

CALIFORNIA COASTAL COMMISSION

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Filed: December 7, 2005
49th Day: January 25, 2006
180th Day: June 5, 2006
Staff: Anne Blemker-LB
Staff Report: April 20, 2006
Hearing Date: May 10-12, 2006
Commission Action:

**W 18f****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-05-412

APPLICANTS: La Ladera Homeowners Association &
Boca del Canon, LLC

AGENTS: Barbara Turnbull (for La Ladera HOA)
Stephan Cohn (for Boca del Canon, LLC)

PROJECT LOCATION: Intersection of Boca del Canon and La Rambla,
San Clemente, Orange County

PROJECT DESCRIPTION: Replacement and relocation of existing vehicular entry gate with new 6' high motorized wrought iron gate with stucco pilasters, unmanned 5' high kiosk, decorative paving, landscaping, irrigation and lighting.

LOCAL APPROVALS RECEIVED: City of San Clemente Planning Commission approval of Resolution No. PC 05-064 dated September 7, 2005, Approval in Concept, dated September 26, 2005.

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

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed project with 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; and 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. Although the project involves demolition and reconstruction of the vehicular gate for a private gated community located between the sea and the first public road, staff's view is that the project itself does not provide a nexus to require increased access through the community. Nonetheless, pedestrian beach access currently exists through the site via sidewalks on either side of the gate and should remain available for public use as proposed. Toward that end, the replacement gate must be designed in a manner that does not dissuade the public from continuing to utilize the public access. Preservation of this public access is particularly critical due to the limited number of beach access points between the Municipal Pier (located upcoast of this site) and San Clemente State Park (located downcoast of this site). Pedestrian access through the La Ladera neighborhood provides a connection to the San Clemente Coastal Trail, which passes in front of this community along the beach. On-street public parking is available immediately inland of the La Ladera neighborhood.

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. Location Map
3. Project Plans
4. LUP Coastal Access Map
5. Site Photographs

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve CDP #5-05-412 pursuant to the staff recommendation.

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

The staff recommends that the Commission adopt the following 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. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
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. Submittal of Revised Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant (La Ladera HOA)¹ shall submit, for the review and written approval of the Executive Director, two (2) full size sets of revised project plans, which reflect the following:
 1. Width of gate shall not exceed the width of existing gate and shall not extend onto the adjacent sidewalks (limited to asphalt roadbed);
 2. Maximum height of gate shall not exceed the height of the existing gate (4'6")
 3. Gate shall be predominantly transparent;
 4. Kiosk shall be limited to the minimum size necessary to support necessary mechanical equipment for the gate and display screen for entry system;
 5. Lighting shall be limited to that necessary for safety purposes; and
 6. No decorative pilasters or landscaped planters shall be constructed.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Submittal of Signage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a signage plan for the La Ladera neighborhood entry.
 1. The plan shall include:
 - The precise content/text of all signs;
 - A graphic depicting the design (e.g., dimensions, etc.) and placement of all posted signs and shall be of sufficient scale and detail to verify that the location and size of all signage match the graphic during a physical inspection of the premises.

¹ The word applicant, when used in the singular in this report, is intended to refer to the La Ladera HOA.

2. If the proposed signage would indicate a change in access restrictions or alter or discourage the access currently available, or change the intensity of use of the area, said signage would require a separate authorization through a permit amendment or new permit.

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

3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-412. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-05-412. Accordingly, any future improvements to the development authorized by this permit, including, but not limited to, new or revised signage and/or the addition of any physical impediments to existing access conditions and/or repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-412 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Deed Restriction

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

5. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. No permittee or anyone else shall use this permit as evidence of a waiver of any public rights that may exist on the property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description, Location and Background

The La Ladera Homeowners Association (HOA) is proposing to remove an existing mechanized vehicular gate and construct a new gate at the entrance to the La Ladera private neighborhood, between 311 and 317 La Rambla in the City of San Clemente, Orange County (Exhibits 1 & 2).² The existing wrought iron gate is approximately 4'6" high and spans the existing roadbed. Identification and informational signage is placed on the existing gate³. The sidewalks and gutters are currently unobstructed.

The applicant proposes a new 6' high motorized wrought iron gate with 6' high by 5'8" wide (at base) tile capped stucco pilasters on each side of the gate, decorative roadway paving, landscaping in raised planter areas, irrigation and lighting (Exhibit 3). The new gate will be relocated to a point approximately 20' feet seaward of its current location. The project also involves the construction of a 5' high by 3' wide by 3' deep, unmanned entry kiosk at approximately the same location as the currently existing gate. The proposed improvements reflect a substantial expansion of the entryway improvements currently existing at La Ladera.

