address adverse geologic conditions on the property in a manner that is consistent with Coastal Act requirements regarding visual impacts, landform alteration, hazard minimization, and avoidance of bluff protective devices to accommodate new development. Commission staff believes that these issues would be best addressed in the context of a comprehensive development plan that involves all of the undeveloped lots. The current effort to seek development approvals for each individual lot will significantly limit the range of alternatives that need to be considered in order to achieve a plan that is consistent with all Coastal Act policies. However, if the applicant insists on proceeding with an application to develop a single lot, as it is doing here, Commission staff did not believe it could decline to file that application.

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 San Clemente has only a certified Land Use Plan (one component of a Local Coastal Program) 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.

LIST OF EXHIBITS:

1. Vicinity Map
2. Parcel Map
3. Aerial Photo
4. Site Plans/Elevations
5. Photographs
6. Lot Size and Coverage
7. Excerpts from Certified LUP/Coastal Access Map
8. Summary of Results from Prescriptive Rights Survey as of October 31, 2006

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-112 for the development as proposed by the applicant.*

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.

I. RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit on the grounds 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:

A. Project Description, Location and Background

The subject site is located at 317 La Rambla, in the City of San Clemente, Orange County (Exhibits 1 & 2). The subject lot is roughly rectangular (6,890 square feet) and is designated for residential use ("RL" (4.5 units/gross acre)) in the certified Land Use Plan. The lot is located southwesterly of the intersection of La Rambla street and Boca del Canon street. La Rambla follows the northerly and westerly boundaries of the lot, and Boca del Canon runs along the easterly property boundary. The lot contains a relatively level pad that drops off to the east toward Boca del Canon.

The proposed project is the construction of a 4,468 square foot single family residence, plus 750 square foot attached garage (5,218 square feet total). The structure will have two floors, one of which will be a partial basement. The maximum height of the structure will be 26 feet; however as viewed from the centerline of the portion of La Rambla that fronts the property, the structure would be 14 feet high above existing (natural) grade, and 14'7" as viewed from the road centerline. Both floors would be visible when viewing the site from Boca Del Canon and vantages along La Rambla as one approaches the property. According to the precise grading plan, 1,040 cubic yards of excavation are required for the basement level, plus an additional 300 cubic yards of grading to accommodate other construction requirements; 100 cubic yards of fill is proposed, with the remainder to be exported off site.

History of Land Division and Ownership

The subject site is one of 9 vacant lots located at the mouth of Toledo Canyon along coastal bluffs in the southerly area of the City of San Clemente. All of these lots were once part of Tract No. 822

that was filed with the County in 1927. The subject site appears to have been a portion of Lot No.s 27 and 28 of Tract No. 822. These lots (27 and 28) were further divided with the filing of Tract No. 4947 (discussed below). Lot No. 29 and a remainder portion of Lot No. 28 of Tract No. 822 were once each developed with single-family residences that were destroyed in a landslide in 1966 and have remained vacant since that time.

Seven (7) of the nine vacant lots (Lot No.'s 5 through 11), including the subject site (Lot No. 5), were identified on Tract No. 4947 filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map. These lots (along with title to the private road Boca del Canon) were held in common ownership by Olga C. Tafe and/or her husband Theodore Tafe from prior to the 1963 subdivision until 2002, when they were transferred together to Theodore Tafe, as trustee of a 1973 trust. Theodore Tafe subsequently transferred them, again as single block, to Boca del Canon LLC in 2005. In April 2006 (i.e. after submittal of the subject application but before it was deemed 'filed'), Boca del Canon LLC simultaneously transferred Lot No.s 6 through 11 to six differently named limited liability companies (LLCs). Boca del Canon LLC retained Lot No. 5 (the subject lot) and title to the private road that bears its name. These other LLCs appear to be related to Boca del Canon LLC in that the Grant Deeds for each of these transfers in April 2006 state that "The Grantors and Grantees in this conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property." The Grant Deed claims a $0.00 documentary transfer tax, and cites a section of the Revenue and Taxation Code (11923), which appears to confirm that this $0.00 transfer tax is authorized because these entities are not different. It is also noteworthy that the first named principal for Boca del Canon LLC, as reported in Westlaw's Corporate Record, is also the principal for every one of the LLCs, that has a principal listed in that same source, and the second named principal for the subject lot is listed by Westlaw as the registered agent for the LLC-owner of those other lots.

History of Effort to Create Public Park

There is at least one written proposal, *La Rambla Park - A Proposal for Coastal Public Access in the City of San Clemente* (by Derehajlo et. al.), for a park design that would include the entire nine-lot area. The proposal is for a view park with parking, trails and native landscaping. In this design, the subject site, Lot No. 5, would have a small parking lot for the proposed park, a trail head, and landscaping.

In the late 1980's a group of local citizens approached the City of San Clemente regarding the purchase of at least three bluff top lots within the nine-lot area that includes the subject site for park purposes. Funding difficulties at the time prevented such acquisition from occurring. However, the City expressed interest in the park concept provided a source of funding could be identified. It is unknown whether subsequent efforts have been made to identify funding.

Prior Recent Commission Actions

On August 8, 2006, the Commission approved Coastal Development Permit 5-05-412 for the removal of an existing mechanized vehicular gate and construction of a new gate across the privately owned Boca del Canon street at the entrance to the La Ladera private neighborhood, between 311 La Rambla and 317 La Rambla (the subject site). The Commission imposed five (5) special conditions, which require: 1) submittal of revised plans showing reduction in project scope; 2) submittal of a signage plan; 3) that future development obtain Commission approval; 4) recordation of a deed restriction; and 5) clarifying that the Commission’s approval of the project does not constitute a waiver of any public rights that may exist on the property. The sidewalks and

gutters are currently unobstructed and are proposed to remain unobstructed such that the existing pedestrian access currently in use would remain available. However, the applicant did not offer to formalize the existing access (i.e. through dedication or other legal instrument). In addition, the Commission did not identify sufficient nexus between the limited gate project and public pedestrian access to mandate formalized public access over the privately owned street (Boca del Canon), in part, due to insufficient information regarding the nature of the existing public access.

Since the Commission's action, a prescriptive rights survey has been initiated that includes Boca del Canon and the nine vacant lots between this road and the beach. Survey submissions to date provide a strong indication of continuous public use of Boca del Canon and the other nine lots over the last several decades to gain physical access to the beach and visual access to the ocean. Thus there is strong evidence that a public right of access acquired through use has developed (i.e. that an implied dedication has occurred).

B. Public Access

Section 4 of Article X of the California Constitution states, in part:

> *No individual, partnership, or corporation, claiming or possessing the frontage…of a…navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose…; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.*

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states,

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 of the Coastal Act states, in pertinent part,

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
>
> *(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
>
> *(2) adequate access exists nearby, or,*
>
> *(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

San Clemente Land Use Plan, Section 295, describes access in the subject area as follows:

> *Access Point 11: La Boca del Canon*
>
> *This private access is reached by either Avenida Presidio or El Camino Real exits from the I-5 Freeway. It is located on La Boca del Canon, a private residential street which connects to West Paseo de Cristobal. The beach is reached by crossing the railroad track via two at-grade locations.*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), states:

> *IX.4 The maintenance and enhancement of public non vehicular access to the shoreline shall be of primary importance when evaluating any future public or private improvements in the Coastal Zone.*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.12, states:

> *A resting/viewplace should be provided at appropriate accessways near the inland entry point. Such facilities would be of benefit to older people or others who would find negotiating steep accessways tiring, and would capitalize on the panoramic coastal views available from the bluff edges.*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.15, states, in part:

> *New developments lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline.*
>
> *a. Any new development proposed by the private communities listed below shall be required to provide an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line….The access easement shall measure at least 10 feet wide. Development permits will require public vertical access for new development at the following private communities: …La Ladera (La Boca del Canon)*
>
> *b…*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.17, states, in part:

> *For the purpose of determining when a project is required to provide access, the following shall be considered:*
>
> *a. …*
>
> *b. The provision and protection of public access to the shoreline can be considered a "legitimate governmental interest." If the specific development project places a burden on this interest, then the City may have grounds to deny the development or impose conditions on the development to alleviate the burden.*
>
> *The following questions should be addressed to determine whether or not a development project places a burden on public access which would justify either requiring the dedication of public access or recommending denial of the project:*

1…
2. *Does the project interfere with public access rights that have been "acquired through use"?*

   Example - Is there reasonable evidence that the project may block a prescriptive easement?

   If there is evidence of a prescriptive easement, then the City may recommend postponing the project until the landowner establishes clear title. If a prescriptive easement exists, then the City may deny the project or require that the project be modified to preserve the access easement.

3…
4…
5…
6…

Assuring public access to the shoreline, including the protection of existing public access, is one of the strongest mandates of the Coastal Act. Section 30604(c) of the Coastal Act requires that any approval of a permit application for development between the nearest public road and the shoreline of any body of water within the coastal zone shall include a finding that the project is consistent with the public access and recreation policies of the Coastal Act, even in an area with a certified LCP. The proposed development is located between the first public road and the sea at the convergence of a coastal bluff and coastal canyon inland of the beach, bluff face and Orange County Transit Authority (OCTA) railroad tracks.

The subject site (Lot No. 5) and surrounding vacant lots, as well as the privately owned and gated (to vehicles) street, Boca del Canon, appear to have been used extensively for at least the past several decades, and continue to be used today, by the public as informal modes of vertical access to the adjacent bluff top, beaches and ocean below. There are several pathways across these lots that offer different modes of access. For example, the informal footpath that crosses the subject site leads to a bluff top view point of the beaches and ocean as well as to a network of other footpaths that eventually lead down the bluff to the beach and ocean. There are presently no physical obstructions to individuals using these footpaths. Another mode of access is to utilize the existing paved gated street (Boca del Canon) and narrow sidewalks that descend from La Rambla down a steep incline to an informal footpath that crosses Lot No. 11 to the beach. Individuals using the road must navigate around the existing vehicular gate at the entryway to the street to utilize this access. The route down Boca del Canon and the dirt path that crosses Lot No. 11 is listed as a secondary access point in the City's certified Land Use Plan, but identifies this as a 'private access'. None of these informally used modes of access have been secured for public use through any formal means such as a written declaration of public rights or a judicial determination of an implied dedication for public use.

