

CALIFORNIA COASTAL COMMISSION

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Filed: June 15, 2006
49th Day: August 3, 2006
180th Day: December 12, 2006
Staff: Ryan Todaro-LB
Staff Report: October 26, 2006
Hearing Date: November 14-17, 2006
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-06-228

APPLICANTS: John & Linda Tully

PROJECT LOCATION: 2410 Calle Majorca, San Clemente, Orange County

PROJECT DESCRIPTION: Demolish existing single-family residence and construct a new 4,915 square-foot, 16 foot-high, single-story with basement, single-family residence, pool/spa and landscape improvements. Approximately 970 cubic yards of grading (950cy cut and 20 cy fill) are proposed for basement excavation and site preparation.

LOCAL APPROVALS RECEIVED City of San Clemente Planning Division Approval-in-Concept dated June 13, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP); Geotechnical and Engineering Geology Investigation Proposed Single Family Residence 2410 Calle Majorca, San Clemente, California, prepared by GEO-ETKA, Inc. dated January 18, 2006.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with seven (7) special conditions, which require 1) submittal of revised final plans; 2) submittal of a revised final landscaping plan; 3) evidence of approval from OCFA; 4) submittal of a final grading and drainage plan; 5) submittal of pool protection plan; 6) compliance with construction-related best management practices (BMPs); and 7) future improvements come back to the Commission for review. The primary issues associated with this development are canyon habitat enhancement and water quality.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points Exhibit
4. Project Plans
5. Coastal Canyon Map

MOTION: *I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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 CONDITIONS:

1. Revised Final Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, two (2) sets of final site and building plans that substantially conform with the plans by Arthur R. Schiller-Architect, Inc. dated January 17, 2003, but shall be revised to include the following:
- 1) The wooden deck surface and railing and small cement block wall located beyond (canyonward) of the canyon edge shall be clearly depicted and marked "THESE ELEMENTS TO BE REMOVED";
 - 2) The stairs and two wooden retaining walls located beyond (canyonward) of the canyon edge shall be clearly depicted, shaded and marked "THESE ELEMENTS NOT PERMITTED BY ANY COASTAL DEVELOPMENT PERMIT" on the plans.
- B. The permittee shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required

2. Final Landscaping Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a final revised landscaping plan prepared by an appropriately licensed professional which demonstrates the following:
- (a) All areas affected by construction activities not occupied by structural development shall be re-vegetated for habitat enhancement and erosion control purposes;
 - (b) 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 affected by construction activities that doesn't meet all of the requirements in this special condition shall be removed;
 - (c) Landscaped areas in the rear yard (canyon-facing) areas 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 native plant areas, all landscaping adjacent to the canyon shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Invasive, non-native plant species that tend to supplant native species shall not be used;

- (d) Landscaped areas in the front yard (street-facing) area shall consist of native or non-invasive non-native drought tolerant plant species;
 - (e) All planting will be completed within 60 days after completion of construction;
 - (f) No permanent in-ground irrigation systems shall be installed on the canyon-facing portion of the site. Temporary above ground irrigation is allowed to establish plantings.
 - (g) All vegetation 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 landscaping plan.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
3. Orange County Fire Authority Approval
- PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director a copy of a permit issued by the Orange County Fire Authority (OCFA) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the OCFA. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
4. Submittal of Final Grading and Drainage Plan
- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) sets of a final grading and drainage plan prepared by an appropriately licensed professional that has been reviewed and approved by the City of San Clemente. The plan shall incorporate the following criteria:
- (i) Runoff from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be directed to dry wells or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements;
 - (ii) Where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be discharged via pipe or other non-erosive conveyance to a designated canyon outlet point to avoid ponding or erosion either on- or off- site;
 - (iii) Visual treatment shall be required for all above ground piping along the canyon slope, including, but not limited to, use of earth-tone colorization (no white or bright colors) of the pipe and native vegetation to screen the pipe from view.

- (iv) Runoff shall not be allowed to pond adjacent to the structure or sheet flow directly over the sloping surface to the canyon bottom; and
- (v) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.

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

5. Pool Protection Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of a pool protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool that conveys any water leakage to an appropriate drainage outlet. The applicant shall comply with the final pool plan approved by the Executive Director.