La Ladera is a private gated residential neighborhood located between the sea and the first public road (Paseo de Cristobal). The private neighborhood was established through the La Ladera Subdivision in 1964, prior to passage of the Coastal Act. The neighborhood is situated in a residential area south (downcoast) of the Municipal Pier/Pier Bowl area. There is no public vehicular access through the neighborhood. Pedestrian access to the beach is available along the sidewalks leading through the neighborhood down to two beach access points. Although the certified LUP lists beach access as private at this location, the public has historically been able to utilize it, as further discussed in the following section.

The exact date of the existing vehicular gate installation is not available. According to information provided by the applicant, a manually operated gate was in place at the present gate location since before September 1, 1969. The existing electronically operated gate replaced the original manual one. The Commission has no record of any permits related to the replacement of a gate at this location. Photos of the existing vehicular gate and sidewalks are provided as Exhibit 5. There is no evidence that the sidewalks have ever been closed to public access.

B. Public Access

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

² La Ladera HOA has been granted an exclusive easement and right of way for vehicular and pedestrian ingress and egress purposes over the private street involved in the current application. The private street is owned by Boca del Canon, LLC. Boca del Canon, LLC has joined as a co-applicant.

³ The primary sign currently states, "LA LADERA, A PRIVATE COMMUNITY, AUTHORIZED PARKING ONLY, VISITORS NOT DISPLAYING VALID DATED GUEST PASSES WILL BE TOWED AWAY AT OWNER'S EXPENSE...1. SPEED LIMIT 15 MPH, 2. NO SKATEBOARDING, ROLLER SKATING, ROLLER BLADING ALLOWED." There is an additional sign reiterating parking restrictions.

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 at the site 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.

The site of the proposed improvements is the La Ladera neighborhood entrance, located immediately inland of the La Boca del Canon (La Ladera) Access Point. This access point is one of only four between the Municipal Pier and San Clemente State Park. Without this access point, there would be no access available for at least a ½ mile stretch between T-Street and Lost Winds (Exhibit 4). The site is used by local residents, as well as by visitors who park their vehicles on the nearby public streets.⁴

⁴ Commission staff is aware of fairly wide-scale public use, and, depending on the precise nature and extent of that use, it is possible that a public right of access has developed for the use of this accessway. However, a formal prescriptive rights study has not yet been conducted, so the Commission does not yet have sufficient evidence of an implied dedication to base its decision on Section 30211 and the likely existence of a public right of access acquired through use.

The preservation of this access point is important due to its historical use, as well as its future use as a connection to the future 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 goal in this circumstance is to—at minimum—protect the existing access and prohibit development that would increasingly privatize the area.

As described above, the proposed project is within a private gated community located between the sea and the first public road. Such private, gated communities interfere with the public's ability to gain access to the beaches adjacent to the communities. Assuring public access to the shoreline is one of the strongest mandates of the Coastal Act, including the protection of existing public access. However, because this gated community was established prior to the Coastal Act, mandating expanded public access to the beach through this community presents a special challenge. The Nollan Supreme Court decision, 483 U.S. 825 (1987), requires that, for a regulatory agency to be able to impose a condition on a permit approval requiring the permittee to provide for public access, a nexus must exist between the impacts of a proposed project on public access and the nature of the condition being imposed on the permit approval. In this case, a gate already exists. Moreover, the entire community is private property that has been legally prohibiting public vehicular access since prior to the adoption of the Coastal Act. Given the circumstances at this site, a replacement of the existing gate, in kind and location, would not create new adverse impacts on coastal access. Thus, the provision of new or additional public access (such as vehicular access) to the shoreline cannot be required as a special condition of this permit. On the other hand, public pedestrian access currently exists through the private neighborhood and is proposed to remain. The La Ladera HOA has stated in its application,

“The public access will be maintained. There is no existing signage for the public access, but it can be provided if necessary. The current and anticipated access will remain the same through the open sidewalks on either side of the gated entrance and a walkway with no time restriction.”

Although the applicant does not propose to restrict or prohibit continued pedestrian access at the site, the project may result in adverse impacts to such access. The proposed project involves the construction of a more substantial vehicular gate than currently exists at the subject site. Although the width of the gate will remain limited to the roadbed width, the height and bulk of the proposed gate will increase. Additional ancillary improvements are also proposed. The gate is currently a 4'6" high transparent wrought iron design with a small card key reader extending from the ground (Exhibit 5). The proposed project involves the construction of a new 6' high gate with 6' high tile capped stucco pilasters on either side of the gate, a 5' high by 3' wide by 3' deep tile roof kiosk, lighting and landscape planters. Decorative interlocking pavers will replace the existing asphalt within the entrance area.

