

CALIFORNIA COASTAL COMMISSION

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**W 15a**

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 Staff: Anne Blemker-LB
 Staff Report: June 28, 2006
 Hearing Date: July 12-14, 2006
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-05-368

APPLICANTS: David Baziak

AGENT: Peter & Associates

PROJECT LOCATION: 4026 Calle Ariana, San Clemente, County of Orange

PROJECT DESCRIPTION: Request for after-the-fact approval of installation of four (4) rows of wooden retaining walls to stabilize bluff face, thirteen (13) caissons and grade beams beneath an existing residence and rear yard patio, construction of a bluff face stairway, landscaping and irrigation on a coastal bluff lot.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission take one vote adopting a two-part resolution which would provide "*after-the-fact*" approval for portions of the development and deny other portions of the development "*after-the-fact*". The major issue of this staff report is development on the bluff face. The proposed development consists of the installation of caissons and a grade beam system beneath the blufftop residence and patio and construction of a terraced wooden retaining wall system (with landscaping and irrigation) and a stairway down the bluff face.

Staff recommends that the Commission **deny** the retaining wall system (with associated landscaping and irrigation) and bluff face stairway that was installed without benefit of a coastal development permit since the development alters a natural landform and creates adverse visual impacts. Staff recommends that the Commission **approve** the caissons and grade beam with four (4) special conditions 1) requiring assumption of risk, 2) informing the applicant that future improvements will require a permit amendment or new permit; 3) requiring recordation of a deed restriction recording the requirements of the permit; and 4) requiring timely compliance with the conditions of approval.

LOCAL APPROVALS RECEIVED: City of San Clemente Planning Department
 correspondence dated July 29, 2005.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente certified Land Use Plan; CDP 5-90-505 (Storment).

EXHIBITS:

1. Vicinity Map
2. Assessors Parcel Map
3. Project Plans
4. City of San Clemente Planning Dept. letter dated July 29, 2005
5. Site Photographs

STAFF RECOMMENDATION:

I. Staff Recommendation of Approval in Part and Denial in Part

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. MOTION:

“I move that the Commission adopt the staff recommendation to approve in part and deny in part CDP No. 5-05-368, by adopting the two-part resolution set forth in the staff report.”

B. RESOLUTION

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **GRANTS**, as conditioned, a coastal development permit for the portion of the proposed project consisting of: installation of thirteen (13) caissons and grade beam beneath the residence and rear yard patio; and adopts the findings set forth below, on the grounds that, as conditioned, the approved development will be in conformity with the provisions of Chapter 3 of the California Coastal Act, 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 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development

The Commission hereby **DENIES** a coastal development permit for the portion of the proposed development consisting of: construction of wooden retaining walls (with associated landscaping and irrigation) and stairway on the bluff face, and adopts the findings set forth below, on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would prejudice the ability of the local government having jurisdiction of the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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 of 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. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-368. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6) and/or 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) and (b) shall not apply to the development governed by Coastal Development Permit No. 5-05-368. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to, 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. 5-05-368 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government

3. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel 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 all 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.

4. Condition Compliance

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit including the recordation of the future improvements deed restriction. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations:

The Commission hereby finds and declares as follows:

A. *Project Location, Description and Background*

1. *Project Location*

The proposed development is located at 4026 Calle Ariana in the private gated community of Cypress Shores in the City of San Clemente, Orange County (Exhibits 1 & 2). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP).

The 8,498 square foot site is currently developed with a two-level single-family residence with rear yard (ocean-facing) hardscape improvements, landscaping and a bluff face stairway. The existing residence was constructed in the early 1990s, pursuant to CDP 5-90-505 (Storment). The seawardmost portion of the residence is sited 10' from the bluff edge, consistent with the structural stringline. Hardscaping currently extends to the bluff edge. The site is surrounded to the north by a single-family residence, to the south by a single-family residence, to the east by the frontage street (Calle Ariana) and to the west by an approximately 30 foot high coastal bluff. The bluff slope descends to the Orange County Transportation Authority (OCTA) railroad and sandy beach below.

The coastal bluffs in San Clemente are not subject to direct wave attack because they are

separated from the beach by the railroad tracks and right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to erosion caused by natural factors such as wind and rain, adverse bedding orientations, soils conducive to erosion and rodent burrowing. Bluffs may also be subject to erosion from human activities, such as irrigation, improper site drainage and grading.

The nearest public vertical access is located approximately ¼ mile to the southeast of the subject lot, beyond the adjacent military housing development at the Trestles accessway in northern San Diego County. Lateral public access is located seaward of the railroad right-of-way at the beach below the subject site.

2. Project Description and Background

The project scope was initially limited to a request for after-the-fact approval of the installation of four (4) rows of wooden post and tie retaining walls and landscaping to stabilize the bluff face of the subject property and a small portion of the adjacent property after a failure in winter 2005 (Exhibit 3).¹ The vertical retaining walls provide level terraces of planting area to be vegetated and irrigated. The exposed faces of the walls are approximately 3 ½ feet high.

After a site visit and further communication with the applicant, Commission staff determined that a caisson and grade beam system was installed without benefit of a permit in 2000. Plans and geotechnical documents reveal that thirteen (13) caissons and grade beams were installed in two rows beneath the residence and rear yard patio. Additional analysis revealed that a wooden bluff face stairway was also installed along the northernmost property line (upcoast) without benefit of a permit. Although the current owner did not undertake the portion of unpermitted development involving caisson installation and bluff stairway construction, it is his desire to resolve these issues through the current application request. As such, the applicant is also requesting after-the-fact approval of the caisson system and a bluff face stairway.

The retaining wall portion of the project was referred to the Coastal Commission after the City of San Clemente put a "Stop Work Notice" on the property on February 16, 2005. After reviewing the work already undertaken (approx. 75% completed) and yet to be completed, City staff determined that the retaining wall system is inconsistent with local requirements and has referred the issue to the Commission for consideration. (See City letter dated July 29, 2005, included as Exhibit 4.) At the time of referral, City staff was only considering the retaining wall system. It was unknown that the caissons and stairway were also unpermitted. City staff has since confirmed that a building permit was issued for the caissons in 2000, but has no record of stairway approval. A new private stairway would also be considered inconsistent with local requirements.

3. Prior Commission Action at Subject Site

On July 12, 1990, the Commission approved CDP No. 5-90-505 for the demolition of an existing single-family residence that spanned two lots and construction of a 3,959 square foot, 22 ft. high single-family residence with a 1,045 square foot 3-car garage on the subject lot subject to one (1) special condition requiring conformance with geotechnical recommendations. A second home was constructed on the adjacent lot pursuant to CDP No. 5-90-504. The development was undertaken in the early 1990s. No bluff face

¹ The applicant has invited the owner of the adjacent property at 4028 Calle Ariana to become a co-applicant in the current application. The invitation was not accepted.

stairways were approved as part of either permit.

Based on an analysis of historical aerial photographs of the site, staff has determined that no stairway existed on the bluff slope prior to the Coastal Zone Conservation Act of 1972 (Exhibit 5). The Commission concurs with this conclusion. The applicant believes the stairs were constructed at the time the residence was constructed in the early 1990s.