The preservation of these accessways is important due to their historical use, as well as their future use as a means of connecting to the San Clemente Coastal Trail. The San Clemente Coastal Trail (approved by the Commission April 2004 and currently under construction) is a three-mile long pedestrian accessway that passes in front (seaward) of the La Ladera private neighborhood. The footpaths described above would provide direct access to the Coastal Trail. For these reasons, and because of the statutory mandates listed above, the goal in this circumstance must be to—at minimum—protect the existing access and prohibit development that would increasingly privatize the area.

The nearest formal vertical coastal access available is approximately 1/2 mile upcoast of the subject site via the T-Street public access point (Exhibit 7). The T-Street public access point is an enclosed pedestrian overpass leading from Paseo de Cristobal to the beach below. Lateral access along the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. There is another formal access point approximately 3/4 mile downcoast of the subject site, known as Lost Winds, which is accessible from Calle de Los Alamos. However, this accessway is described in the City's LUP as being within a residential area that is more difficult for non-residents to find.

In order to more fully investigate potential public use of the subject site, Commission staff distributed a "Prescriptive Rights Study Public Use Questionnaire and Declaration" to City staff in the Planning Division, the San Clemente Sun Post News, the South Orange County Chapter of the Surfrider Foundation, members of the public who requested the form, among others. The questionnaire and accompanying documents were also posted on the Coastal Commission's website at http://www.coastal.ca.gov/access/BocadelCanon.pdf. (A summary of results submitted to date are included as Exhibits 8a to 8c.) The Sun Post News printed a brief write-up on August 3, 2006 informing readers of the prescriptive rights analysis underway.

In order to approve the proposed project, the Commission would have to find the project, as submitted or as the Commission would condition it, to be consistent with the policies of Chapter 3 of the Coastal Act, including the public access policies outlined in Sections 30211 and 30212 listed above. However, for the reasons listed below, the Commission cannot find the proposed project consistent with these policies, and the Commission believes it would be imprudent, at best, to attempt to condition it to make it so. As stated in the Summary of Staff Recommendation above, there are a range of possible alternatives and a conditional approval would require selection of a specific alternative among the many available options; therefore, at this time the project must be denied. The project's inconsistency with each of these policies is described below.

1. Inconsistency with Section 30211

Section 30211 states, in part, that "*development shall not interfere with the public's right of access to the sea where acquired through use.*" Applicants for coastal development permits must demonstrate that the proposed development is consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act, the permitting agency, in this case the Commission, must consider whether a proposed development will interfere with public access to an area used by the public for access to the sea. If the agency finds that there may be such an interference, then it also must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use. Because the authority to make the final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule relates to the statute of limitation after which the owner cannot assert normal full ownership rights to terminate an adverse use. In California, the statute of limitation, and thus the prescriptive period, is five years.

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

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

In general, when evaluating the conformance of a project with Section 30211, the Commission cannot determine conclusively whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, the Commission must review the available evidence and make its own assessment of whether there is substantial evidence of such use. Where there is substantial evidence that such use has occurred, and thus that such public rights exist, the Commission must ensure that proposed development would not interfere with any such rights.

An exception to the need to assess the evidence of an implied dedication exists when an applicant proposes public access as part of the project. If the applicant were to propose public access, the Commission could evaluate the extent to which the proposed public access elements are equivalent in time, place and manner to any public rights that *may* exist. To the extent any proposed dedication of access is equivalent, proposed development is considered not to interfere with any existing public access rights. Thus, an exhaustive analysis of the existence of an implied dedication would not be necessary. Here, however, no dedication of public access is proposed, and an analysis of public rights of access is required to determine whether the project is consistent with Section 30211.

a. Potential for Development to Interfere with Public's Access to Sea Across this Lot

As described previously, the applicant's proposed project involves the construction of a new two-story single-family residence with attached garage and associated landscaping and hardscape. The proposed structure would be sited on a vacant lot, which members of the public contend has been used for coastal access. As depicted on many of the questionnaires returned, the lot has typically been crossed beginning from the northeasterly corner of the lot and subsequently across the lot via an alignment that roughly bisects the property lengthwise. A review of available photographs also shows a path crossing the lot in this manner. Construction of a house on the lot would obstruct this access across the site.

b. Nature of Any Implied Dedication of Access

Substantial evidence has been provided that indicates that public rights of access to the sea exist across the subject site. The Commission has before it a variety of information regarding the presence of an implied dedication over the subject property. The format of the information suggesting that an implied dedication may have taken place includes 1) 134 responses to the questionnaire described on page 8 indicating more than 5 years use of the area as if it were public, and 2) the previously described photographs.

The survey responses from the public indicate that the writers had used the subject site over the years for access to the beach, ocean viewing, viewing of fireworks on the Fourth of July and dog walking. The time periods specified in the letters range from before the 1960's to the present. A few questionnaires indicate that some fencing was placed around the area several years ago but that fence was removed as a result of Commission enforcement action.

Commission staff continue to receive surveys. As of the date of this staff report, of the 171 responses received (Exhibits 8a - 8c), all but one of said they have used the general area. Moreover, only 3 said they had permission (though four others did not respond to the question about whether permission for their use had been granted (see Exhibit 8c)), so 164/171 (96% of the responders) said they had no permission. Of those 164, 30 reported use for less than the prescriptive period or did not indicate the length of use (Exhibit 8b), leaving 134 (over 81% of the 164) who reported use for at least the prescriptive period (Exhibit 8a). Of those 134, about 33% (44) specifically said that they crossed over the subject site (Lot 5), and the other 67% did not specify. Of the 44 who clearly indicated crossing the subject lot, 66% (29 responders) were from the neighborhood, 20% (9 responders) were from elsewhere in the City, 9% (4 responders) were from elsewhere in the County, and 5% (2 responders) were from elsewhere in the state. Of the entire 134 who may well have crossed over Lot 5, 63% (84 responders) were from the neighborhood, 25% (33 responders) were from elsewhere in the City, 7% (10 responders) were from elsewhere in the County, and 5% (7 responders) were from elsewhere in the state.

Based on the survey responses received by the Commission, it appears that many people have been using the subject property for public access purposes without the express permission of the property owner for the prescriptive period, and, although the numbers predictably drop as users from farther away are tallied, a substantial portion of the users have nevertheless been from outside the immediate geographic area, and a significant number have been from quite far away.

c. Sufficiency of Landowner Attempts to Negate Implied Dedication of Access

There are some limitations that prevent property from being impliedly dedicated, even if the basic elements of implied dedication have been satisfied. The court in Gion explained that for a fee owner to negate a finding of intent to dedicate based on uninterrupted use for more than five years, the owner must either affirmatively prove he/she has granted the public a license to use the property or demonstrate that the owner made a bona fide attempt to prevent public use. Thus, persons using the property with the owner's "license" (e.g. permission) are not considered to be using the area as the "general public" for purposes of establishing public access rights. Furthermore, various groups of persons must have used the property without permission for prescriptive rights to form in the public interested. If only a small number of people from a definable group have used the land, those persons may be able to claim a personal easement, but not dedication to the public. Moreover, even if the public has made some use of the property, an owner may still negate evidence of public prescriptive rights by showing bona fide affirmative steps to prevent such use. A court will judge the adequacy of an owner's efforts in light of the character of the property and the extent of public use.

The applicant has not provided any information to date regarding efforts to prevent public use of the property.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1000 yards from the Pacific Ocean and its bay and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1000 yards of the sea; therefore, the required five year period of use need not have occurred prior to March of 1972 in order to establish public rights.

In addition, it is important to note that Section 1009 explicitly states that it is not to have any effect on public prescriptive rights existing on the effective date of the statute (March 2, 1972). Therefore, public use of property for the prescriptive period prior to the enactment of Section 1009 or utilization of application procedures set forth in the section is sufficient to establish public rights in the property.

d. Provision of Public Access Equivalent in Time, Place and Manner

As noted previously, where there is substantial evidence of the existence of a public access right acquired through use, and a proposed development would interfere with that right, the Commission may deny a permit application under Public Resources Code Section 30211. However, the Commission could also consider alternatives that would preclude the interference or adverse effect through modification or relocation of the development and/or an offer of public access that is equivalent in time, place and manner.

In this case, that applicant has made no offer with regard to modification or relocation of the development to preclude the interference or adverse effects upon a public right of access that may have been acquire through use of the property. Nor has the applicant offered public access that is equivalent in time, place and manner. Were the applicant to offer to modify or relocate the development, the Commission would need to assess whether the project was consistent with Section 30214 of the Coastal Act, which directs the Commission to implement the public access policies of the Act in a manner that balances various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use. Therefore, the Commission must evaluate the extent to which an area protected or offered for access is in fact equivalent in time, place and manner to the use made of the site in the past. If the Commission determines that the protected or offered area is, in fact, equivalent in time, place, and manner to the access use made of the site in the past, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists, because regardless of the outcome of the investigation, the Commission could find the project as a whole consistent with Section 30211. However, again, no such offer has been made in this case.

With an appropriate offer, even if an investigation indicated substantial evidence of an implied dedication, the project would not interfere with such public rights because it protected an area which is equivalent in time, place and manner to the access previously provided in the area subject to the implied dedication. As such, the Commission could find the proposed project consistent with Section 30211. If an investigation indicated that substantial evidence of an implied dedication was lacking, the Commission could also find that the proposed project could be consistent with Section 30211.

The letters and survey responses submitted by members of the public about prior public use of the site provide an indication of the time, place and manner of public access use that has occurred. The responses from the public indicate that the site has been used for access to the beach, view of fireworks, viewing of the ocean, and walking dogs. The responses contain no indication that the uses made of the site were limited to certain days of the week or times of day. It appears that people used the lot anytime they wanted. According to responses received, no permission to use the property had been requested by or granted to the vast majority of the users.

Furthermore, the site is visually prominent as one approaches the bluffs from inland public streets. Presently, an individual walking from West Paseo de Cristobal toward the site along La Rambla street sees an existing vehicular gate at the head of Boca del Canon street, which is the entryway to the La Ladera residential community. The subject site is located to the right side of the gated entry. The existing gate is a visual deterrent to public access. However, the individual approaching the site can see across the subject lot toward the bluffs and ocean beyond. In the current condition, there are clear visual cues available to guide individuals across the subject lot toward the bluffs and beach access beyond. Any alternative access proposed would need to address this issue as well.