6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

7. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-06-228. 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 entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities 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. 5-06-228 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project site is located at 2410 Calle Majorca in the City of San Clemente, Orange County (Exhibits 1 & 2). The 16,560 square-foot lot consists of a generally flat pad on the western side of the lot, which slopes down towards Montalvo Canyon to the east. Surrounding development consists of low-density single-family residences. The nearest public access is available at the Riviera access point, approximately ¼ mile west of the subject site (Exhibit 3). The site is designated as Residential Low (7 dwelling units per acre) in the certified Land Use Plan, and the proposed project is consistent with this designation.

The applicant proposes to demolish an existing single-family residence and construct a new 4,915 square-foot, 16 foot-high, single-story with basement, single-family residence, pool/spa and landscape improvements on a coastal canyon lot. Approximately 970 cubic yards of grading (950cy cut and 20 cy fill) are proposed for basement excavation and site preparation. Project plans are included as Exhibit 4.

There are several existing small structures located down the rear slope and beyond the canyon edge, including a wooden deck surface and railing, a small cement block wall, a concrete stairway and two wooden retaining walls. The applicant proposes to remove the wooden deck surface and railing and the small cement block wall, but leave the concrete stairway and the two wooden retaining walls. The applicant believes that all of these structures were installed in the 1970's by the original owners. Commission staff has determined that no previous coastal development permits were issued for these structures. The applicants are not seeking authorization for this existing unpermitted development through this application. Approval of the proposed project does not authorize the unpermitted development.

The current application only involves improvements that are sited in accordance with the minimum 15' setback from the canyon edge. Commission approval of the current application does not constitute approval of any unpermitted development located on the subject site. The Commission's enforcement division will evaluate further actions to address this matter.

The City's certified LUP (Policy VII.15), to which the Commission may look for guidance, requires new development on coastal canyon lots to be set back as follows:

"New development shall not encroach into coastal canyons and shall be set back either: a. a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or b. a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian

vegetation); or c. in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.

The development setback shall be established depending on site characteristics.”

The proposed development conforms to the canyon setback policies in the certified LUP. The new residence will be located 15 feet from the canyon edge. The pool/spa will be set back at least 5 feet and up to approximately 10 feet from the edge. This is consistent with the Commission's typical 5-foot setback requirement for non-structural, at-grade features on canyon lots. A string line setback is not appropriate due to the configuration of the lot in relationship to adjacent lots. Therefore, the “15-feet from the canyon edge” setback is applied. The proposed project has been sufficiently set back to be consistent with the pattern of development in the surrounding area. The project, including both the residence and the pool/spa, will not result in significant canyonward encroachment. As proposed, the project is sited to preserve scenic resources, as well as protect canyon habitat.

As stated previously, the applicant has not proposed to remove the encroachments, nor has a request been made for after-the-fact authorization of the stairway and two retaining walls. The Commission's enforcement division will evaluate further actions to address this matter. Therefore, the Commission is requiring Special Condition No. 1. To ensure that there is no confusion regarding the development that has been approved and the development that has not been approved on the site. Special Condition No. 1 requires submittal of revised plans indicating that the stairway and two retaining walls that the applicant is not addressing in this application are not permitted development.

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. While no rare or endangered species have been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons, including Montalvo Canyon, as environmentally sensitive habitat areas (ESHA), as depicted in Exhibit 5. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis.

The canyon adjacent to the subject site is considered somewhat degraded due to the presence of both native and non-native plant species. No portion of the applicant's site contains resources that rise to the level of ESHA. However, to decrease the potential for canyon instability, deep-rooted, low water use, plants, preferably native to coastal Orange County, should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the canyon slope. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. The Commission typically requires that applicants utilize native plant species, particularly along coastal canyons.

In addition, since the proposed development is adjacent to a coastal canyon where the protection and enhancement of habitat values is sought, the placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. 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/) in their publications. In the areas on the canyonward side of the lot, landscaping should consist of plant species native to coastal Orange County only. Elsewhere on

the site, while the use of native plants is still encouraged, non-native plant species that are drought-tolerant and non-invasive may be used.