B. Approval Findings and Declarations

The findings in this section apply only to that portion of the proposed project that is described in Part 1 (caissons and grade beams) of the Commission's resolution on this permit application, which portion is therefore being conditionally approved.

1. Geologic Hazards

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Blufftop development poses potential adverse impacts to the geologic stability of coastal bluffs, to the preservation of coastal visual resources, and to the stability of residential structures. Bluff stability has been an issue of historic concern throughout the City of San Clemente. Coastal bluffs in San Clemente are composed of weak sedimentary bedrock and unconsolidated surface soils which are subject to sloughing, creep, and landsliding.

The subject site is developed with a single-family residence set back 10 feet from the bluff edge. The concrete patio extends to the bluff edge. In 1997, the former property owner consulted a geotechnical consultant to evaluate rear patio damage and soil conditions at the subject site. A *Report of Geotechnical Investigation at Serrano Residence* was prepared by Dale Hinkle P.E., Inc. on December 9, 1997. The geotechnical report concludes that a tied-back system constructed to prevent movement of the slope had failed and that lateral movement was occurring in the upper 18-20 feet. The report recommended stabilization measures to mitigate future distress to site improvements, including the existing residence and rear yard brick patio. The 1997 geotechnical report states the following:

It is our opinion that damage to the structure and lot was caused by settlement and lateral slope creep due to failure of the tied-back system. It is recommend that the west side of the structure be underpinned...with a series of concrete caissons and grade beams founded a minimum of 10 feet into bedrock.

An *Update of Geotechnical Investigation* was prepared by Dale Hinkle PE, Inc. on April 4, 2000. The update states, "lateral movement of the rear deck has progressed to the point where excessive damage is occurring and stabilization is required." The detailed design of the caisson system was included with this report.

In August 2000, a *Preliminary Engineering Geologic Investigation for Remedial Foundation Design* was prepared by Via Geos, apparently for a new property owner. According to the report,

Much of the substantial structural distress features at the rear of the residence are most likely the effect of relatively deep slope creep, and limited settlement of the existing fill and weathered sandy bedrock. Surficial slope processes such as creep, shallow slumping, limited settlement and erosion may occur in the future, however, assuming the repair elements are properly installed in conformance with our geotechnical recommendation, the effects of these slope processes will be substantially reduced by the proposed improvements and should not significantly affect the proposed improvements or existing structures.

The Commission's technical staff reviewed the aforementioned geotechnical reports and concurred with the consultants' conclusions and recommendations. Clearly, an existing structure was imminently threatened. Therefore, the installation of the caisson and grade beam system is deemed necessary to protect the existing residence. Although no comprehensive alternatives analysis was performed, the Commission has generally found that below-grade retention and underpinning systems have the least environmental impacts of commonly proposed shoreline protection devices.

Although the caissons provide an added level of protection for the residence and patio, development on a coastal bluff is inherently hazardous. Consequently, the Commission typically requires applicants on blufftop lots to comply with certain specific special conditions to bring the project into compliance with the resource protection policies of the Coastal Act. In this case, those special conditions 1) require assumption of the risks, 2) inform the applicant that future improvements will require a permit amendment or new permit and make it so; 3) require recordation of a deed restriction listing the requirements of the permit; and 5) require timely compliance with the conditions of approval.

Special Condition No. 1 requires the applicant to assume the risk of development. The standard waiver of liability condition has been attached through Special Condition No. 1. By this means, the applicant is notified that the residence is built in an area that is potentially subject to bluff erosion that can damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicant to waive claims against the Commission and indemnify the Commission for third-party claims.

Special Condition No. 2 is a future development restriction, which states that any future improvements or additions on the property, including hardscape improvements, grading, landscaping, vegetation removal and structural improvements, require a coastal development permit from the Commission or its successor agency. This condition ensures that development on coastal bluffs, which may affect the stability of the bluffs and residential structures or may require future bluff protective structures, requires a coastal development permit.

Special Condition No. 3 is imposed to require the applicant to record a deed restriction against the property so as to notify all prospective future property owners of the terms and conditions of approval to which they will also be required to adhere. It thus ensures that future owners of the property will be informed of the conditions as well as of the risks and the Commission's immunity for liability.

Only as conditioned to require 1) assumption of risk, 2) future improvements require a permit amendment or new permit; and 3) a deed restriction recording the requirements of the permit, does the Commission find the proposed development in conformance with Section 30253 of the Coastal Act.

2. Scenic Resources

Section 30251 of the Coastal Act pertains to visual resources. It 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...

The project is located on a blufftop lot in the southern portion of San Clemente. Although the site is located within a private community, the site is highly visible from the shoreline or when traveling along the public beach below. Consequently, it is necessary to ensure that stabilization of the structure and any future work is carried out in a manner that protects views to and along the beach area and minimizes the alteration of existing landforms.

The existing residence and patio will be supported by a subterranean caisson and grade beam system. The caissons are sited immediately inland of the bluff edge and are not visible from public vantage points seaward of the site. Therefore, the subterranean stabilization portion of the proposed work is consistent with the scenic resource policies of the Coastal Act.

As discussed previously, Special Condition No. 2 ensures that any future development on the site, which may affect the stability or appearance of the bluff, requires a coastal development permit. The "future development" condition will ensure that improvements are not made at the site that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. Therefore, the Commission finds that, as conditioned, the project is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

3. Public Access and Recreation

Section 30212(a)(2) 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:

(2) adequate access exists nearby

Section 30604(C) of the Coastal Act requires that permit applications between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. The proposed development is located between the sea and the first public road in the private community of Cypress Shores. The nearest vertical coastal access is available approximately $\frac{1}{4}$ mile southeast of the subject site via the Trestles public access point. Lateral access to the Pacific Ocean and sandy beach is available immediately adjacent to the proposed development, seaward of the railroad tracks located at the toe of the adjacent slope.

The development is located between the sea and the first public road, however, it does not impact access either directly or indirectly to the ocean. The project site is currently developed with a single-family residence and the proposed caisson and grade beam system will not result in any intensification of use. The development will not create adverse impacts, either individually or cumulatively, on public access and will not block public access from the first public road to the shore. Additionally, adequate access exists nearby.

Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

4. Unpermitted Development

Development has occurred on the subject site without benefit of the required coastal development permit, including installation of a caisson and grade beam system beneath the residence and rear yard patio, and construction of wooden retaining walls, a stairway, landscaping and an irrigation system along the bluff face. All work occurred on the bluff face or within 50 feet of the edge of a coastal bluff. Consequently, even if it were considered to be the sort of work that is normally associated with a single-family residence, the work that was undertaken constitutes development that requires a coastal development permit application.

To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition 4 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The Executive Director may grant additional time for good cause.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

5. 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 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 certified an amendment 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 caisson and grade beam stabilization system is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not 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).

6. California Environmental Quality Act (CEQA)

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

The project is located within an existing residential neighborhood. Development already exists on the subject site. In addition, the proposed development has been conditioned, as follows, to assure the proposed project is consistent with policies of the Coastal Act: 1) assumption of risk, 2) future improvements restriction; 3) a deed restriction recording the requirements of the permit; and 4) timely compliance with the conditions of approval.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA.