Signage is to be placed on the kiosk as well as on the decorative gate pilasters. The plans indicate that a bronze sign board will be placed on the kiosk and a bronze “La Ladera” entry sign will be placed on the gate pilaster. The language and dimensions of the signs were not provided with the application.

The proposed entry improvements will create a much more imposing entrance to the La Ladera neighborhood. The 5' high tile roofed kiosk will be the first thing that visitors see as they approach. The kiosk and gate pilasters will be sited within new landscaped planter areas requiring irrigation and lighting. The mass of the pilasters, in conjunction with the planters and kiosk, create a far more imposing entryway than currently exist. The public can currently see through and around the

existing gate toward the ocean. At present, there is a visual linkage to the ocean from the public street – the gate is low and unobtrusive and the sidewalks are clearly open.

The proposed improvements, including the larger gate, decorative features and signage, will adversely impact continued public use of the existing pedestrian access through this neighborhood. When the public sees these new structural improvements and architectural embellishments, they will be given the impression that the area does not allow public access. As architectural features and signage can affect the public's perception of access opportunities at a location—particularly a private residential neighborhood—the design of any proposed entryway improvements is a significant component of the current project. Imposing, monumental scale architectural features may give the appearance of privatization and deter members of the public from entering the neighborhood. Only the most intrepid members of the public are likely to be inclined to investigate further; others are more likely to avoid the challenge and seek access elsewhere. As proposed, the project will effectively discourage continued public use. To avoid adverse public access impacts, the Commission imposes Special Conditions 1, 2 and 3.

Special Condition 1 requires the applicant to submit revised plans showing a replacement gate that is comparable in size, scale and design to the existing gate. The applicant must revise the plans to remove all substantial design features that are unnecessary for the operation of the vehicular gate. All pilasters, decorative lighting and planters must be removed. The kiosk must be reduced to the minimum height, width and depth necessary to house the mechanical equipment for the gate and provide the display screen for a card key or key pad entry system. The height of the vehicular gate must be limited to 4'6" (i.e. the same as existing) and remain predominantly transparent. The width of the gate must be limited to the width of the existing gate, which is limited to the asphalt roadbed. As modified, the scope of the proposed entry improvements will be reduced, thereby lessening the perception that pedestrian access is prohibited.

Special Condition 2 requires the submittal of a signage plan. The plan shall include the precise content/text of all signs and a graphic depicting the design (e.g., dimensions, etc.) and placement of all posted signs and shall be of sufficient scale and detail to verify that the location and size of all signage match the graphic during a physical inspection of the premises. If the proposed signage would effect a change in access restrictions or would alter the current access available, said signage would require a separate authorization through a permit amendment or new permit.

As is evident from the two conditions just discussed, relatively minor changes to this site (i.e., minor relative to the current application) could have a significant impact on public access. This is a concern because the Coastal Act states that, unless the Commission indicates otherwise in approving a project, such minor changes can be made subsequently without any Commission review. Thus, without additional assurances, the proposed project raises concerns that future development of the project site potentially may result in a development which 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. Special Condition 3 requires that any future changes or improvements, including new or revised signage and/or any physical impediments to existing access conditions, require an amendment to Permit No. 5-05-412 from the Commission or shall require an additional permit and informs the applicant of this.

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition. Special Condition 4 requires that the property owner record a deed restriction against the property, referencing the above special conditions of this permit and imposing them as covenants, conditions and

restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including maintenance of the existing pedestrian access. In addition, Special Condition 5 states that the Commission's approval of this permit does not constitute a waiver of any public rights that may exist on the property. As conditioned, development at the subject site does not preclude access should a successful prescriptive rights claim occur.

The Commission finds that the project, as conditioned, is consistent with the public access policies of the Coastal Act.

C. 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.

The subject site is located between the sea and 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.

Public views from the first public roadway to the sea currently exist. As shown in Exhibit 5, there is a blue water view above and through the existing gate. The new gate would be approximately 1'6" taller than the existing gate. Additionally, it appears that the wrought iron design will not be as transparent as the current pattern. The new 6' high by 5'8" wide stucco pilasters on each side of the gate and the 5' high kiosk will create monumental features that physically obstruct the current view toward the ocean. Public views after the proposed project will be adversely affected by the proposed project. As such, the Commission imposes Special Condition 1, described in the previous section. The condition ensures that no greater view obstruction will occur by requiring the applicant to re-design the proposed gate such that it substantially conforms with the current size and style of the existing gate. As conditioned, the Commission finds that the proposed project will not result in any adverse impacts on public views and so is consistent with Section 30251 of the Coastal Act.