2. Analysis of Project with regard to Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast must be provided in conjunction with new development projects except where 1) it would be inconsistent with the protection of fragile coastal resources or 2) adequate access exists nearby. The Commission notes that Section 30212 is a separate section of the Act from Section 30211, the policy which states that development shall not interfere with the public's right of access to the sea where acquired through use. The limitation on the requirement for the provision of new access imposed by Section 30212 does not pertain to Section 30211. Even if public prescriptive rights of access have accrued over trails in areas near other public access, so that one could argue that preservation of those trails would be duplicative, Section 30211 requires that development not be allowed to interfere with those rights. As such, the presence of formal public access in the vicinity of the subject site would not preclude the potential for public rights on the subject site requiring Commission protection.

In this case, the nearest formal vertical coastal access available is approximately 1/2 mile upcoast of the subject site via the T-Street public access point (Exhibit 7). The T-Street public access point is an enclosed pedestrian overpass with stairs leading from Paseo de Cristobal to the beach below. Lateral access along the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. There is another formal access point approximately 3/4 mile downcoast of the subject site, known as Lost Winds, that provides access to the beach from Calle de Los Alamos via a steep stairway. This accessway is described in the City's LUP as being within a residential area that is more difficult for non-residents to find. Both accessways contain stairways that are more difficult to use by those of limited mobility.

According to the City's certified Land Use Plan, the subject site is located within an area of the City that individuals tend to prefer for beach access due to the presence of support facilities and more direct accessibility from major transportation routes than other areas within the City. The subject site is accessible from Paseo de Cristobal, which is one of a few streets that provide easy accessibility to the beach from the El Camino Real/Interstate 5 freeway exits. Clearly, adequate formalized public access does not exist to serve existing recreational demand, as evidenced by the significant informal use of the site for access. In this case, and particularly where there is substantial evidence of an implied dedication over the subject lot, 30212 requires that access across the lot be provided in connection with the new development. The proposed project offers no such access. Therefore, the proposed project must be denied.

3. Conclusion

As discussed previously, the Commission cannot approve development that is inconsistent with the public access policies of the Coastal Act. Substantial evidence has been presented to indicate that prescriptive rights of access to the ocean have been acquired at this site and would be adversely impacted by the proposed development at this location. As proposed, development at the subject site would interfere with the public's right of access over this site. Therefore, the Commission hereby denies the proposed project based upon inconsistency with Section 30211 and 30212 of the Coastal Act.

C. Geology/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.*

Development upon property near coastal bluffs is inherently hazardous. Development that requires a bluff or shoreline protective device or that may require one in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, natural landforms, and shoreline processes.

The subject site is an inland site located along a steep slope approximately 15 feet high that descends in an easterly direction to the street Boca Del Canon, which runs along the bottom of a coastal canyon. The majority of the site is flat, having been raised by the addition of a large wedge of artificial fill to the level of the street, La Rambla, which borders the north and west sides of the site. The fill is underlain by marine terrace deposits, and the bedrock is the Capistrano Formation.

There is a large landslide in close proximity to this site. In May of 1966 a large block slid on a clay seam in the Capistrano Formation approximately 52 feet below the ground surface, destroying several houses which were located on the west-facing bluffs southwest of the subject site. According to the 10 February 2006 Lawson and Associates geotechnical report entitled "Geotechnical Grading Plan Review Report for Lot 5 of Tract 4947, Boca Del Canon, City of San Clemente, California," the headscarp of this landslide lies 128 feet south of the subject site. The subject site was not involved in the landslide. Although redevelopment of many of the lots that were affected by the landslide may be problematic from a geologic and Coastal Act perspective, the subject site presents no such difficulties and is probably the easiest lot in the subdivision to redevelop from a geologic point of view.

The proposed development consists of a two story house, with the lowest story fronting on Boca del Canon and being excavated below the grade of La Rambla. The large wedge of artificial fill will be removed to make room for this story. Since the undocumented fill may not be properly compacted, there will be additional excavation below the finished grade in order to completely

remove the artificial fill and recompact it to establish a safe pad to support the foundations. Excavations will be as great as 16 feet below the current ground surface.

The excavations associated with the development will need to be maintained in a safe condition by a temporary shoring system during construction. Specifications for the shoring system are presented in the 10 February 2006 Lawson and Associates report, and structural calculations have been prepared to these specifications and reviewed by the City. The finished development will consist of combined retaining walls/basement walls to support the western side of the site and La Rambla.

Because it is not clear what future development may take place off-site to the south, and to isolate the site from potential future slope movement should the buttressing effect of the landslide mass be removed through erosion, a row of caissons or a retaining wall will be constructed along the southern property boundary.

The site is not subject to wave run-up or to the direct effects of coastal erosion. No known faults traverse the site, and seismic design criteria are provided in the 10 February 2006 Lawson and Associates report. The Commission's staff geologist has reviewed the submitted information and visited the site, and concurs that the proposed development would 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 as required by Section 30253 of the Coastal Act.

Although the proposed project could be found consistent with Section 30253 of the Coastal Act, the Commission notes that allowing development to proceed at the subject site at this time, without consideration, in a comprehensive manner, of the type and intensity of development potential on the adjacent vacant lots, would prejudice alternatives that cluster development in the stable areas and protect the public's right to physical and visual access to the shoreline. Development of the subject lot in the manner proposed will likely reduce and or foreclose options that would otherwise be available. Therefore, the Commission encourages the owners of these various lots to consider a comprehensive development plan that considers and addresses all of the constraints present.

D. Public Views

Section 30251 of the Coastal Act states:

> *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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

San Clemente Land Use Plan, Section 305 A (Coastal Visual Resources Goals and Policies), Policy XII.9, states:

> *Promote the preservation of significant public view corridors to the ocean.*

The subject site is located seaward of the first public road. Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be considered and protected. Consequently, impacts that the proposed project may have on existing public views must be considered.

As noted previously, the subject site is located prominently in the viewshed toward the beach, ocean, and bluffs. Public views across the site and to the sea currently exist from a public roadway. As shown in Exhibit 5, there is a blue water view available across the property. The proposed project would place a structure that is approximately 14 feet tall above the centerline of La Rambla within this existing view corridor. As a result, the blue-water views presently available would be entirely blocked with the construction of the proposed residence. Such view blockage would be inconsistent with Section 30251 of the Coastal Act which requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas.

A smaller residence, appropriately sited and designed, could significantly reduce or avoid adverse visual impacts. Furthermore, a smaller residence would be more consistent with the character of surrounding areas. According to the application submitted, the subject lot is 6,890 square feet (whereas data available from the County Assessor records provided to the Commission from RealQuest.com indicate the parcel is 7,920 square feet). According to statistics available to the Commission from RealQuest.com, there are at least fifty comparably sized lots (7,920 square feet +/- 15%) within 1/2 mile of the subject site. Other developed lots in the vicinity of the subject vacant lot contain residences that range in size from 987 square feet to 3,000 square feet, with the average being 1,835 square feet. The proposed residence would have 4,468 square feet of living space, plus a 750 square foot attached garage (5,218 square feet total). Thus, the proposed residence significantly exceeds both the average size residential structure and even the largest residential structure on comparably sized lots in the neighborhood.

Members of the public interested in this project have compiled data regarding surrounding lots (see Exhibit 6). Their analysis indicates that the average percentage of lot coverage with residential structures in the vicinity of the subject lot is approximately 20%. The proposed project would have lot coverage of 3,402 square feet of the 6,890 square foot lot area, or 49% lot coverage.

Clearly, it would be both feasible and more consistent with community character to construct a smaller residence on the lot. A smaller residence could be both lower in height as well as sited in a manner that reduces or avoids adverse visual impacts. Therefore, the Commission finds the proposed development inconsistent with Section 30251 of the Coastal Act, and the proposed project must be denied.

E. Alternatives

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. 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 all 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 impacts to existing public access. The property would remain as an undeveloped lot. 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, though it would not, in and of itself, put the property to any productive economic use.

2. Reduced Height/Reduced Square Footage/Reduced Lot Coverage

As noted in the Public Views section of these findings, the proposed residence significantly exceeds the size and lot coverage of residences on comparably sized residences in the neighborhood. A smaller residence with smaller garage could be designed as a single story structure with flat roof, partially recessed below ground in the same approximate fashion as the first floor/basement of the proposed residence. Based on the current design, this would provide for at least 1,200 square feet of living space plus 750 square feet of garage/storage. The amount of living space could increase with a smaller quantity of area devoted to garage/storage. This design would improve views across the site toward the ocean. However, some additional changes may be necessary to incorporate public access across the lot that would be equivalent in both time, place and manner to that which presently exists.

3. Lot Consolidation/Reconfiguration/Comprehensive Development Plan

Consolidation of the subject lot with one or more adjacent vacant lots and/or reconfiguration of lots would provide for the greatest range of flexibility with regard to the design of a residence or residences. Reconfiguration and/or lot consolidation could also address the visual impacts raised by the current proposal as well as provide for public access across the lot(s) that would be equivalent in both time, place and manner to that which presently exists and address the geologic issues inherent in the broader site. The height and footprint of the structure(s) could be adjusted to prevent adverse impacts upon public views. The footprint(s) of the structure(s) could be designed to accommodate public walkway(s), public viewpoint(s) and appropriate privacy buffer(s). Geologic hazards could be addressed comprehensively as well.

4. Public Park

The subject lot and one or more of the adjacent lots could be developed into a park with public view point(s), pathway(s), landscaping and parking. There is at least one written proposal, *La Rambla Park - A Proposal for Coastal Public Access in the City of San Clemente* (by Derehajlo et. al.), for a park design that would include the entire nine-lot area. The proposal is for a view park with parking, trails and native landscaping. In this design, the subject site, Lot No. 5, would have a small parking lot for the proposed park, a trail head, and landscaping. This alternative would address public access and visual issues and would avoid or minimize issues raised with regard to geologic hazards.

F. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and it certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

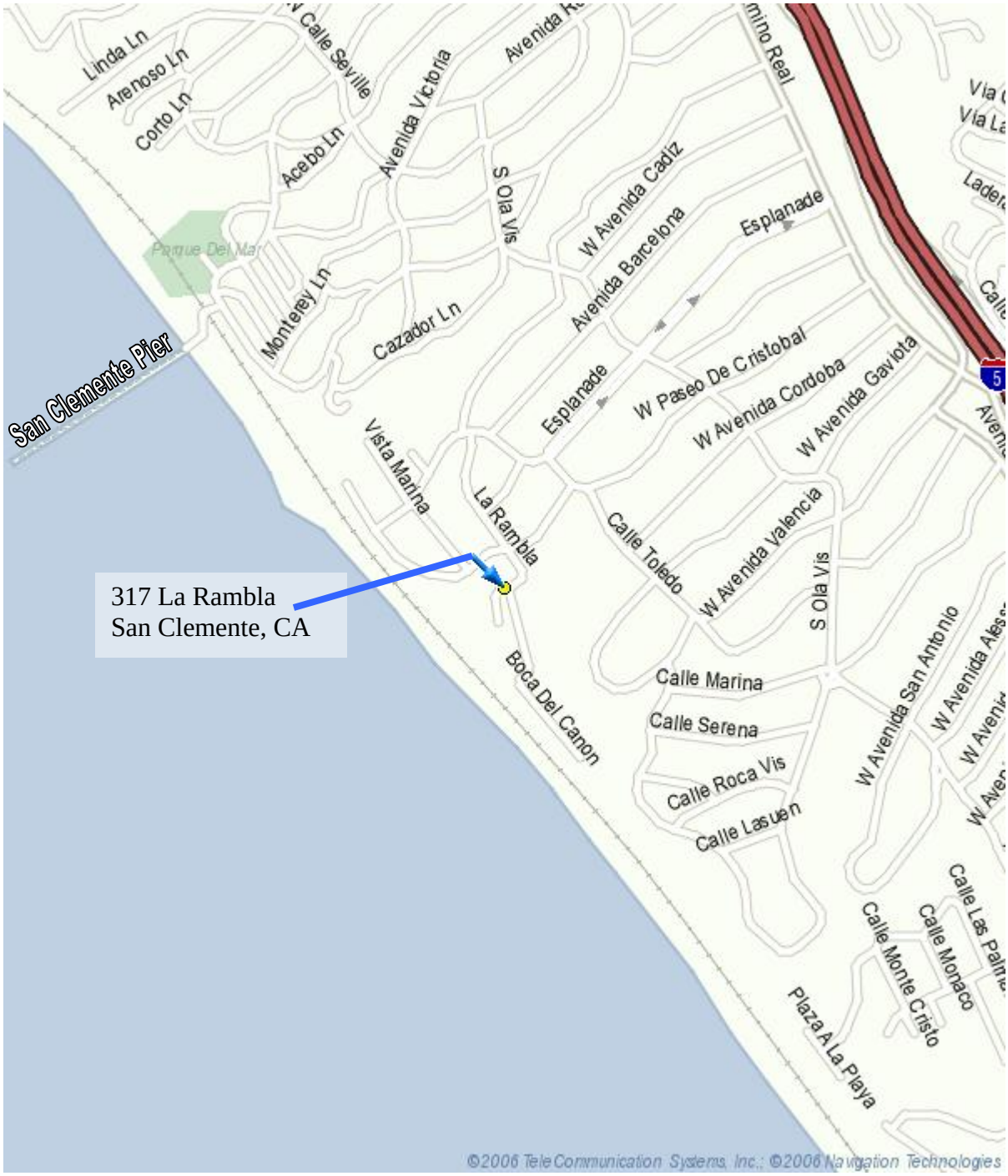
The proposed development is inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development would prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the proposed project must be denied.

G. California Environmental Quality Act

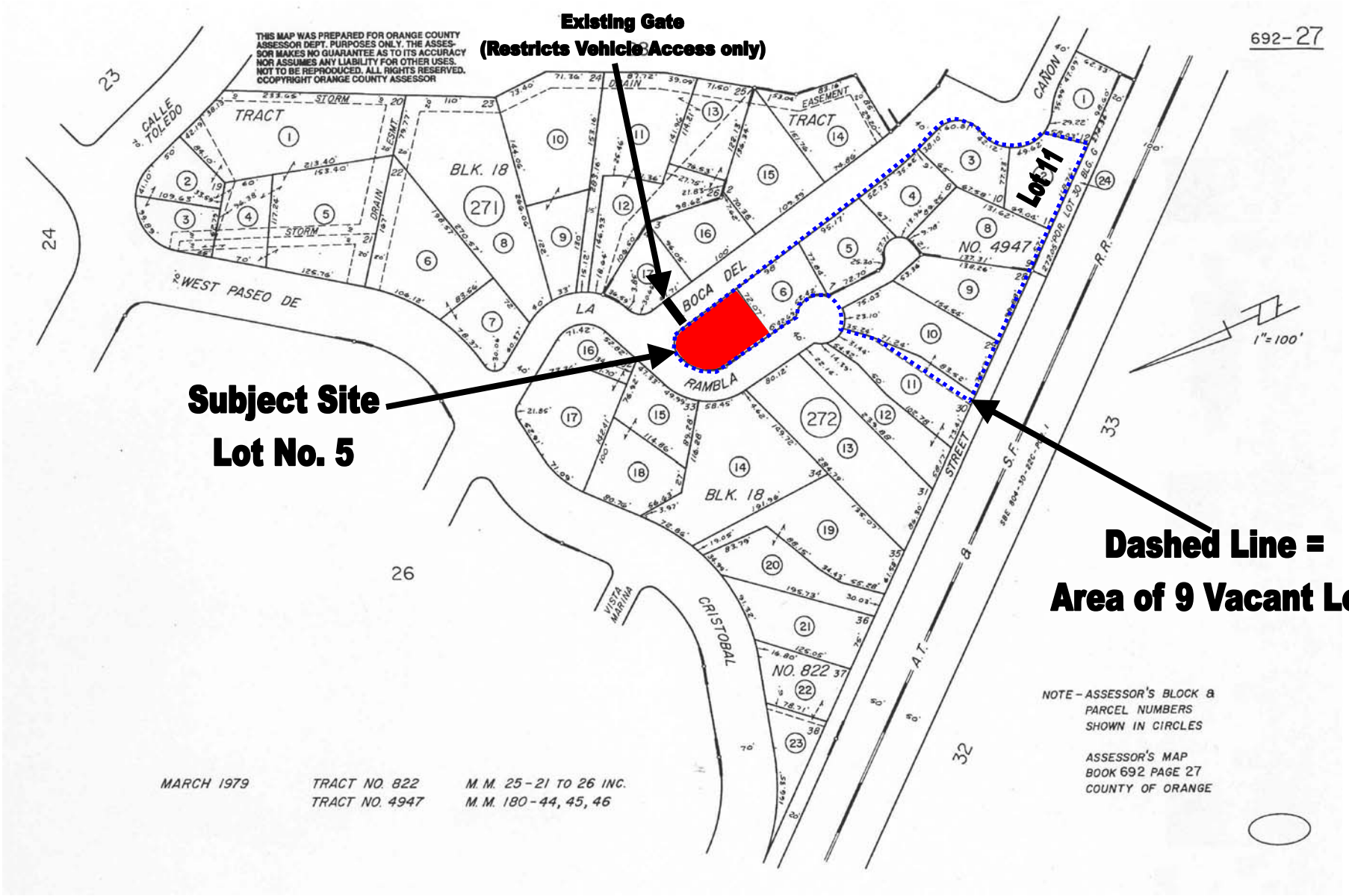
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental 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 explained above and as incorporated here by reference, the proposed project is inconsistent with Sections 30211, 30212 and 30251 of the Coastal Act due to adverse impacts upon public access and views. The Commission has also found that there are feasible alternatives that would avoid such impacts. Therefore, the Commission finds that the proposed project is inconsistent with the California Environmental Quality Act. Therefore, the proposed project must be denied.

317 LA RAMBLA SAN CLEMENTE, CALIFORNIA 92672



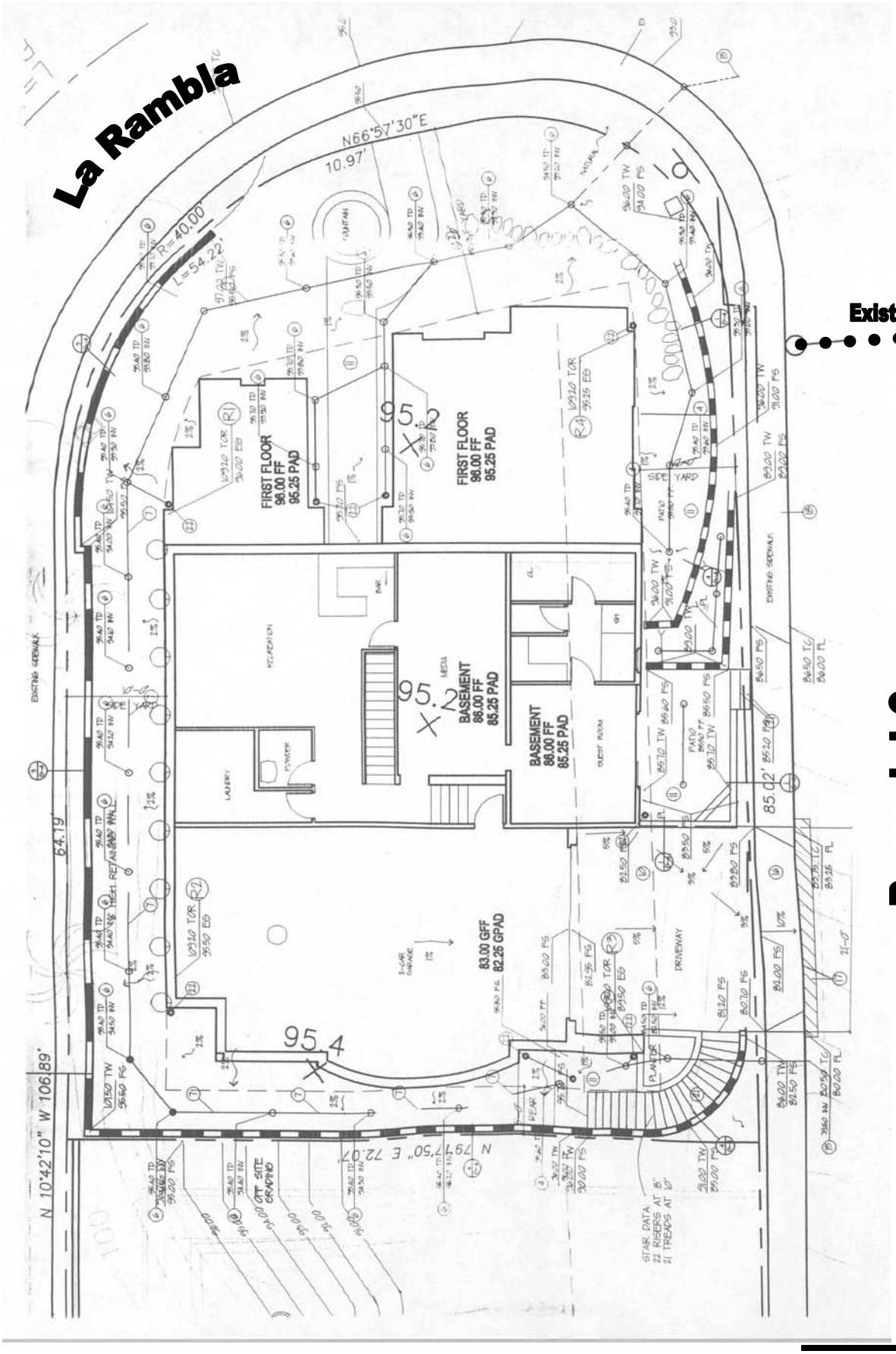
EXHIBIT# 1
Page 1 of 1
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission



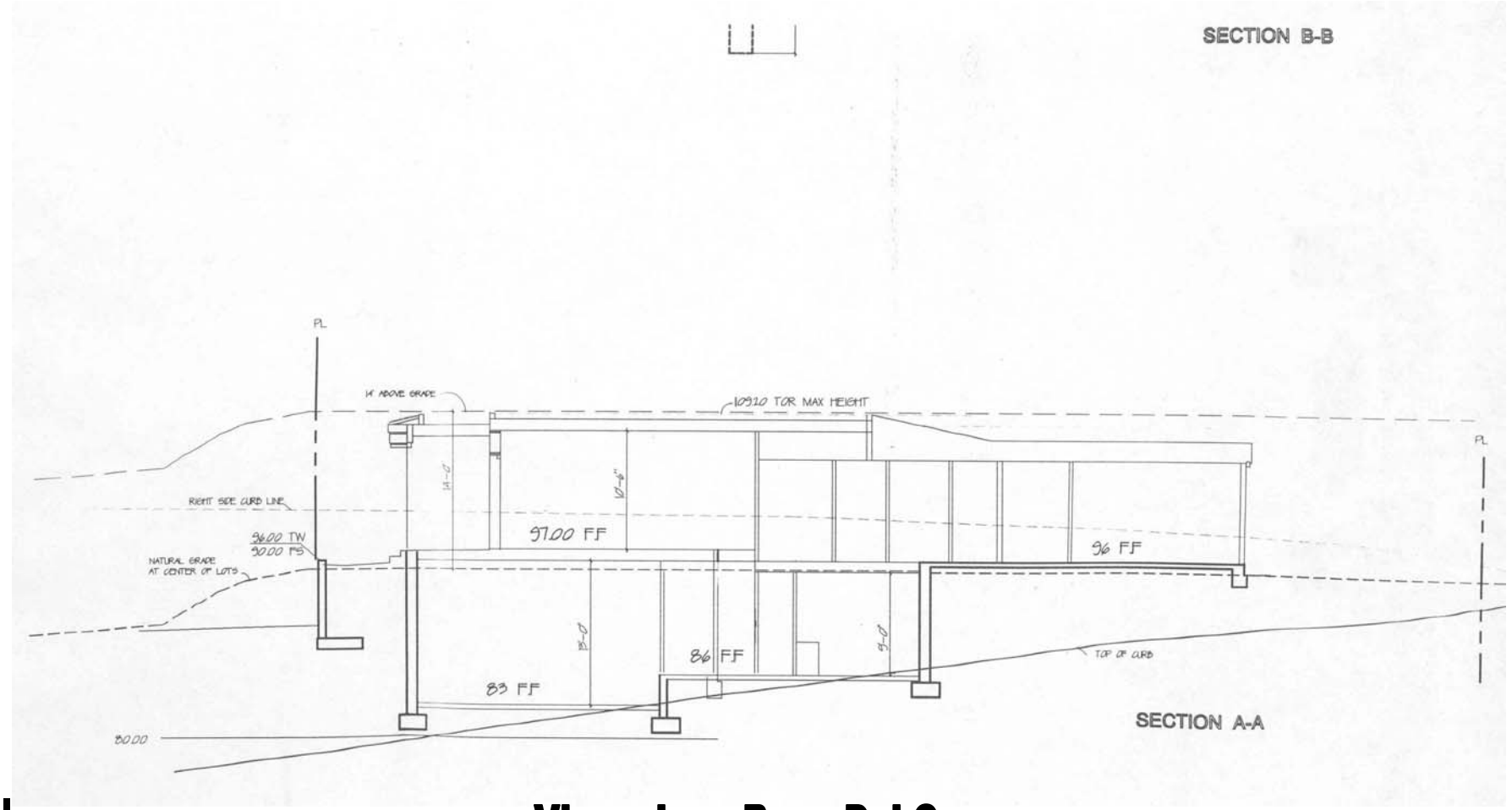
EXHIBIT#2
Page 1 of 1
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

Oblique Aerial View of the Nine Vacant Lots, Including the Subject Lot (Lot No. 5)

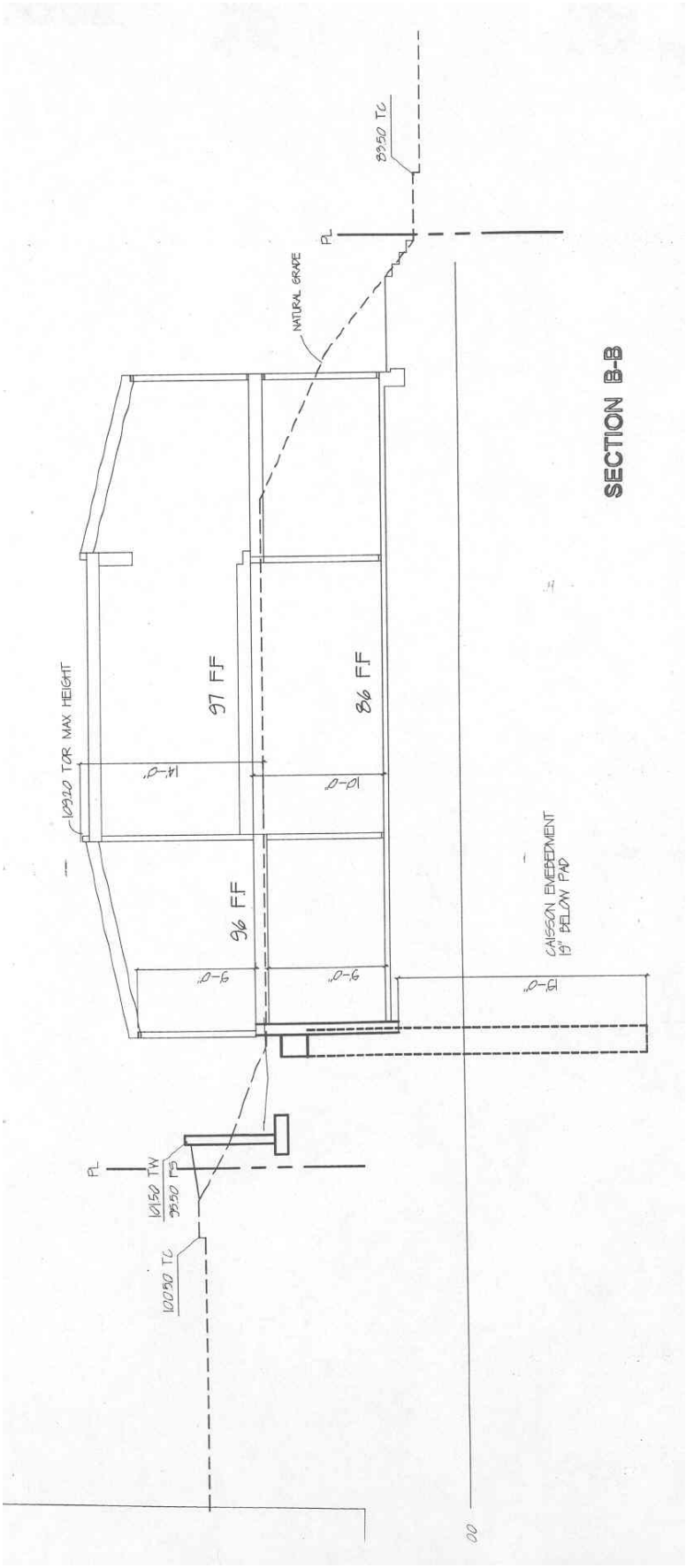
EXHIBIT#3
Page 1 of 1
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission



Site Plans and Elevations



View along Boca Del Canon



View from La Rambla

Site Plans and Elevations

EXHIBIT#4
Page 3 of 3
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

View of Gated Entry to Boca del Canon, the Subject Site Beyond and Entry to Footpath

EXHIBIT#5
Page 1 of 2
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

EXHIBIT#5
Page 2 of 2
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

View Across the Subject Site (Lot No. 5) from La Rambla
Showing Blue Water View that will be blocked by the Proposed Development and Footpath Across Property

Summary for properties with in 300' radius

Address	lot size	living sq ft	%of lot
303 LaRambla	0.2596	3342	11.5
304 LaRambla	0.1338	1594	27.4
305 LaRambla	0.1608	1088	15.5
307 LaRambla	0.3739	2673	16.4
309 LaRambla	0.2596	1617	14.3
310 LaRambla	0.1741	2600	34.2
311 LaRambla	0.1537	2358	35.2
316 LaRambla	0.2327	2257	22.3
317 La Rambla	0.1603	vacant	
319 LaRambla	0.1521	vacant	
320 LaRambla	0.2969	vacant	
323 LaRamba	0.1937	vacant	
324 LaRambla	0.2411	vacant	
325 LaRambla	0.1599	vacant	
326 LaRambla	0.2561	vacant	
303 Boca DC	0.1845	2324	28.9
305 Boca DC	0.2789	1673	13.7
307 Boca DC	0.2794	3778	31.0
312 Boca DC	0.169	vacant	
314 Boca DC	0.193	vacant	
315 Boca DC	0.142	1684	27.2
315 PD Cristobal	0.2931	2279	17.9
319 PD Cristobal	0.2047	2279	25.6
323 PD Cristobal	0.5087	4550	20.5
327 PD Cristobal	0.6004	5044	19.3
314 Gaviota	0.3155	1301	0.95
316 Gaviota	0.3852	2280	13.6
318 Gaviota	0.4495	2897	14.8
320 Gaviota	0.4341	2055	10.9
322 Gaviota	0.651	vacant	

Average % of lot used = 20.1% (401.15 divided by 20 homes)
Average sq footage/house = 2484 sq ft. (49673 /20)