C. Denial Findings and Declarations

The findings in this section apply only to that portion of the proposed project that is described in Part 2 (stairway, retaining walls, associated landscaping and irrigation) of the Commission's resolution on this permit application, which portion is therefore being denied.

1. Scenic Resources / Community Character & Cumulative Adverse Impacts

The proposed development consisting of a stairway that extends down the face of a coastal bluff and a four level wooden retaining wall system with associated landscaping and irrigation is inconsistent with the following Coastal Act policy:

Section 30251 of the Coastal Act states, in part:

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

The bluffs along this stretch of shoreline in San Clemente extend about 30 feet above beach level. From the beach, the houses on the top of the bluff are visible. There is little structural development other than stairways and minor landscape improvements along the face of the bluffs.² For the most part, the bluff faces—particularly the lower portions—are vegetated and largely undisturbed.

The proposed development is located on the bluff face immediately adjacent to the public beach. The applicant proposes to construct a stairway and retaining wall system extending to the toe of the bluff. The project site is highly visible from the sandy beach. Development at this location must be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms, as further addressed below.

a. Landform Alteration

The Coastal Act requires new development to be sited to “*minimize the alteration of natural land forms.*” The proposed project would be located along a coastal bluff face. The existing bluff is a natural landform visible from public vantage points such

² Commission staff has determined that many of the existing stairways are either unpermitted or constructed prior to passage of the Coastal Act. Further investigation is required.

as the adjacent beach. Any alteration of this landform would affect the scenic views of the coastline when viewed from the public beach.

b. Community Character

Pursuant to Section 30251 of the Coastal Act, new development must be visually compatible with the surrounding area. In addition, Section 30253 (5) requires the protection of “*special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*” The proposed project would result in a visible intensification of use of the site as compared to its undeveloped, vegetated state. The bluff faces of the surrounding properties are not developed with structural stabilization features, such as the proposed retaining walls.

The project site is immediately inland of a public beach and just upcoast of a popular surfing area. New development along the bluff face will adversely impact the visual quality of the subject area, and will do so in a manner inconsistent with the community character, inconsistent with Sections 30251 and 30253 of the Coastal Act.

c. Cumulative Impacts

Section 30250(a) of the Coastal Act requires that new development be located where it will not have significant cumulative adverse effects on coastal resources. The proposed development would create a new precedent for future development in the subject area. The project may have indirect impacts on views by moving the line of private development closer to the public area. Over time, incremental impacts can have a significant cumulative adverse visual impact.

The Commission finds that the bluff stairway, retaining walls, landscaping and irrigation, as currently proposed, are not sited and designed to protect scenic and visual qualities of the site as an area of public importance. Denial of the proposed development would preserve existing scenic resources and would be consistent with preserving the existing community character where development occurs at the top of the coastal bluff. The alteration of the bluff from construction of the stairway and retaining walls would result in an adverse visual effect when viewed from public vantage points along the beach. Allowing the proposed stairway and walls would also lead to seaward encroachment of new development in an area where additional unpermitted development has occurred that has encroached seaward and threatens to affect the community character. The Commission finds that the proposed bluff development would result in the alteration of natural landforms and would not be visually compatible with the character of the surrounding area. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed stairway and retaining walls are inconsistent with Section 30251 of the Coastal Act and therefore must be denied.

2. Geologic Hazard

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

LUP Policy VII.13:

Development shall be concentrated on level areas (except on ridgelines and hilltops) and hillside roads shall be designed to follow natural contours. Grading, cutting, or filling that will alter landforms (e.g.; bluffs, cliffs, ravines) shall be discouraged except for compelling reasons of public safety. Any landform alteration proposed for reasons of public safety shall be minimized to the maximum extent feasible.

LUP Policy VII.17:

New permanent structures shall not be permitted on a bluff face, except for engineered staircases or accessways to provide public beach access where no feasible alternative means of public access exists.

Development on a coastal bluff is inherently risky due to the potential for bluff failure. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures and ancillary improvements. In general, bluff instability is caused by environmental factors and impacts caused by man. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding and soils conducive to erosion. Factors attributed to human intervention include bluff over steepening from cutting roads and railroad tracks, irrigation, over-watering, building too close to the bluff edge, grading into the bluff, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, pedestrian or vehicular movement across the bluff top and toe, and breaks in water or sewage lines.

Coastal bluffs in San Clemente are composed of weak bedrock and unconsolidated surface soils which are subject to sloughing, creep, and landsliding. The subject site has a history of instability, documented by a series of reports prepared in 1997-2000 describing damage to the structure and failure of the tie-back system.

The applicant submitted a *Geotechnical Assessment of January 2005 Slope Failure and Unfinished Slope Repair* prepared by William R. Munson dated May 26, 2005. The assessment provides a chronology of the site up to, and including, the partial construction of a wood revetment system in January-February 2005. The work was intended to repair a slope failure that occurred *“during or shortly after an intense rainstorm that followed several storms beginning in October-November 2004.”* The report notes that a major causative factor of the slope failure was sheet flow runoff from approximately the seaward half of the tiled lower deck. A secondary causative factor was water from a pressure slope irrigation waterline that ruptured as a result of initial slope failure. According to the report, the slope failure is classified as *“surficial (i.e. 4-feet or less in depth)”*. The unfinished slope repair construction is described and conclusions are provided. The report concludes that the wood revetment system is too shallow to have adequate embedment in fill and/or natural ground beneath the slide. However, the report states, *“the wood revetment design, when augmented by galvanized pipes or equivalent members that are engineered for depth and center-to-center spacing, should be suitable for the intended purpose.”*

The May 2005 report was augmented by *Discussions of Existing and Alternative Slope Repair Methodologies for the January 2005 Slope Failure at the Rear of 4026 Calle Ariana* prepared by William R. Munson dated September 14, 2005. The report approves the slope repair construction methodology because *“it is a suitable tried-and-true stabilization measure for surficial slope failures...as well as a cost-effective means to practically re-build the slope.”* The report reiterates that the vertical members are insufficiently deep and require retrofitting with thick-walled galvanized iron pipe, or equivalent. Of particular interest, is the consultant’s following note:

Note: Both the seaward edge of the lower concrete deck (at the top-of-slope) and the rear wall of the house are respectively supported by 30-40-foot deep caissons that extend minimum 10- and 5- feet into the underlying Capistrano formation bedrock. This deep foundation system effectively renders the deck and house independent of (i.e. non-reliant on) the slope for lateral support.

Peter and Associates, the applicant’s civil engineering/geotechnical engineering consultant provided a response letter to address Commission staff questions on December 12, 2005. The letter asserts that the slope repair construction (i.e. retaining walls) is deemed necessary to *“1) prevent further slope instability that could damage terrain of adjacent properties, and more so if they do not have benefit of caisson supported structures and 2) to create a stable condition to promote plant growth and drainage control to preclude or minimize slope erosion that could otherwise result in sedimentation with the railroad right-of-way.”* No additional justification regarding the stability of the adjacent structures is provided.