D. 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 land use designation contained in the certified Land Use Plan. Moreover, as discussed herein, the 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). As conditioned, however, the Commission finds the development consistent with the both the policies in Chapter 3 of the Coastal Act and those of the certified San Clemente LUP, and thus, approvable.

E. 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.

The proposed project, as conditioned, has been found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which require: 1) submittal of and compliance with 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. .

No further alternatives, or mitigation measures, beyond those imposed by this permit, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

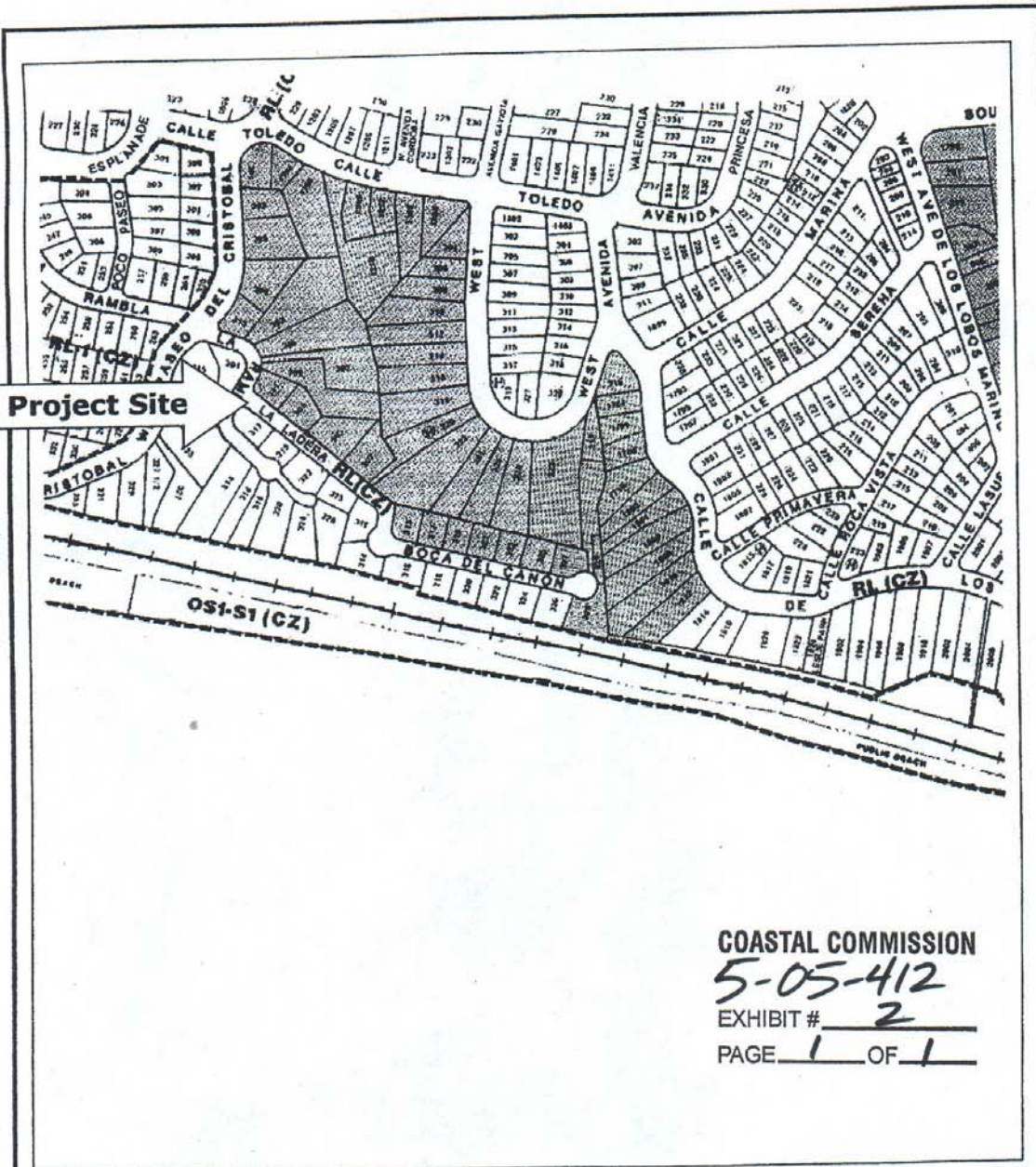




LOCATION MAP

SPP 05-045, La Ladera Entrance Gate

Location - Approx. 60 feet to the south of intersection of La Rambla and Boca Del Canon