The applicant has submitted a landscape plan that demonstrates the use of non-invasive, drought tolerant plant species throughout the site, but the plan contains a mix of both native and non-native plants throughout the site. Therefore, the Commission imposes Special Condition #2, which requires the applicant to submit a final revised landscaping plan, which depicts the use of native plants appropriate to the habitat type adjacent to the canyon area. 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" (a.k.a. WUCOLS) 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>.

Because the site is located adjacent to a canyon, the plans must also be submitted to the Orange County Fire Authority (OCFA) for review to confirm that appropriate plant materials, from a fire-management perspective, are used and to ensure that development is carried out in conformance with OCFA requirements.

The geologic stability of the site has been evaluated in a study conducted by GEO-ETKA, Inc., dated January 18, 2006. The study concludes that the proposed development is considered geotechnically feasible provided the recommendations of the report are incorporated. Recommendations relate to site preparation and grading, general foundation design and drainage. The structural design of the pool is discussed, but no recommendations for leak prevention are addressed. Prior to permit issuance, a pool protection plan must be submitted for review and approval by the Executive Director. The plan must incorporate mitigation of the potential for geologic instability caused by leakage from the proposed pool.

During construction, the applicant will be required to implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the adjacent canyon or storm drain system. After construction, roof and surface runoff from new impervious areas should, ideally, be directed to dry wells or vegetated/landscaped areas. However, the Commission recognizes that, at present, City codes mandate directing certain types of runoff, such as roof runoff, to the street. Until there is reconciliation between City codes and the goal of maximizing on-site treatment and infiltration of runoff for water quality purposes, site runoff should be directed to dry wells or vegetated/landscaped areas to the maximum extent practicable but within the constraints of City requirements.

The applicant has submitted a preliminary grading plan prepared by Alpine Consultants, Inc. that shows all roof and surface runoff directed to area drains and piped to an existing City storm drain facility located at the street. Although the proposed grading plan is consistent with the geotechnical recommendations and past Commission approvals, the plan does not have final approval from the City's Public Works Department. A final grading and drainage plan, showing approval by the City of San Clemente, must be submitted for review and approval by the Executive Director prior to permit issuance.

B. HABITAT, RECREATION AND PARK IMPACTS

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240(b) of the Coastal Act.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development that is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition must be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. PUBLIC ACCESS

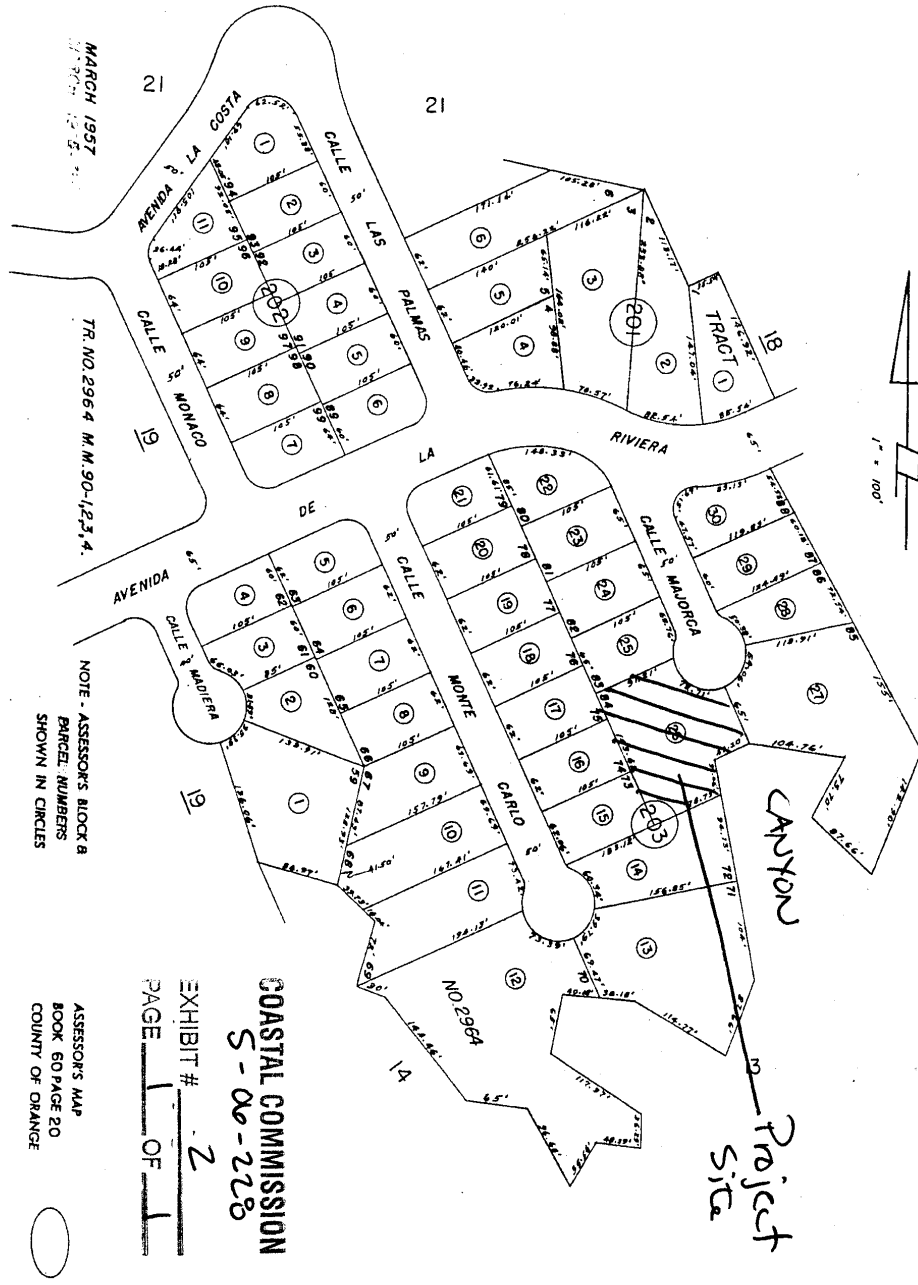
The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