Summary of Lot Sizes, Building Sizes and Lot Coverage
Submitted by C. Rios

EXHIBIT#6
Page 1 of 1
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

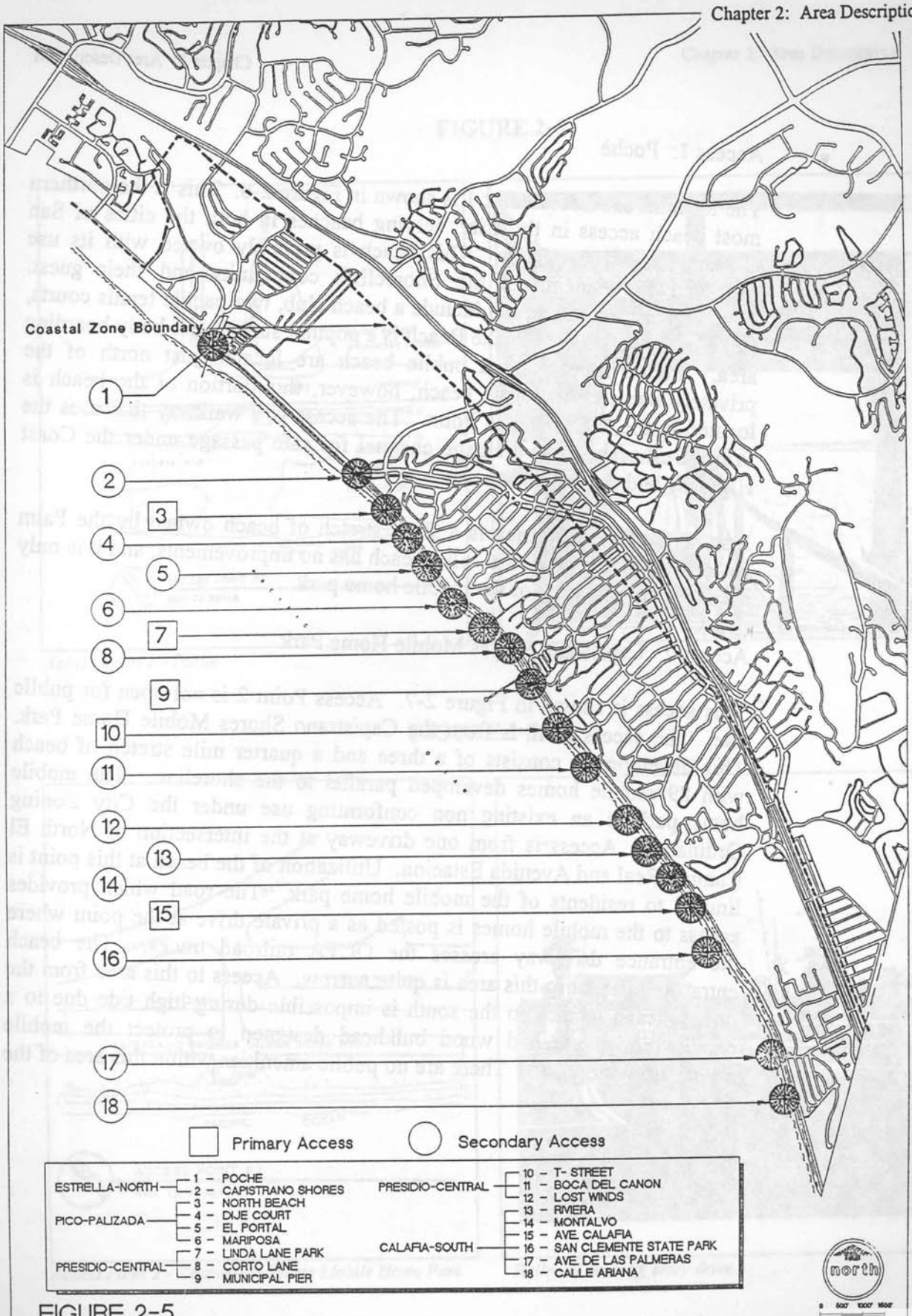


FIGURE 2-5

CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS

EXHIBIT#7
Page 1 of 4
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

EXHIBIT#7
Page 2 of 4
Application Number:
5-06-112
California Coastal Commission

TABLE 2-2
SUMMARY OF EXISTING SHORELINE ACCESS POINTS IN SAN CLEMENTE

Area Division	Access Point #	Location/Name	Regional Access: Connection to I-5	Type of Developed Public Access	Type of Railroad Crossing	Amenities	# of Parking Spaces		
							Off-St.	On-St.	Total
Estrella/ North	1	Poche	Ave. Pico	Stairs & tunnel beneath PCH	Storm Drain Tunnel	None	0	10	10
	2	Capistrano Shores Mobile Home Park	Ave. Pico	None (Private)	At-Grade	None	0	0	0
Pico/ Palizada	3	North Beach	Ave. Pico	Foot-Path	Asphalt Paved At-Grade	Picnic tables, snack bar, showers, restrooms, child play areas & fire pits	250	100	350
	4	Dije Court	Ave. Pico or Ave. Palizada	Stairway	At-Grade	None	0	10	10
	5	Ave. W. El Portal	Ave, Pico or Ave. Palizada	Stairway	At-Grade/Below Trestle	None	0	10	10
	6	Mariposa	Ave, Pico or Ave. Palizada	Asphalt paved ramp	At-Grade	None	0	15	15
Presidio/ Central	7	Linda Lane City Park	Ave. Palizada/ Ave. Presidio	Foot-Path	Storm Drain Tunnel	Turf picnic area, restrooms, volleyball courts, showers	135	0	135
	8	Corto Lane	Ave. Palizada/ Ave. Presidio	Stairway	At-Grade	Shares Linda Lane Amenities	0	5	5
	9	San Clemente Municipal Pier	Ave. Palizada/ Ave. Presidio	Foot-Path	Underpass & Paved Asphalt At-Grade	Restaurant, tackle, restrooms, showers, picnic tables	133	102	235
	10	"T"Street	El Camino Real	Foot-Path	Overpass	Restrooms, showers, fire pits, picnic tables, volleyball courts	0	150	150
	11	La Boca del Canon	El Camino Real	None (Private)	At-Grade	None	0	0	0
	12	Lost Winds	El Camino Real	Foot-Path/Stairway	At-Grade	None	0	10	10
Califia/ South	13	Riviera	Ave. Calafia	Stairway	Storm Drain Tunnel	None	0	10	10
	14	Montalvo	Ave. Calafia	Foot-Path/Stairway	Below Trestle	None	0	0	0
	15	Califia - S. C. State Beach	Ave. Calafia	Foot-Path	At-Grade	Restrooms, snack bar, fire pits, showers	210	0	210
	16	San Clemente State Beach	Ave. Calafia	Foot-Path/Tunnel	At-Grade Underpass	Restrooms, showers, picnic tables, barbecues	200	0	200
	17	Ave. de Las Palmeras	Cristianitos	None (Private)	At-Grade Underpass	None	0	0	0
	18	Calle Ariana	Cristianitos	None (Private)	At-Grade	None	0	0	0
Total							928	422	1,350

Excerpted Pages from San Clemente Coastal Element (Certified LUP)

- Access Point 11: La Boca del Canon

  This private access is reached by either Avenida Presidio or El Camino Real exits from the I-5 Freeway. It is located on La Boca del Canon, a private residential street which connects to West Paseo de Cristobal. The beach is reached by crossing the railroad track via two at-grade locations (see Figure 2-16).

  Parking is limited to on-street spaces for residents, and their guests, of La Boca del Canon. There are no public facilities on the beach at this location.

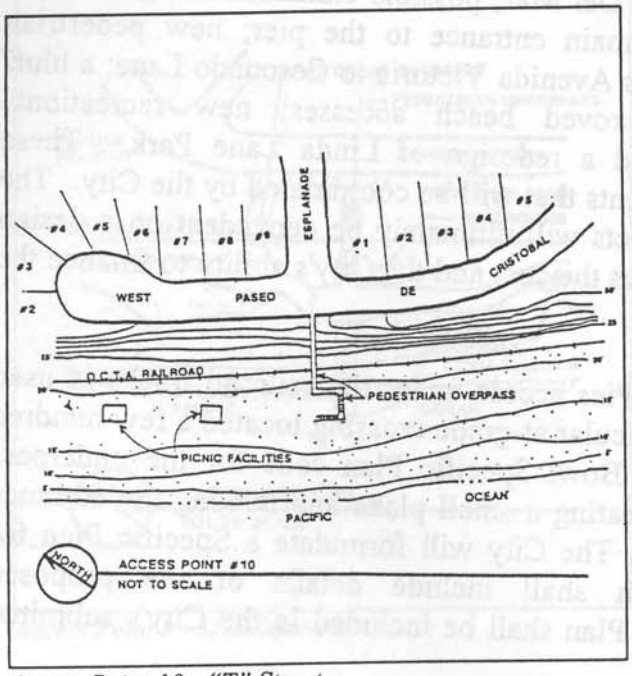
- Access Point 12: Lost Winds

  The Lost Winds beach access is located 435 feet south of Leslie Park, off the streets Calle de Los Alamos and Calle Lasuen (see Figure 2-17). Originally named after the street "Lasuen," mispronunciation over the years has transformed the name of this beach to "Lost Winds." The Lost Winds access is a ten foot wide easement between two residences with a dirt path that leads from the street down a steep slope. Steps formed from railroad ties lead to a dirt path that slopes gradually down a small valley to the beach. The railroad is crossed at-grade, and there are no public facilities on the beach. Parking at both Leslie Park and Calle de los Alamos is limited to on-street spaces.

  The Lost Winds access is located within a residential area, and for this reason, it is used primarily by local residents of San Clemente. Lost Winds is a popular surf break.