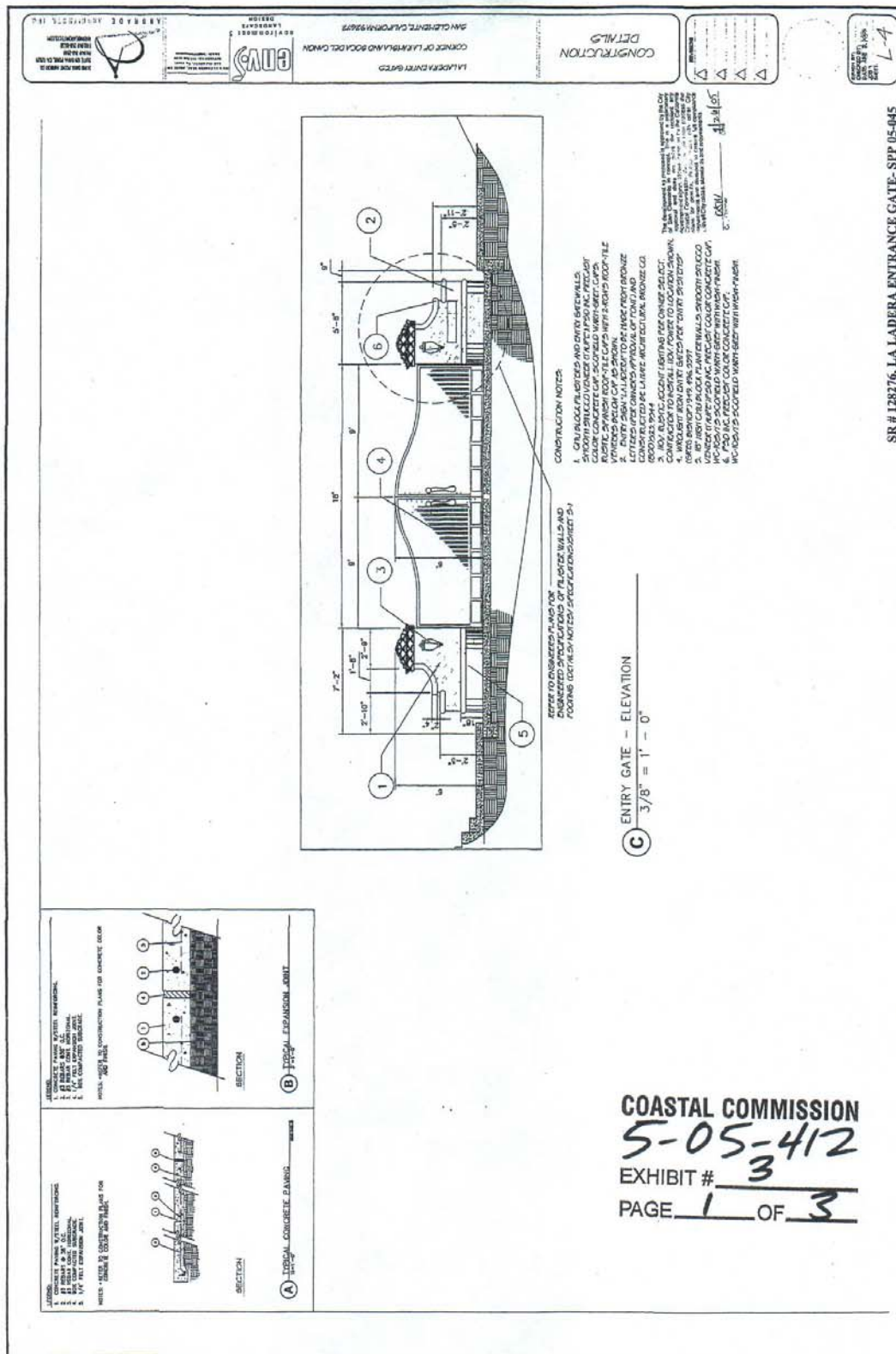
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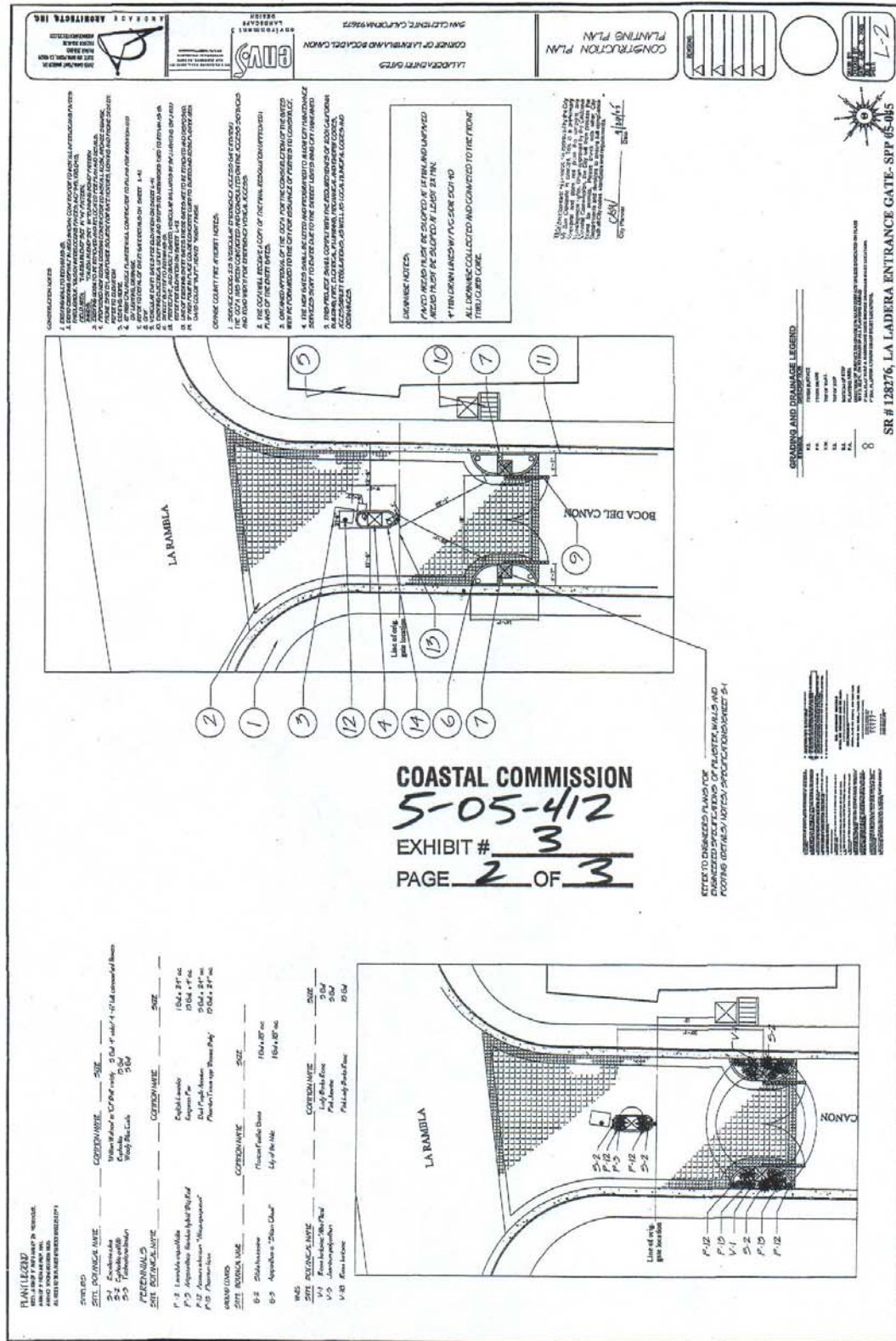