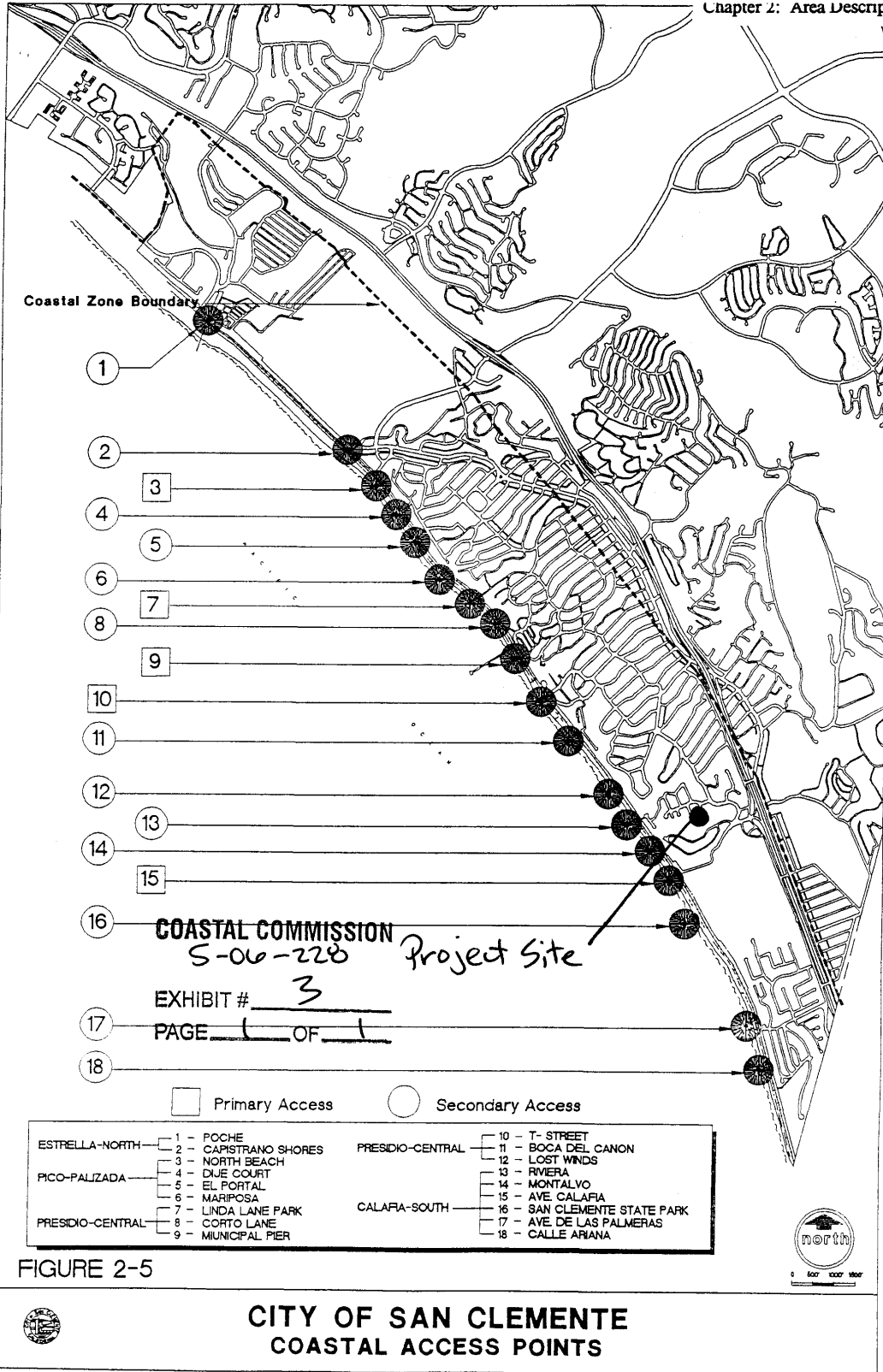
F. LOCAL COASTAL PROGRAM

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and 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. As conditioned, the proposed development 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

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that 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.