The only alternative presented by the applicant is the removal of slide material and the unsuitable natural ground material, excavation of a toe keyway into competent bedrock and reconstruction of the slope with soil cement or geogrid reinforcement. The alternative is considered *“both physically impractical and cost prohibitive”* by the consultants.

Section 30235 of the Coastal Act requires protective devices, including “*cliff retaining walls,*” to be permitted when required to protect existing structures. In this case, the applicant has not shown that the proposed retaining walls are necessary to protect existing structures. The residence at the subject property is supported by caissons and therefore is not at risk. No information is provided regarding the stability of the adjacent structures. It is premature to authorize the construction of the retaining wall system in the absence of a definitive geotechnical justification. Because the threat to existing structures has not been demonstrated, it is not possible to find affirmatively that the development is required to be approved by Section 30235 of the Coastal Act.

Section 30253 of the Coastal Act requires new development to “*assure stability.*” The applicant proposes to construct a retaining wall system which creates four plantable terraces along the bluff face. A variety of plants and an in-ground irrigation system is proposed. The landscaping and irrigation is integrally related to the applicant’s retaining wall proposal. It has been shown that the site has experienced failure in the past where a contributing factor was water infiltration. The introduction of additional water onto the slope may adversely affect stability of the development. As such, the proposed development is inconsistent with Section 30253 of the Coastal Act.

For the reasons stated above, the Commission finds that the wooden retaining walls (with associated landscaping and irrigation) and the bluff stairway have not been shown to be consistent with Sections 30235 and 30253 of the Coastal Act, which allow protective devices to protect existing structures and requires that new development ensure stability. In addition, the LUP requires development to be concentrated on level areas and prohibits new permanent structures on bluff faces. Therefore, due to geologic hazard concerns, as well as visual impact considerations discussed previously, the retaining wall (and associated landscaping and irrigation) and bluff stairway portions of the project must be denied.

3. Public Access and Recreation

Sections 30210, 30220, and 30221 of the Coastal Act, among other sections, contain policies regarding public access to the shoreline.

Section 30210 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 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30240(b) states:

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

The analysis below deals with the proposed construction of a retaining wall system (with associated landscaping and irrigation) and bluff stairway and the adverse impacts of that development to an adjacent park and recreation area, the public beach.

The proposed project includes development adjacent to a public beach. The project may have indirect impacts on public recreation by moving the line of private structures closer to the public areas and creating a new precedent. The project site is located along a bluff face immediately inland of the beach. The bluff at this site is highly visible from the sandy public beach. The pattern of development along this segment bluff is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated. The bluff faces, generally fenced at the toe of the bluff, provide a buffer between the public beach and the private residential uses. Public access is available directly seaward of the toe of the bluff beyond the railroad tracks.

While the requested structure does not physically impede public access at the toe of the slope or adjacent beach area, new private structures adjacent to the beach often facilitate private use of public beaches. Increased intensification of private development located along the coastal bluffs adjacent to the beach will result in a less inviting beach appearance to the general public that may also discourage use of the beach. The Commission finds that the proposed project would decrease the distance from the public beach to private residential uses, therefore significantly degrading the area for public recreation and would therefore be incompatible with Sections 30210, 30220, 30221 and 30240(b). Therefore, the Commission finds that the proposed project is inconsistent with the public access policies of the Coastal Act and must be denied.

4. Unpermitted Development

Development has occurred on the subject site without the required coastal development permit, including the installation of a retaining wall system, stairway, landscaping and irrigation on the bluff face. The Commission's enforcement division will evaluate further actions to address this matter.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

5. Alternatives

Denial of the proposed bluff face retaining walls and stairway will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment backed expectations regarding the value of the subject property. The applicant already possesses a substantial residential development of significant economic value of the property. In addition, the applicant has not presented any evidence that it purchased this property based on a reasonable expectation of being able to construct the proposed project.

Several alternatives to the proposed development exist. Among those alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

a. Slope Revegetation Only

Rather than install the tiered retaining wall system, the applicant could undertake a less structural alternative that minimizes landform alteration and appears more natural as viewed from the public beach. The slope could potentially be recompacted and replanted with native, drought-tolerant vegetation. This alternative would involve the minimum amount of grading necessary to prevent erosion of the slope and allow for the establishment of vegetation. No in-ground irrigation would be allowed. The applicant would be required to install drainage improvements to direct runoff away from slope. The Commission recognizes this as staff's preferred alternative.

b. Reconstruction of Slope

As described by the applicant's consultant, there is an alternative that involves removing the slide material, cutting a bluff toe keyway, and reconstructing the slope with soil cement or geogrid reinforcement. This would be a substantial undertaking with logistical issues related to construction. The alternative is considered "*both physically impractical and cost prohibitive*" by the consultants. Because this alternative is not proposed by the applicant, the Commission does not take a position about whether it is approvable.

6. 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 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 certified an amendment 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 retaining wall system and bluff face stairway are inconsistent with the policies 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 this portion of the project is found inconsistent with Section 30604(a), and the project must be denied.

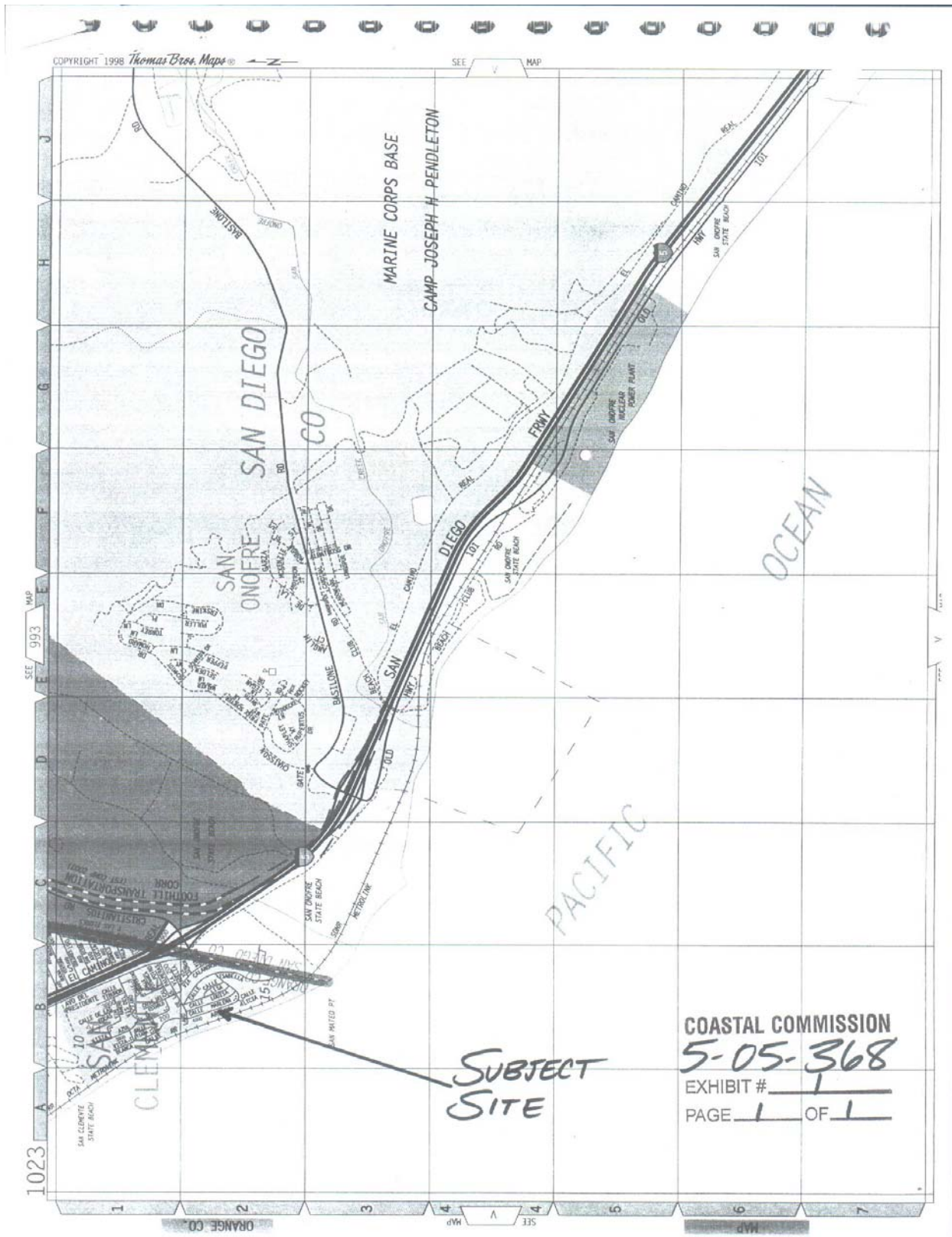
7. California Environmental Quality Act (CEQA)

