

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: February 2, 2006
49th Day: March 23, 2006
180th Day: August 1, 2006
Staff: Ryan Todaro-LB
Staff Report: June 22, 2006
Hearing Date: July 12-14, 2006
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-05-459

APPLICANT: Dennis and Suzi Gertmenian

AGENT: Gregg Abel Design, Attn: Drew Brislen

PROJECT LOCATION: 19 Bay Drive, Laguna Beach, Orange County

PROJECT DESCRIPTION: Construct an approximately 30 foot-long landscape/retaining wall, ranging from 2'9" to 5'9" in height and an approximately 9'6" long, 2'7" high, wood fence along the southeasterly side of the property.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed project with **Five (5) Special Conditions** regarding: **1)** additional approvals for any future development; **2)** submittal of final project plans; **3)** conformance with geotechnical recommendations; **4)** submittal of a landscape plan; **5)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: Preliminary Geotechnical Investigation, prepared by GeoFirm, dated 6/8/92; Geotechnical Recommendations For Proposed Retaining Wall, prepared by GeoFirm, dated 1/27/06; Structural Calculations for Retaining Wall, prepared by GeoFirm, dated 2/20/06; City of Laguna Beach certified Local Coastal Program (as guidance only).

LOCAL APPROVALS RECEIVED: City of Laguna Beach Approval in Concept, dated 11/29/05.

LIST OF EXHIBITS

1. Location Map
2. Assessor's Parcel Map
3. Site Plan

STAFF RECOMMENDATION:

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

MOTION:

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

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. Future Development

This permit is only for the development described in coastal development permit No. 5-05-459. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit No. 5-05-459. Accordingly, any future improvements to the development 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. 5-05-459 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

2. Final Project Plans

A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of final project plans. The final plans shall demonstrate the following:

The final project plans are consistent with the revised plans submitted by the applicant on April 28, 2006, which show the locations of the 3 caissons for the proposed landscape/retaining wall.

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

3. Conformance with Geotechnical Recommendations

A. All final design and construction plans shall be consistent with all recommendations contained in the following geologic engineering investigations: Geotechnical Recommendations For Proposed Retaining Wall, prepared by Geofirm, dated 1/27/06; Structural Calculations for Retaining Wall, prepared by Geofirm, dated 2/20/06.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a

Commission amendment unless the Executive Director determines that no amendment is required.

4. Final Landscape 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) full size sets of landscaping plans prepared by an appropriately qualified professional which demonstrates the following:

- (1) The plan shall demonstrate that:
 - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 - (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
 - (c) Landscaped areas within the development footprint not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping within the development footprint shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist within the development footprint. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the development footprint. Any existing landscaping within the development footprint that doesn't meet the above requirements shall be removed.
 - (d) No permanent irrigation system shall be allowed within the development footprint. Any existing in-ground irrigation systems within the development footprint shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed within the development footprint. The landscaping plan shall show all the existing vegetation and any existing irrigation system (which shall be removed) within the development footprint.
- (2) The plan shall include, at a minimum, the following components:
 - (a) A map showing the type, size, and location of all plant materials that will be within the development footprint, any temporary irrigation

system, topography of the developed site, and all other landscape features, and

(b) A schedule for installation of plants.

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.

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

IV. **FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

A. **PROJECT DESCRIPTION**

The subject site is an oceanfront bluff top lot, located at 19 Bay Drive, Laguna Beach (Three Arch Bay), Orange County. The lot slopes gently seaward between the road and the bluff edge, and then slopes to the sandy beach below. A one-story single-family residence and attached garage occupies the pad portion of the 10,629 square-foot lot. The land use designation for this lot is Village Low Density and adjacent lots are also developed with single-family residences (Exhibit #2).

The applicant proposes to construct an approximately 30 foot-long garden/retaining wall, ranging from 2'9" to 5'9" in height and an approximately 9'6" long, 2'7" high, wood fence along the southeasterly side of the property. The wall and fence will be oriented approximately perpendicular to the bluff edge and will extend no further seaward than the seaward face of the existing residence. The project also includes removing the existing ivy groundcover and replacing it with prostrate rosemary. The retaining wall will be concrete and covered in a stack stone veneer fascia. Grading is anticipated to consist of minor excavation for the retaining wall construction and limited backfill of the wall.