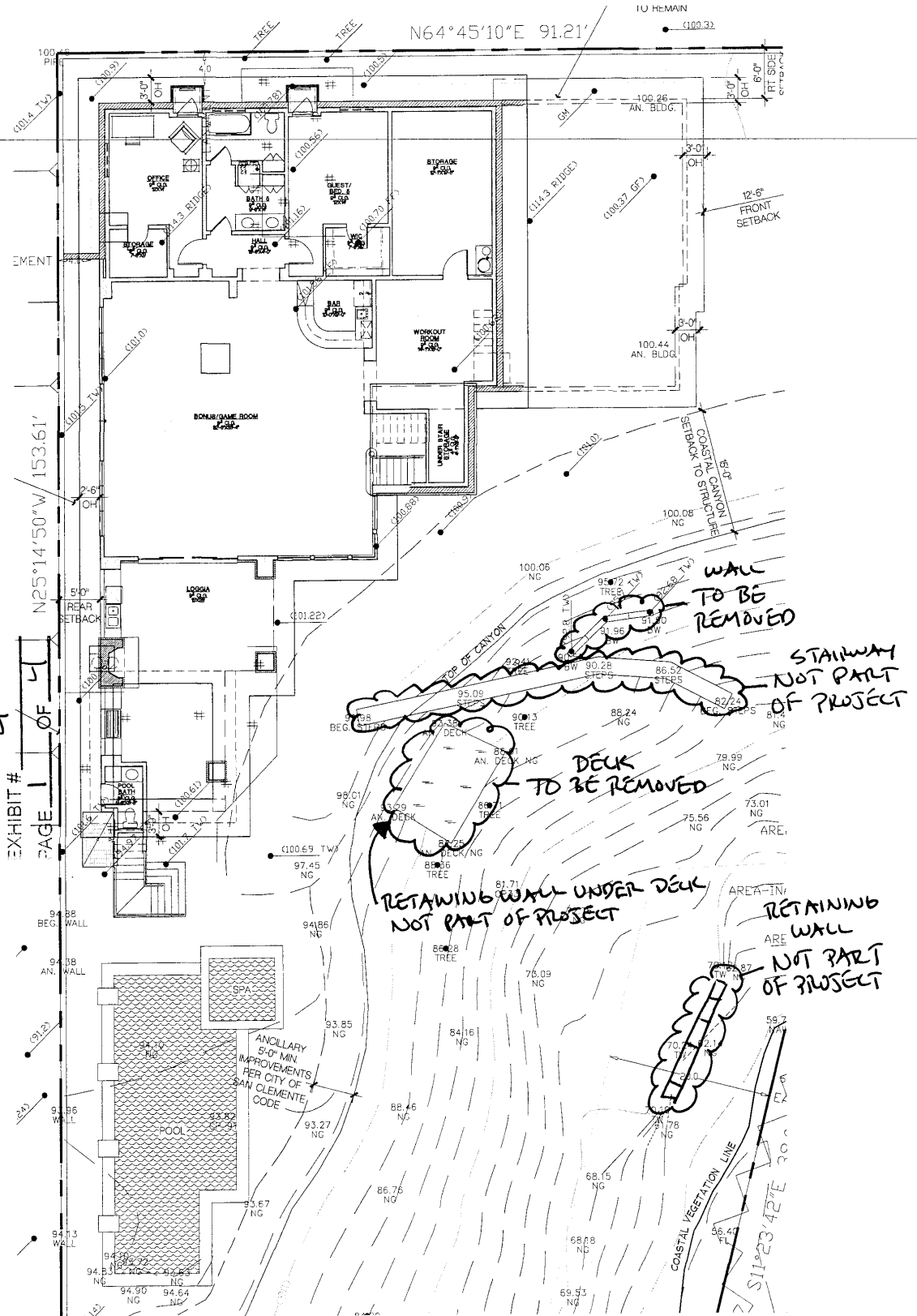




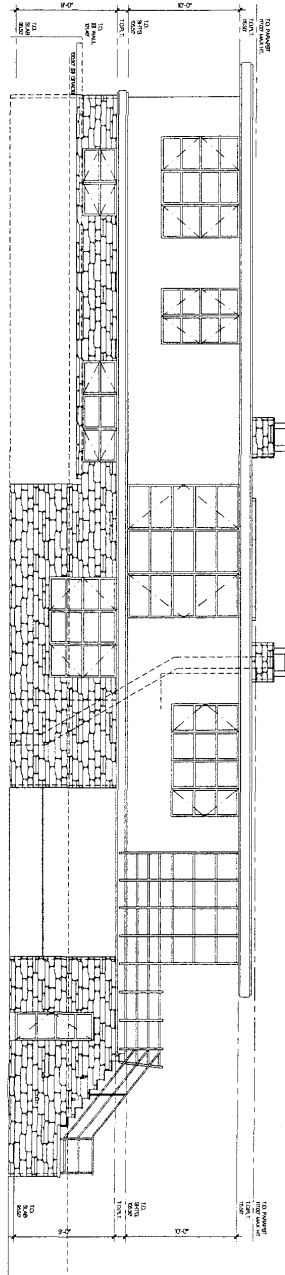
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