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 includes development on the bluff face. Coastal resources in the general area include scenic views from the public beach. In addition, approving the project described above may set a precedent for future projects on other properties along this bluff and the cumulative impacts of that would be severe in degrading the public's recreational beach experience.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, as described in the section above that would substantially lessen any significant adverse impacts that the activity may have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives that would lessen significant adverse impacts that the activity would have on the environment. Therefore, the project must be denied.

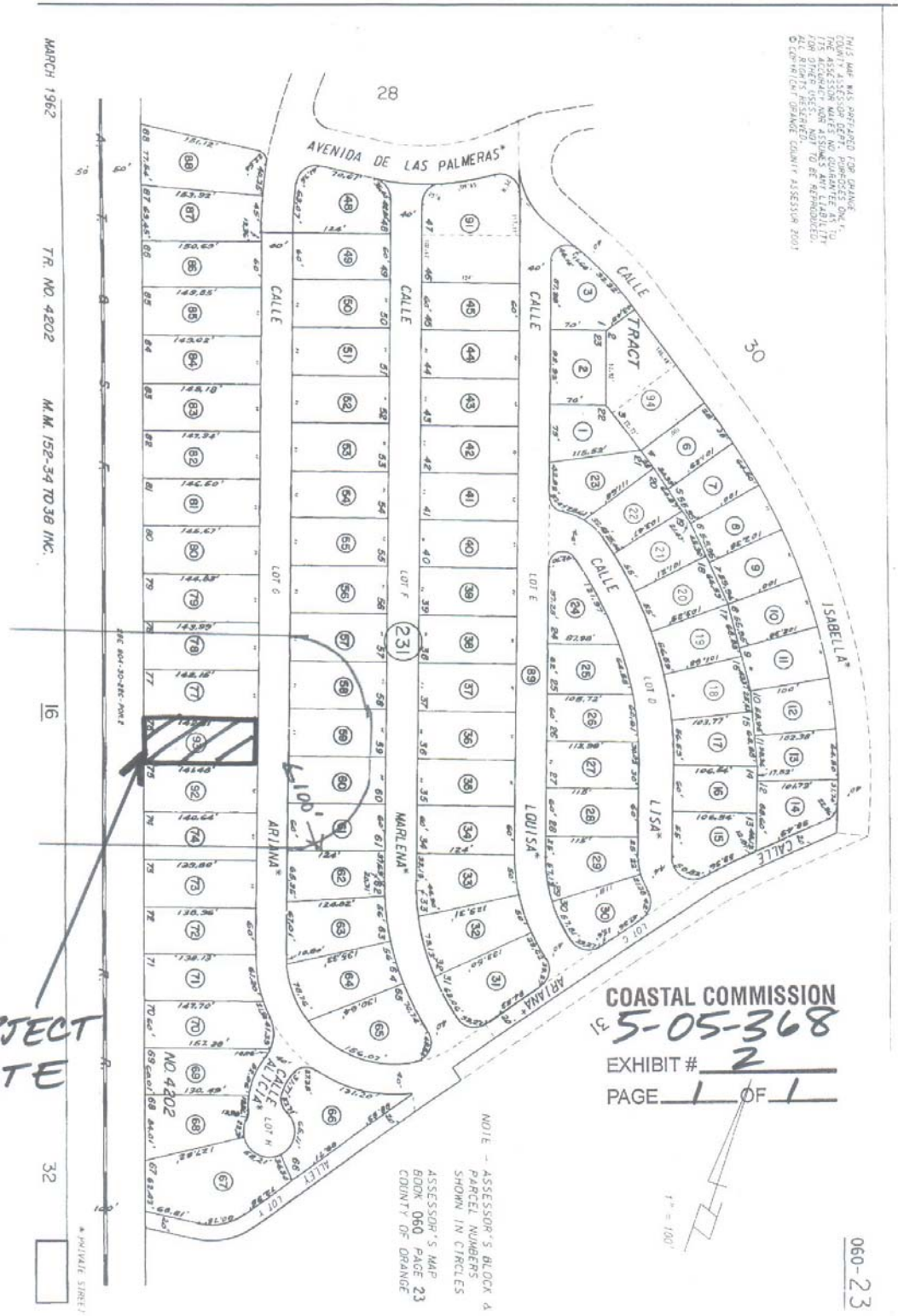
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THIS MAP WAS PREPARED FOR GRANGE
 ASSOCIATION. THE ASSASSOR'S
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 ASSASSOR'S OFFICE IS LOCATED AT
 400 G ST., ORANGE, CALIF. 92667.
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SUBJECT SITE

COASTAL COMMISSION
 5-05-368
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 PAGE 1 OF 1