EXHIBIT#7
Page 3 of 4
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

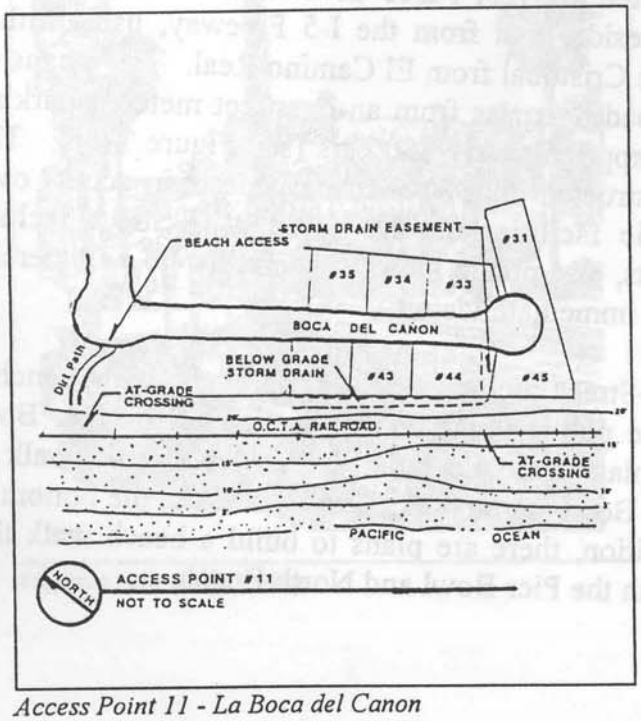
FIGURE 2-15



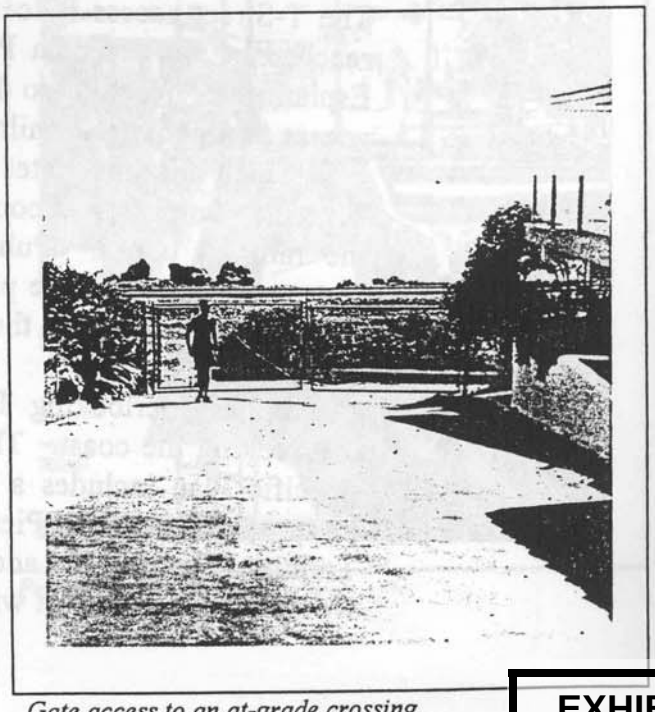
Access Point 10 - "T" Street

Pedestrian overpass to the beach

FIGURE 2-16



Access Point 11 - La Boca del Canon



Gate access to an at-grade crossing

EXHIBIT#7
Page 4 of 4
Application Number:
5 - 0 6 - 1 1 2
California Coastal Commission

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

Record Number	Last Name	First Name	Distance (Miles)	Location	Began Use	Times Used	# Others Observed	Specified Use of 317 La Rambla
1	FRANCISCO	ROSEMARIE	59.9	STATE	1974	DOZENS/100'S	2-10	YES
2	FRANCISCO	RICHARD	59.9	STATE	1974	DOZENS/100'S	1-15	YES
3	SHACKLEY	DANA	442	STATE	1987	10	2-10	Unclear
4	GAFFNEY	CHRISTINA	434	STATE/CITY	1974	100'S	2-10	Unclear
5	TRIMMER	BRAD & KELLY	89	STATE	1993	ON AND OFF	10-35	Unclear
6	FAYER	FRISER	77	STATE	1990	200	3	Unclear
7	BYERS	MELINDA	71	STATE/NEIGHBOF	1962	1000'S	no response	Unclear
8	CHAPMAN	PATRICIA	18.7	COUNTY	1980	100	3 - 5	YES
9	MESERVE	SUSAN	16.3	COUNTY	1959 (TO BE	100'S	3 - 5	YES
10	INSLEY	SHARYN	9.3	COUNTY	1965	3224	5	YES
11	CONLON	MIKE & FAMILY	7.6	COUNTY	1978	1,000	2 - 5	YES
12	MCBRIDE	JULIE	33	COUNTY/CITY	1974	100'S	2-10	Unclear
13	TATALA	JAN	31.8	COUNTY/CITY	1993	100+	2-4	Unclear
14	**Anonimity	Requested	15.2	COUNTY	1995	400	1 - 2+	Unclear
15	VAN DAM	MARK	8.9	COUNTY	1987	3800	2	Unclear
16	FOLEY	GERARD	8.8	COUNTY	1969	1000+	3+	Unclear
17	HAZLETT	GINA	7.2	COUNTY	1972	500	10 - 20	Unclear
18	RANDALL	KRISTIN	5.7	CITY	2000	NUMEROUS	5	YES
19	DARAKJIAN	SPIKE	1.9	CITY	1994	NUMEROUS	10	YES
20	MCINTYRE	KATE	0.8	CITY	1985	3000	3 - 5	YES
21	HAYDEN	DAVID	0.7	CITY	1991	100'S	3-6	YES
22	MCMURRAY	WAYNE	0.7	CITY	1995	100+	1-3	YES
23	MCMURRAY	JEAN	0.7	CITY	1995	100+	1-3	YES
24	PARLOW	WHITNEY	0.7	CITY	2000	NUMEROUS	5-7	YES
25	SCHMITT	KATHLEEN	0.7	CITY	1984	6864	0 - 10	YES
26	ADRIANCE	E. LEIGH	0.6	CITY	1980	4056	1 - 2	YES
27	CURRAR	JILL	6	CITY	1983	200	1 - 10	Unclear
28	DELANTY	RICK	5.8	CITY	1974	100'S	1 - 4	Unclear
29	GALLAGHER	KARIN	5.4	CITY	1986	300	2 - 5	Unclear
30	EADS	TOM & MARISA	3.2	CITY	1974	8320	2 - 10	Unclear
31	STROTHER	SUSAN	2.2	CITY	1976	3120	1 - 6	Unclear
32	MONTGOMERY	SAM	2.1	CITY	1978	1000'S	no response	Unclear
33	MONTGOMERY	SAM & LINDA	2.1	CITY	1986	1000	5 - 15	Unclear
34	HILL	JUSTIN	2	CITY	1990	100'S	1 - 2	Unclear
35	NAMIMATSU	KRISTEL	1.7	CITY	1990	100 +	10 +	Unclear

Surveys Identifying 5 or More Years of Use (i.e. Use of the Area without Permission for the Prescriptive Period)

Record Number	Last Name	First Name	Distance (Miles)	Location	Began Use	Times Used	# Others Observed	Specified Use of 317 La Rambla
36	HURLBUT	KARON & JEFF	1.2	CITY	1976	4680	8 - 10	Unclear
37	MAZIEK	JENNIFER	1.2	CITY	1999	100+	2-10	Unclear
38	MCCOY	BRIDGET	0.8	CITY	1984	DAILY	10-15	Unclear
39	KEISKER	JAMES B., JR.	0.7	CITY	1996	200-300	2 - 20	Unclear
40	SIMON	STEPHEN	0.7	CITY	1981	1000	no response	Unclear
41	BROOKS	EDWARD	0.6	CITY	1987	1000	1-10	Unclear
42	FERRANTO	DALE	0.6	CITY	1993	5 x/WEEK	2-3	Unclear
43	FREET	LARA	0.6	CITY	1989	100+	3+	Unclear
44	GOIT	JENNY & WILLIAM	0.6	CITY	1980	26,820	15	Unclear
45	JOSSE	ALAN	0.6	CITY	1998	1500+	2	Unclear
46	JOSSE	NICOLE	0.6	CITY	1999	DAILY	3	Unclear
47	MERRILL	ARLENE	0.6	CITY	1985	3-4 x/WEEK	2-10	Unclear
48	WIGGINS	ANDREW	0.6	CITY	1987	NUMEROUS	1-10	Unclear
49	WRIGHT	ALAN	0.6	CITY	1973	1000'S	5 - 10	Unclear
50	VLEISIDES	NICK	0.6	CITY/STATE	1963	2000-3000	2 - 20	Unclear
51	HELM	STANDIFORD	0.5	Neighborhood	1982	NUMEROUS	1 - 5	YES
52	LARWOOD	CHARLES & ALLIE	0.5	Neighborhood	1977	100'S	2-5	YES
53	ANDERSON	MARILY	0.4	Neighborhood	2000	900	1 - 6	YES
54	CADDY	ALISTER	0.4	Neighborhood	2000	500	1 - 7	YES
55	DURAN	EDWARD	0.4	Neighborhood	1996	100+	1-4	YES
56	GALLIGAN	DEBBIE	0.4	Neighborhood	1977	1000'S	2-6	YES
57	GALLIGAN	RICHARD	0.4	Neighborhood	1977	1000'S	2-6	YES
58	GASKIN	SHILOH	0.4	Neighborhood	1993	NUMEROUS	14	YES
59	SCHOENIG	TODD	0.4	Neighborhood	1995	600	3-5	YES
60	SIMONELLI	JANENE & FAMILY	0.4	Neighborhood	1990	10000	3 - 4	YES
61	DETTONI	JOHN	0.3	Neighborhood	1982	3-5 x/WEEK	1-10	YES
62	MACKEY	ELENE	0.3	Neighborhood	1981	UNKNOWN	4 - 8	YES
63	NEHER	RUSSELL	0.3	Neighborhood	1983	300	1 - 100	YES
64	RIOS	CHRISTINE	0.3	Neighborhood	1986	2862	1-5	YES
65	RIOS	MAGGIE	0.3	Neighborhood	2000	NUMEROUS	5-7	YES
66	SMITH JR.	WILLIAM	0.3	Neighborhood	1998	2900	1 - 30	YES
67	CROSS	ELIZABETH ANN	0.3	Neighborhood	1987	2660+	2-30	YES
68	BONAR	ANN	0.1	Neighborhood	1981	100'S	SEVERAL	YES
69	BONAR	MARIAN	0.1	Neighborhood	1990	DOZENS	SEVERAL	YES
70	BONAR JR.	KENNETH	0.1	Neighborhood	1975	100'S	4-6	YES

Surveys Identifying 5 or More Years of Use (i.e. Use of the Area without Permission for the Prescriptive Period)