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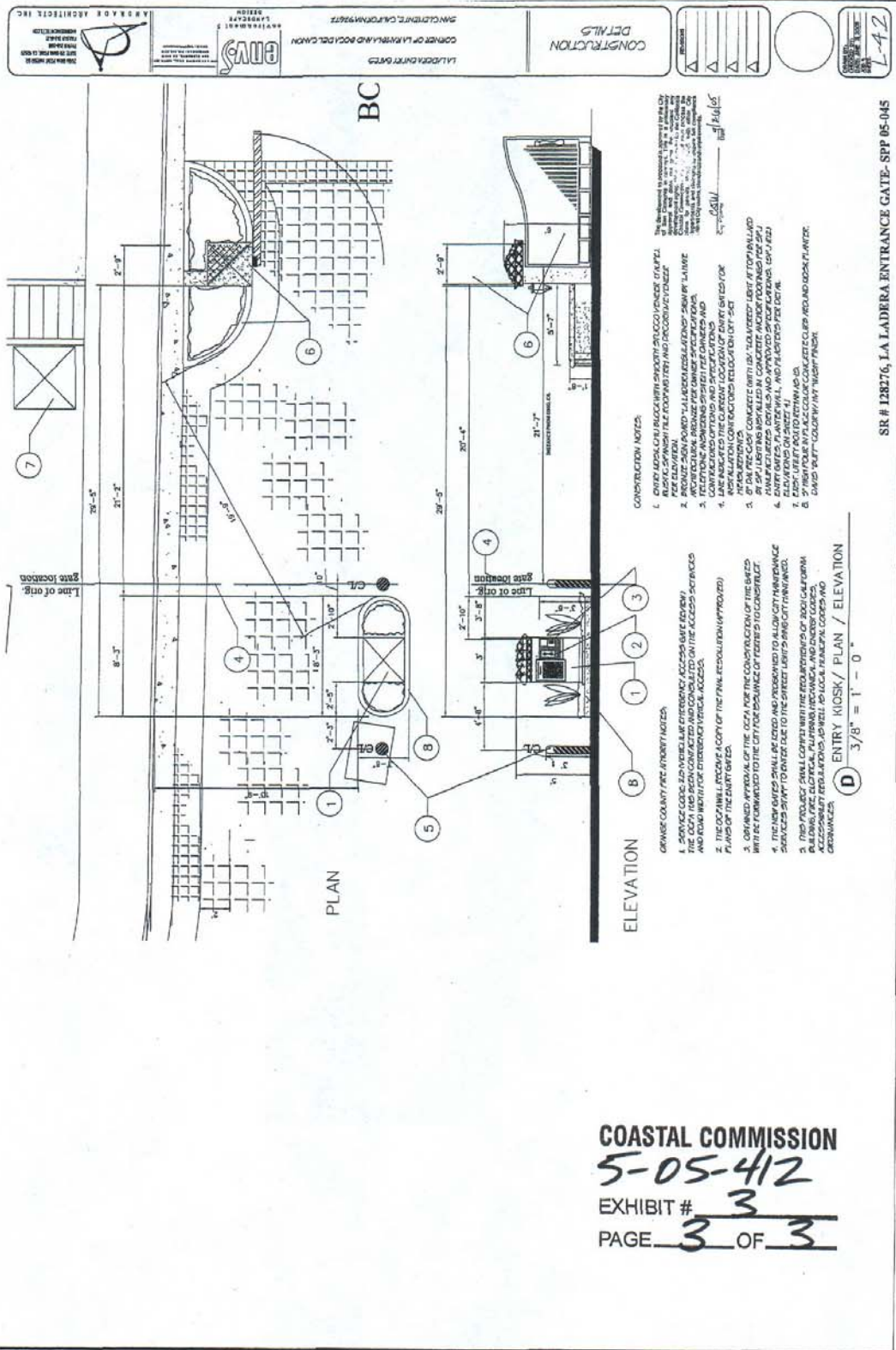
EXHIBIT # 2