NOTE - ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES
 ASSESSOR'S MAP
 BOOK 060 PAGE 23
 COUNTY OF ORANGE

1664,000 Feet

060-23

MARCH 1962

TR. NO. 4202

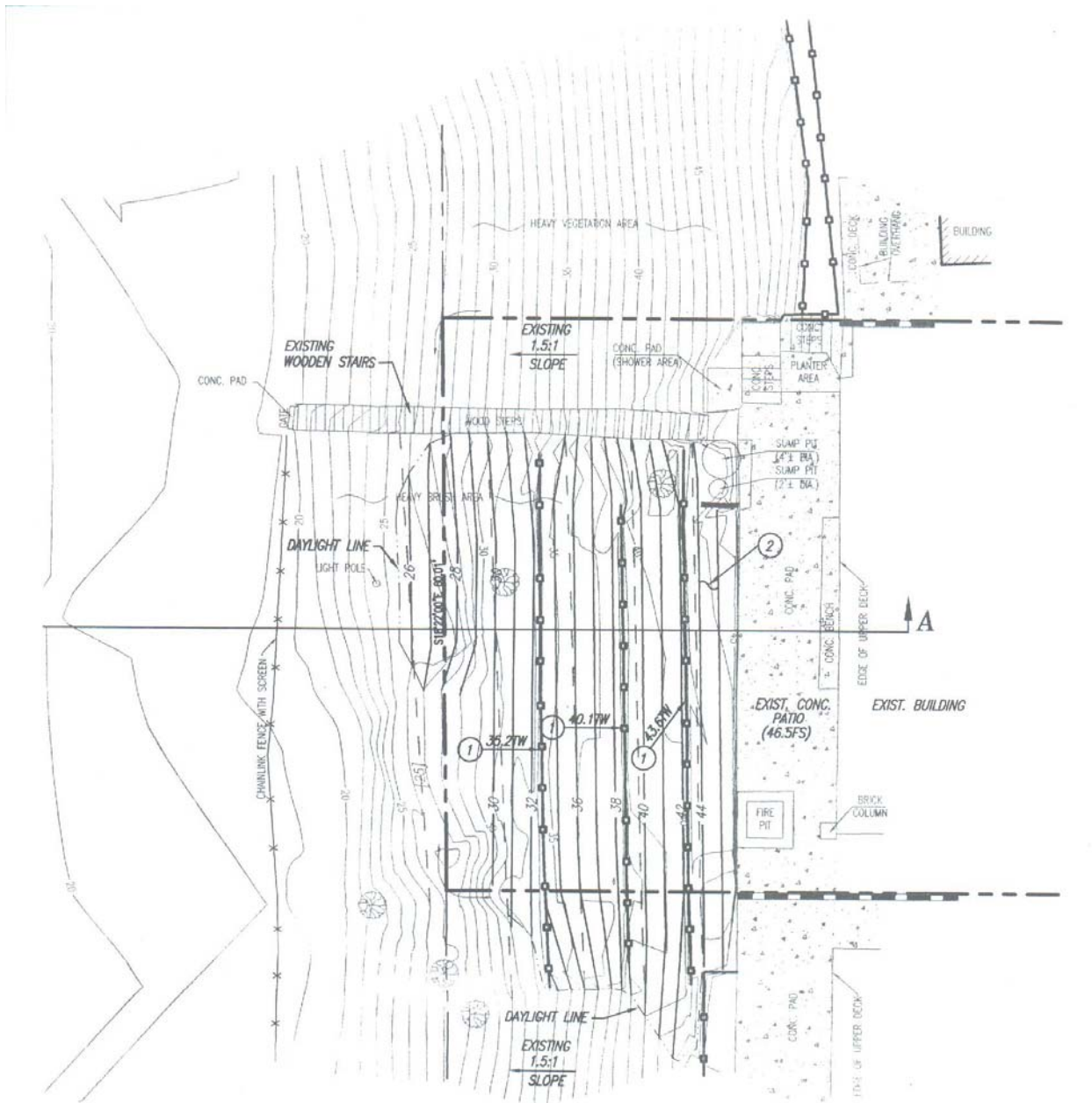
M.M. 152-34 TO 38 INC.