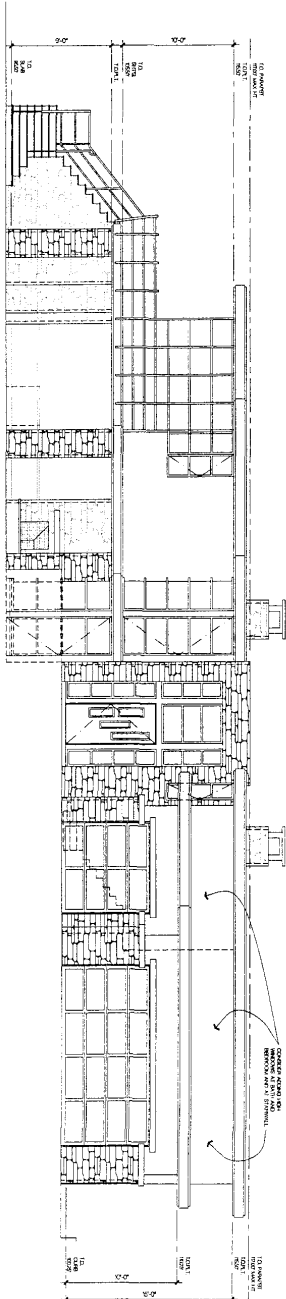
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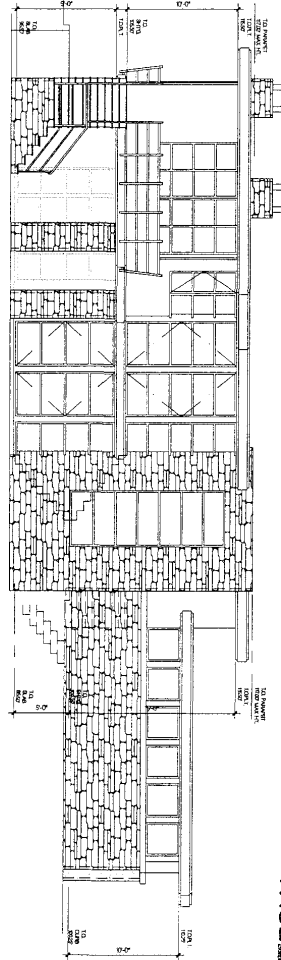
REAR ELEVATION