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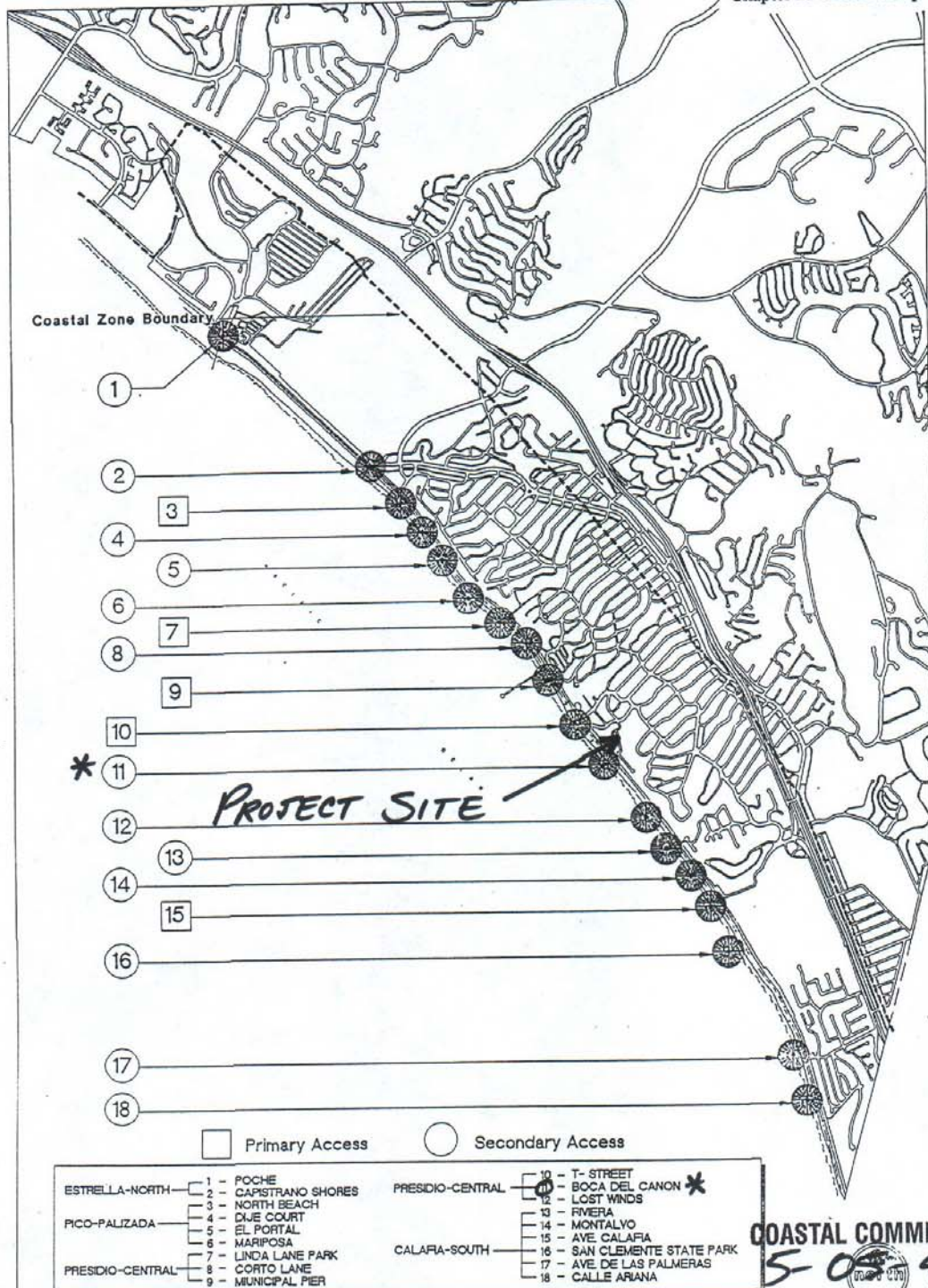