16

32

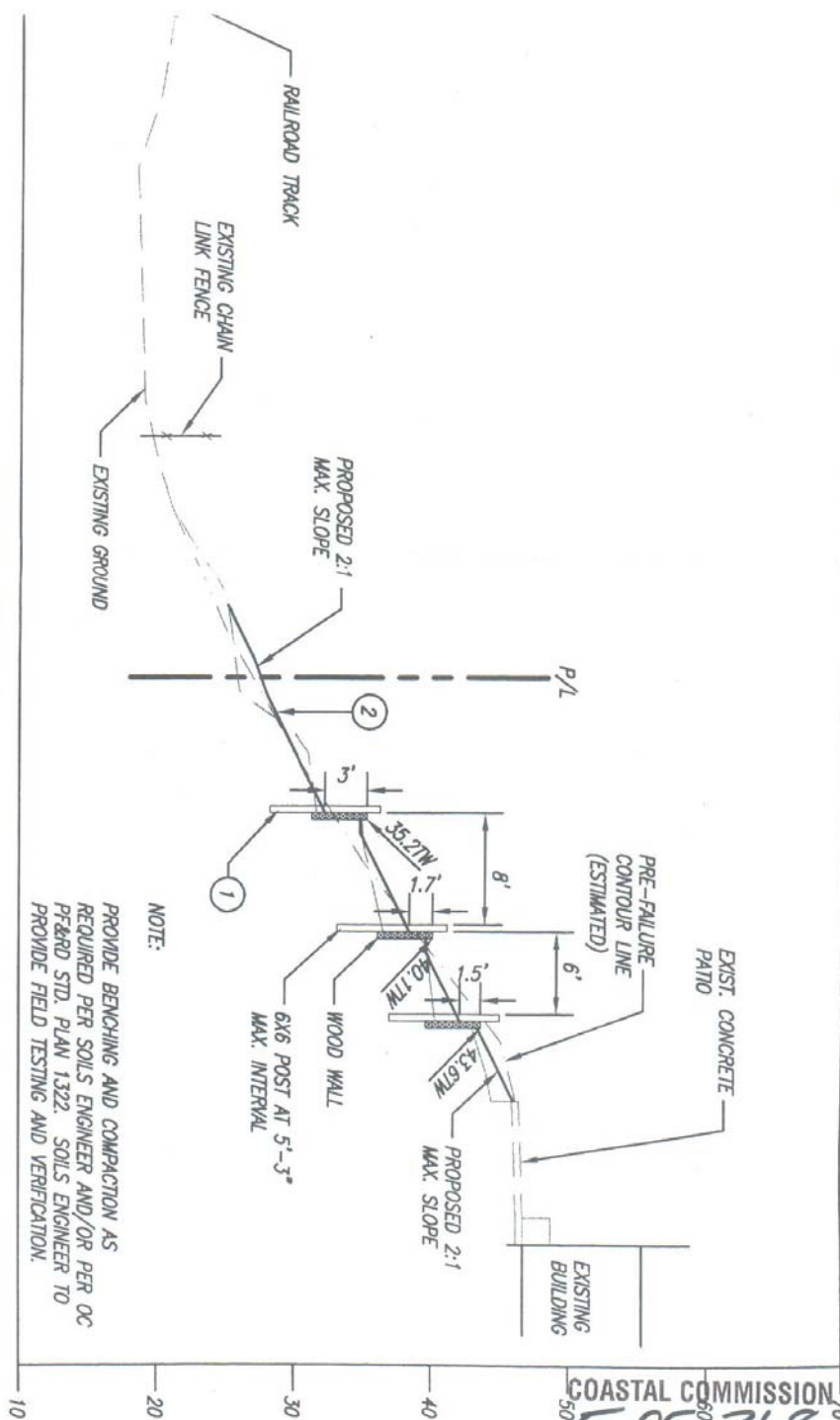
PRIVATE STREET

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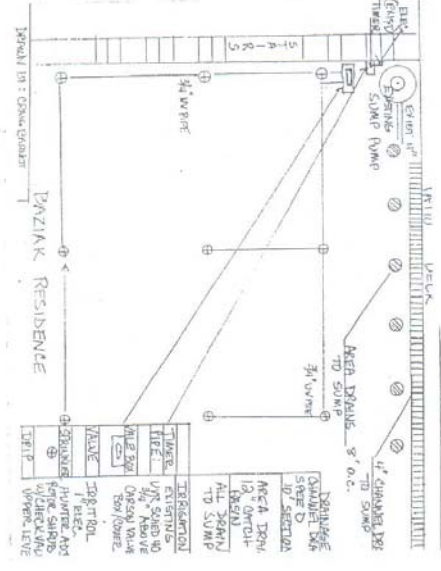
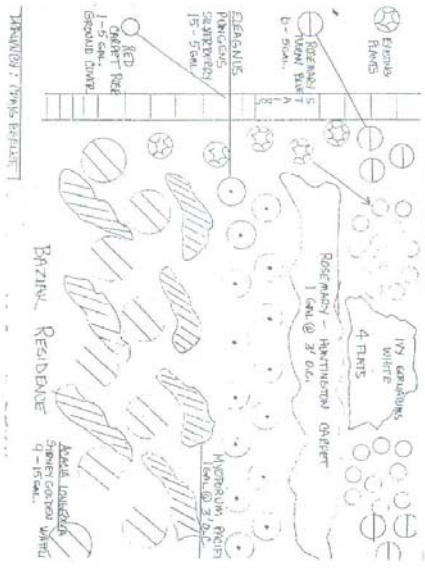
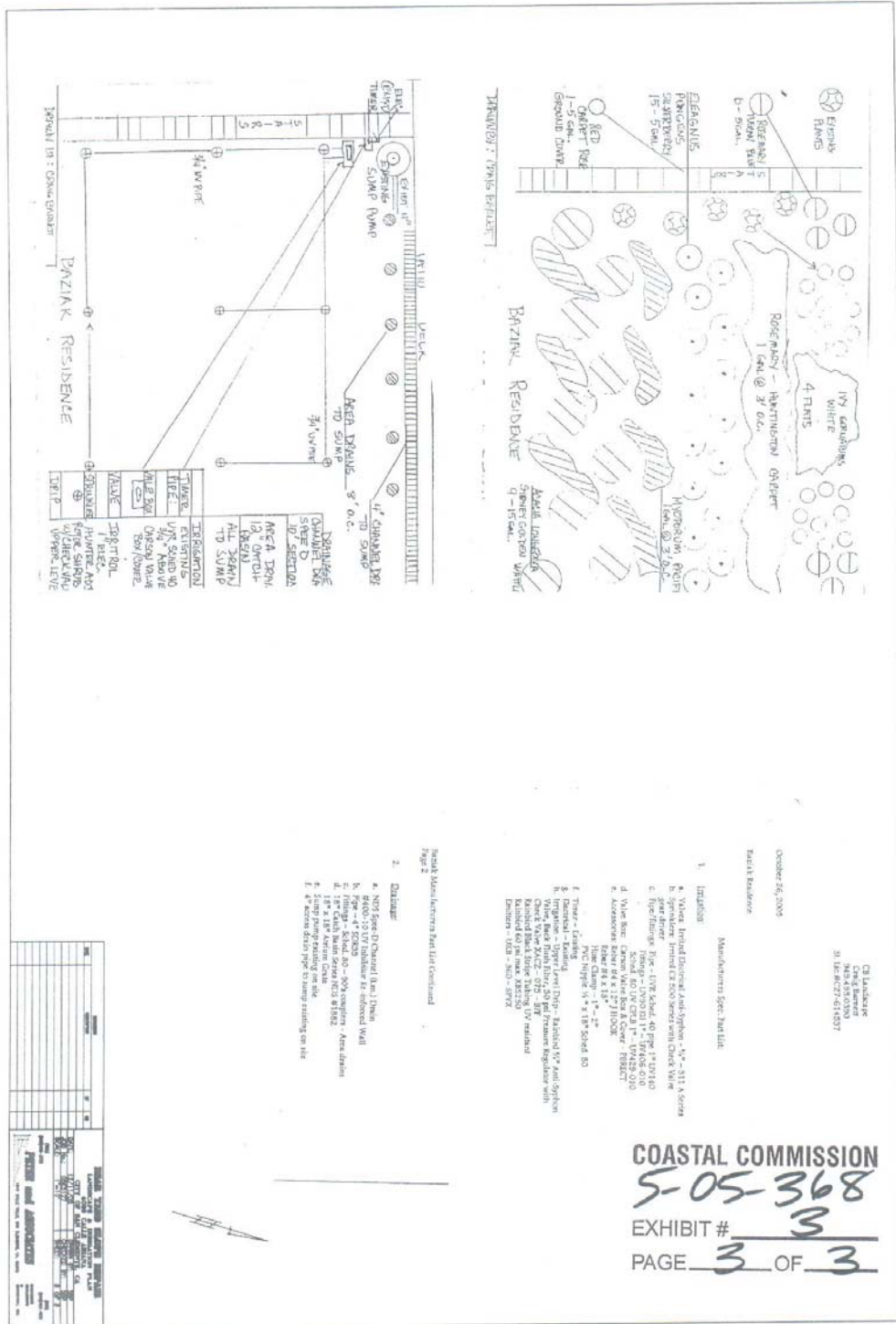
SECTION A-A
 1"=10'



NOTE:
 PROVIDE BENCHING AND COMPACTION AS
 REQUIRED PER SOILS ENGINEER AND/OR PER OC
 PER ORD STD. PLAN 1322. SOILS ENGINEER TO
 PROVIDE FIELD TESTING AND VERIFICATION.