Record Number	Last Name	First Name	Distance (Miles)	Location	Began Use	Times Used	# Others Observed	Specified Use of 317 La Rambla
71	HAYES	JOHN	0.1	Neighborhood	1973	2296	1 - 12	YES
72	HAYES	BETTYE	0.1	Neighborhood	1973	2296	1 - 12	YES
73	LEWIS	VIVIAN GIROT	0.1	Neighborhood	1988	DAILY	1-5	YES
74	MCGUIRE	HARRY	0.1	Neighborhood	1985	NUMEROUS	2-6	YES
75	MCGUIRE	SALLY	0.1	Neighborhood	1985	NUMEROUS	2-6	YES
76	MESERVE	KATHARINE	0.1	Neighborhood	1976 (AND E	300	3 +	YES
77	STEBLAY	MOLLY	0.1	Neighborhood	1992	728	4 - 5	YES
78	STROTHER	LEE	0.1	Neighborhood	1976	1000+	1 -5	YES
79	TAYLOR	SHALA	0.1	Neighborhood	1973	600+	3 - 6	YES
80	DALLABETTA	SUZANNE	0.5	Neighborhood	1979	2080	1-4	Unclear
81	HENDRICKSON	TED	0.5	Neighborhood	2000	30	2 - 100'S	Unclear
82	OMAR	STEVE	0.5	Neighborhood	1994	3-4 x/WEEK	8+	Unclear
83	OMAR	MARIA	0.5	Neighborhood	1994	3-4 x/WEEK	8+	Unclear
84	BANKS	D. SCOTT	0.4	Neighborhood	1994	3744	3	Unclear
85	CARTER	MATT	0.4	Neighborhood	1993	200 x/YEAR	50-100	Unclear
86	CUNNINGHAM	JEFF	0.4	Neighborhood	2000	800	3 - 4	Unclear
87	CUNNINGHAM	DONNA	0.4	Neighborhood	2000	1000	3 - 4	Unclear
88	CUNNINGHAM	KELSEY	0.4	Neighborhood	2000	1000+	2 - 10	Unclear
89	DOLLAR	MICHAEL	0.4	Neighborhood	1960'S	1000'S	1-10	Unclear
90	EMPERO	ED	0.4	Neighborhood	1995	4015	2 - 3	Unclear
91	EMPERO	JACK	0.4	Neighborhood	1995	1716	1 - 3	Unclear
92	EMPERO	SAM	0.4	Neighborhood	1995	1716	1 - 3	Unclear
93	EMPERO	TAMARA	0.4	Neighborhood	1995	2860	1 - 3	Unclear
94	FORTUNA	SAM	0.4	Neighborhood	1995	NUMEROUS	5 - 10	Unclear
95	GASKIN	LISA & FAMILY	0.4	Neighborhood	1978	2900+	3 - 5	Unclear
96	GASKIN	JAMES	0.4	Neighborhood	1980	(/WEEK-EVERYDA	3-5	Unclear
97	GIANNA	SIMONELLI	0.4	Neighborhood	1989	500	4-6	Unclear
98	HERRINGTON	TOM	0.4	Neighborhood	1990	3 x/WEEK	2+	Unclear
99	HERRINGTON	BECKY	0.4	Neighborhood	1990	3 x/WEEK	2+	Unclear
100	KING	PATRICK	0.4	Neighborhood	1987	1000 APPROX	3	Unclear
101	MCDONALD	CINDY	0.4	Neighborhood	1988	DAILY	10-100'S	Unclear
102	PEZMAN	THOMAS	0.4	Neighborhood	1986	500	1-10	Unclear
103	PIKE	ROXANNE & NELS(	0.4	Neighborhood	1990	5840	30	Unclear
104	SIMONELLI	JOHN J.	0.4	Neighborhood	1987	2 x/WEEK	4-6	Unclear
105	SIMONELLI	ANGELO	0.4	Neighborhood	1994	500	3-4	Unclear

Surveys Identifying 5 or More Years of Use (i.e. Use of the Area without Permission for the Prescriptive Period)

Record Number	Last Name	First Name	Distance (Miles)	Location	Began Use	Times Used	# Others Observed	Specified Use of 317 La Rambla
106	SIMONELLI	TONY	0.4	Neighborhood	1992	1000	2-3	Unclear
107	TURNEY	NORMA	0.4	Neighborhood	1986	100'S	1 - 3	Unclear
108	WHITAKER	JEFF	0.4	Neighborhood	1996	4-5 x/WEEK	SEVERAL	Unclear
109	WHITAKER	DARYL	0.4	Neighborhood	1996	4-5 x/WEEK	SEVERAL	Unclear
110	ARMSTRONG	CASEY	0.3	Neighborhood	1996	NUMEROUS	3-5	Unclear
111	CRUSE	GREG	0.3	Neighborhood	1987	100'S	2-12	Unclear
112	DIEHL	ROBERT & FAMILY	0.3	Neighborhood	2000	200	1-2	Unclear
113	FITZPATRICK	CAROLE	0.3	Neighborhood	1980	NUMEROUS	20 - 40	Unclear
114	RIOS	GARRETT	0.3	Neighborhood	1996	NUMEROUS	1-10	Unclear
115	VICK	MARCY	0.3	Neighborhood	1997	100'S	5-10	Unclear
116	YEILDING	DAN	0.3	Neighborhood	1970	1500 +	2 - 10	Unclear
117	MCGEE	MARY	0.2	Neighborhood	1968 (AND E	NUMEROUS	1 - 10	Unclear
118	WICKS	TOM	0.2	Neighborhood	1986	1000+	0 - 6	Unclear
119	WICKS	LINDA	0.2	Neighborhood	1986	1000+	0 - 6	Unclear
120	BOISSERANC	FRANK	0.1	Neighborhood	1989	5525	3 - 4	Unclear
121	BOISSERANC	SYLVIA	0.1	Neighborhood	1989	5525	3 - 4	Unclear
122	EADS	THOMAS	0.1	Neighborhood	1969	14, 400	5 - 10	Unclear
123	EADS	MARILYN	0.1	Neighborhood	1969	14, 400	5 - 10	Unclear
124	JASO	TOM	0.1	Neighborhood	1974	100'S	2 - 12	Unclear
125	JASO	LADONNA	0.1	Neighborhood	1974	100'S	2 - 12	Unclear
126	KABEL	ROBERT	0.1	Neighborhood	1981	1100	1 - 20	Unclear
127	LATTEIER	DOLORES	0.1	Neighborhood	1972	DAILY	3-5	Unclear
128	MORTON	JUDITH	0.1	Neighborhood	1975	10000	no response	Unclear
129	SCIBELLI	DALE	0.1	Neighborhood	1979	NUMEROUS	no response	Unclear
130	SCIBELLI	STEPHEN JR.	0.1	Neighborhood	1986	NUMEROUS	35-55	Unclear
131	STEBLAY	KELLY	0.1	Neighborhood	1992	5000 +	3 - 150	Unclear
132	STEBLAY	PHILIP	0.1	Neighborhood	1992	500+	2 - 6	Unclear
133	STEVENS	DIANE	0.1	Neighborhood	1985	100'S	2-3	Unclear
134	TAYLOR	CYNTHIA	0.1	Neighborhood	1980	1000'S	1 - 4	Unclear

Surveys Identifying 5 or More Years of Use (i.e. Use of the Area without Permission for the Prescriptive Period)

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

Record Number	Last Name	First Name	Began Use	Times Used	# Others Observed	Specified Use of 317 La Rambla
1	AMES	RAMONA	2002	3 TO 4?	4 - 5	Unclear
2	DOUGHERTY	STEPHANIE	2002	NUMEROUS	1 - 3	Unclear
3	BOLSTER	JULIE ANNE	2002	200	4 - 5	Unclear
4	ROSS	JOAN	2002	200	20	Unclear
5	WOLF	LYNN	2003	468	1 - 3	Unclear
6	COHEN	RUTH	2003	156	1 - 3	Unclear
7	SCIBELLI	MICHELLE & STEPHEN	2003	15-20	1 - 3	Unclear
8	MANDEL	ANDREA	2004	700+	1 - 25	Unclear
9	RIDGE	JIM	2005	250	1 - 15	Unclear
10	RIDGE	SAM	2005	700	50	Unclear
11	RIDGE	KIMBERLY	2005	250	3 - 15	Unclear
12	BRAIL	RICK	2006	100+	2 - 3	Unclear
13	VORELL	TERRY	No resposne	2 x per day/every c	no response	Unclear
14	HENDRICKSON	BRIGID	No resposne	MANY	2 - 100'S	Unclear
15	VAN DER MEULER	LAILA	No resposne	3?	1 - 4	Unclear
16	MACFADEN	NANCY	No resposne	20x/PER YEAR	no response	Unclear
17	WARNER	DORIS	No resposne	500+	2 - 3	Unclear
18	VICK	KAYLA	No resposne			Unclear
19	ROSS	JOAN	2002	200	20	YES
20	HILLYARD	BRETT	2002	3-4 x/WEEK	3-5	YES
21	CUEVA	JASMIN	2000	No Response		Unclear
22	COON	CINDY	2004	Several x/week	3 to 5	Unclear
23	HOWARD	CHRIS	2004	10	5	Unclear
24	HEALY	DOUG	2002	50	3 TO 5	Unclear
25	HEALY	NINA	2002	50	3 TO 5	Unclear
26	CADENHEAD	PHILIP	1986/2006 Unclear	100	1 TO 5	Unclear
27	MARSH	DREW	2006	200-300	5 TO 10	Unclear
28	KRAUS	CONSTANCE	2003	250+	1 TO 3	Unclear
29	FERRANTO	NANCY	2003	3X/WEEK	2	Unclear
30	MANDEL	RICHARD	ALL THE TIME	EVERYDAY	LOTS	Unclear

Surveys Identifying Recent Use (Less than 5 Years) or No Response
(i.e. Use of the Area without Permission for Less than the Prescriptive Period)

Last Name	First Name	Began Use	Times Used	# Others Observed	OTHER COMMENT
GARRETT	VICTORIA	1952	No Response	No Response	REC'D PERMISSION
SHEPLAY	JULIE	1968	6240+	40	ASKED FOR PERMISSION; but used as if public park
TAYLOR	WILLIAM	1960'S	300+	No Response	REC'D PERMISSION FROM TAFES
GIROT	CHARLES	1986	1000+	1-45+	NO RESPONSE TO 'DID YOU ASK PERMISSION'
JOBST	STEVEN	1986	300	5-10	NO RESPONSE TO 'DID YOU ASK PERMISSION'
CARTER	M.CHRISTINA	1993	Several x/week	3 TO 20	NO RESPONSE TO 'DID YOU ASK PERMISSION'
DETTONI	CAROL	1980	Numerous	1 TO 10	NO RESPONSE TO 'DID YOU ASK PERMISSION'