FIGURE 2-5

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CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS



La Ladera Entrance as viewed from La Rambla



Looking downcoast at existing gate and open sidewalks

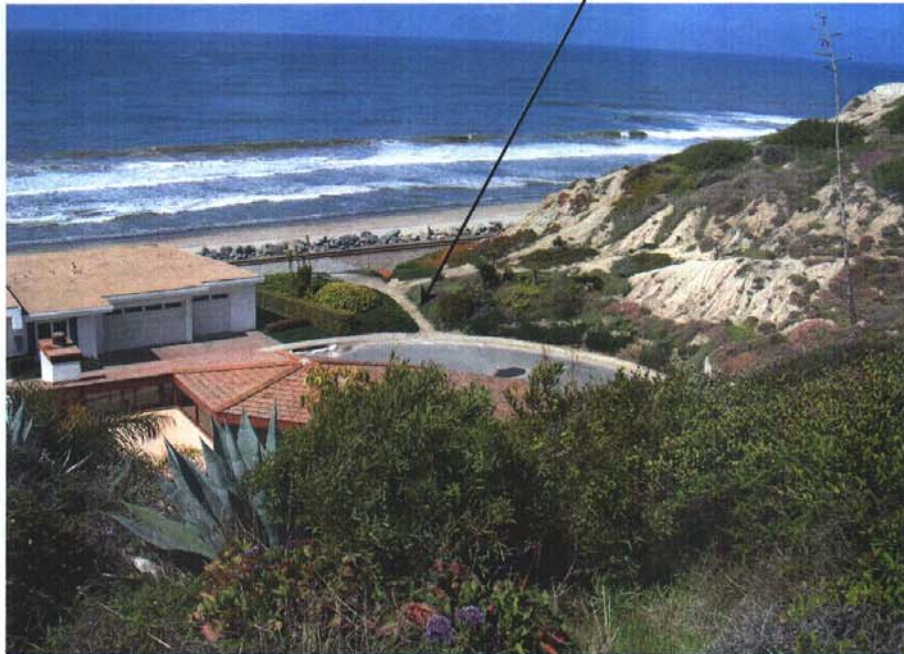
5-05-412 (La Ladera Gate) Exhibit 5

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Location of existing gate and existing beach access point located at base of street



View of existing beach access point from inland vantage point