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October 26, 2004
 Baziak Residence

City of Bellingham
 Engineering Department
 3100 West Street
 Bellingham, WA 98225

COASTAL COMMISSION
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 PAGE 3 OF 3

1. Details:
 - a. Valve: Inland District and Siphon - W-311 A Series
 - b. Siphon: Inland District and Siphon - W-311 A Series
 - c. Pipe Flange: 1/2" - 1/2" Schedule 40 Pipe 1" O.D. x 1/2" Thick
 - d. Valve Seat: Crown Valve Seat & Cover - FIBRETT
 - e. Accessory: Siphon 4" x 1/2" FIBRETT
 - f. Flange: 1/2" - 1/2" Schedule 40
 - g. Flange: 1/2" - 1/2" Schedule 40
 - h. Flange: 1/2" - 1/2" Schedule 40
 - i. Flange: 1/2" - 1/2" Schedule 40
 - j. Flange: 1/2" - 1/2" Schedule 40
 - k. Flange: 1/2" - 1/2" Schedule 40
 - l. Flange: 1/2" - 1/2" Schedule 40
 - m. Flange: 1/2" - 1/2" Schedule 40
 - n. Flange: 1/2" - 1/2" Schedule 40
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 - p. Flange: 1/2" - 1/2" Schedule 40
 - q. Flange: 1/2" - 1/2" Schedule 40
 - r. Flange: 1/2" - 1/2" Schedule 40
 - s. Flange: 1/2" - 1/2" Schedule 40
 - t. Flange: 1/2" - 1/2" Schedule 40
 - u. Flange: 1/2" - 1/2" Schedule 40
 - v. Flange: 1/2" - 1/2" Schedule 40
 - w. Flange: 1/2" - 1/2" Schedule 40
 - x. Flange: 1/2" - 1/2" Schedule 40
 - y. Flange: 1/2" - 1/2" Schedule 40
 - z. Flange: 1/2" - 1/2" Schedule 40
2. Details:
 - a. 1/2" Schedule 40 Pipe
 - b. 1/2" Schedule 40 Pipe
 - c. 1/2" Schedule 40 Pipe
 - d. 1/2" Schedule 40 Pipe
 - e. 1/2" Schedule 40 Pipe
 - f. 1/2" Schedule 40 Pipe
 - g. 1/2" Schedule 40 Pipe
 - h. 1/2" Schedule 40 Pipe
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 - l. 1/2" Schedule 40 Pipe
 - m. 1/2" Schedule 40 Pipe
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 - u. 1/2" Schedule 40 Pipe
 - v. 1/2" Schedule 40 Pipe
 - w. 1/2" Schedule 40 Pipe
 - x. 1/2" Schedule 40 Pipe
 - y. 1/2" Schedule 40 Pipe
 - z. 1/2" Schedule 40 Pipe

Small Water Systems that list conditions
 Page 2

NO.	DESCRIPTION	DATE	BY
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City of San Clemente
Planning Division

Carrie Tai, Associate Planner
Phone: (949) 361-6186 Fax: (949) 366-4750
TaiC@San-Clemente.org

July 29, 2005

Ms. Anne Blemker
California Coastal Commission
200 OceanGate, 10th Floor, Ste. 1000
Long Beach, CA 90802-4302

RE: 4026 Calle Ariana

Dear Anne:

Per our telephone conversation, this letter pertains to a grading plan for a series of as-built retaining walls for the above-mentioned address. The applicant indicates that these walls were put in place to stabilize slope failure. The walls were not previously permitted by the City and this application has now been submitted to us for approval of the as-built construction.

The retaining wall system is located on the bluff face, therefore, not meeting the above provision. Per the San Clemente Zoning Ordinance Section 17.56.050(D)(1) states that "Proposed development on coastal bluff lots shall be set back: a) At least twenty-five (25) feet from the bluff edge. The City of San Clemente is unable, at this time, to approve this request.

This application is being referred to you per San Clemente Zoning Ordinance Section 17.56.050(D)(7) Exception to the Standards of this Section, which states "Exceptions to the standards in this section shall not require the approval of a variance and shall be permitted by the City of San Clemente, if all of the following occur; (a) the exception is for an addition to an existing structure; (b) The exception is approved by the Coastal Commission and (c) The City of San Clemente has no objections to the exception.

Please review and advise as to the Coastal Commission's position on this application.
Thank you.

Sincerely,

Handwritten signature of Carrie Tai in cursive.

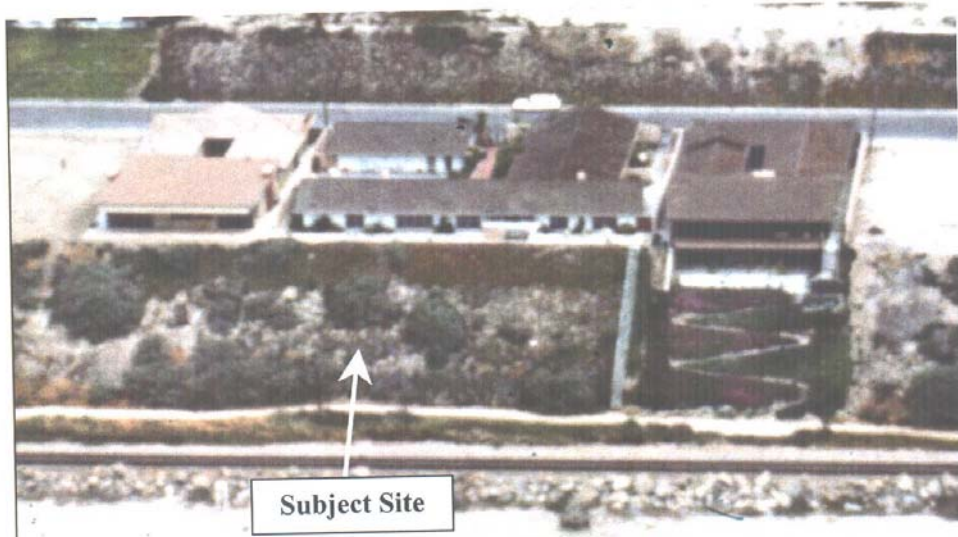
Carrie Tai
Associate Planner

COASTAL COMMISSION

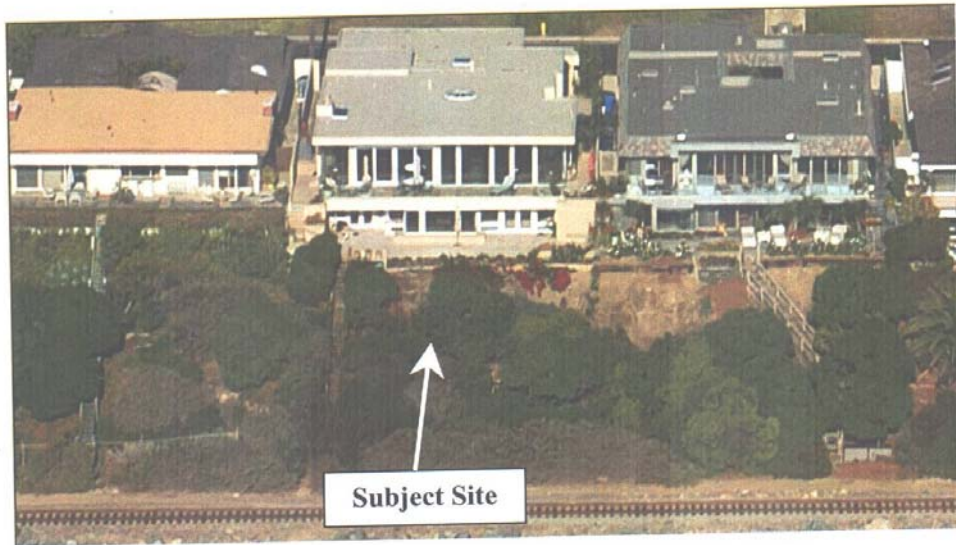
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1972



2002 (pre-slope failure)

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