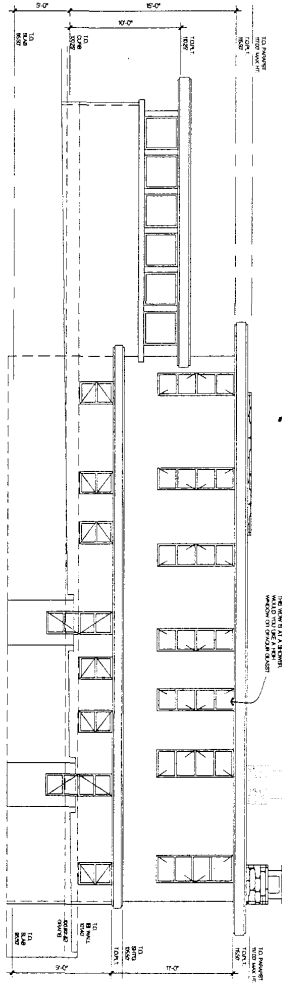
FRONT ELEVATION

ELEVATIONS
 TULLY RESIDENCE





LEFT ELEVATION



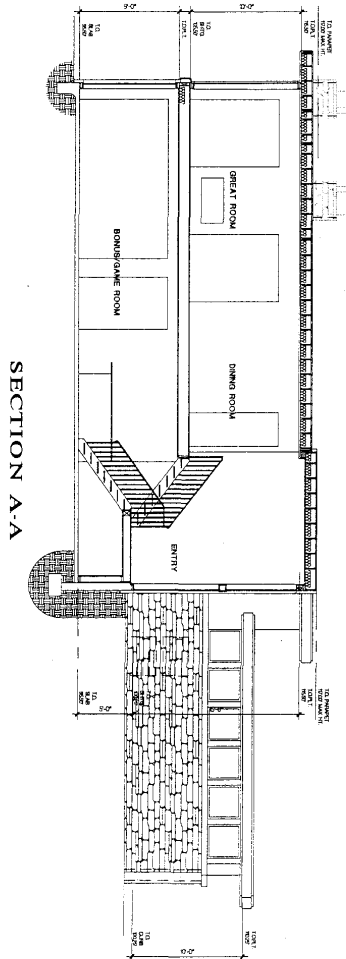
RIGHT ELEVATION

ELEVATIONS
 TULLY RESIDENCE

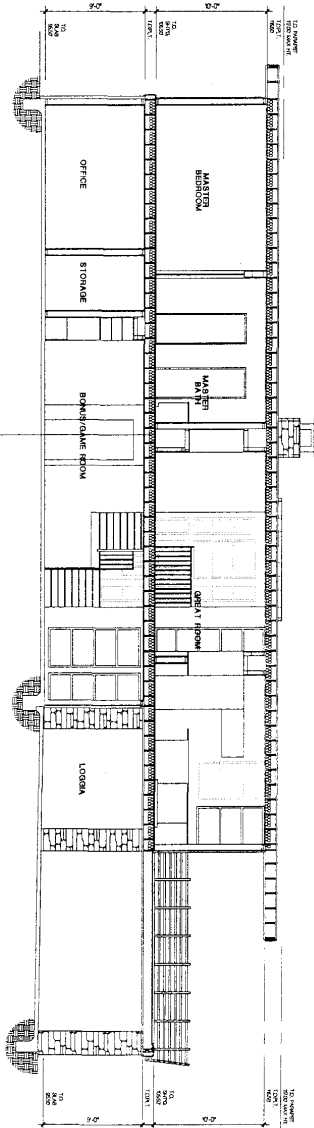
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SECTION A-A



SECTION B-B

ELEVATIONS
 TULLY RESIDENCE



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