The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach (Exhibit #1). Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification and because the proposed structure is within 50 feet of a coastal bluff. Because the site is located within a locked gate community, no public access exists in the immediate vicinity. The nearest public access exists at 1000 Steps County Beach approximately one half mile up-coast of the site. The proposed development will not affect the existing public access conditions. It is the locked gate community, not this development that impedes public access.

The applicant's geologic consultant (GeoFirm) has determined that the edge of the bluff on this site ranges from between the 52-foot contour elevation on the north side of the property to the 77-foot contour elevation on the south side of the property, which is where the proposed retaining wall is located (Exhibit #3). This bluff edge determination appears to be in keeping with the City's definition of 'bluff edge' found in their zoning code, however, as discussed more fully below, is not consistent with the Commission's regulatory definition of 'bluff edge' found in 14 CCR (California Code of Regulations) Section 13577 (h)(2). In the project vicinity, the Commission typically imposes a minimum bluff top setback of 25 feet from the edge of the bluff for this type of development. The minimum 25-foot setback from the bluff edge is deemed acceptable within the Three Arch Bay community based on the relatively stable, underlying San Onofre formation bedrock. The intent of the setback is to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff erosion rates as a result of rising sea level.

The Commission's staff geologist has reviewed the applicant's bluff edge determination and, applying the criteria found in 14 CCR 13577(h)(2), believes that the bluff edge is farther up the bluff than the applicant has depicted on their plans¹; somewhere within the limits of the proposed retaining wall, which means that the proposed retaining wall is located at the bluff edge and/or within the bluff top setback. However, because of the orientation of this lot and the undulations along the bluff, the proposed retaining wall, which is located along on the side yard and landward of the seaward face of the existing single-family residence, is not visible from the beach. Thus, the proposed wall is consistent with the line of development on the lot and will have no visual impacts.

According to the applicant's consultant, the purpose of the proposed retaining wall is to secure the steep slope along this portion of the site, as the nearly vertical cut is prone to caving, due to the change in topography between this site and the adjacent site, where a beach access way (concrete sidewalk) runs along the subject site. The applicant's desire is to control erosion, which accumulates on this beach access way. The retaining wall is not proposed to retain any structures, including the single-family residence, and can be characterized as more of a landscape feature, with the stack-stone veneer fascia and rosemary plantings above it. The Commission is not viewing this minor landscape/retaining wall as a 'protective device' and thus is not subject to the prohibitions contained in Section 30253 of the Coastal Act related to such devices. Furthermore, the Commission views this minor accessory structure as one that would not warrant protection pursuant to Section 30235 of the Coastal Act should the structure be threatened in the future by

¹ Thus, for purposes of this analysis and any future submittals related to the subject site, the applicant is hereby notified that the bluff edge depicted on their plans is not accurate for coastal planning purposes and cannot be used to establish required bluff edge setbacks.

erosion, landslides, or wave attack. The applicant's geologic consultant has concluded that the proposed garden retaining wall is geotechnically feasible and safe provided that their recommendations are integrated into design and construction. Therefore, the Commission imposes Special Condition #3, which requires that the project to conform to these geotechnical recommendations.

The Commission's staff geologist has reviewed the applicant's geotechnical consultant's reports and plans and has visited the site and has determined that the proposed project is fully consistent with Section 30253 of the Coastal Act. At the time of the site visit, the applicant indicated that they might want to extend the retaining wall approximately 20 feet further seaward toward the rear property line in the future. This extension could potentially impact sensitive coastal resources and for that reason the Commission imposes Special Condition #1, which requires either an amendment to this permit or an additional permit for any future development not described in this coastal development permit.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing, which could necessitate protective devices. The applicants have proposed to remove existing ivy groundcover and replace it with prostrate rosemary, which is not an invasive species.

As discussed previously, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Commission staff reviewed the submitted plans for drought tolerant vegetation and determined that prostrate rosemary is drought tolerant.

The Commission imposes Special Condition #4, which requires that prior to the issuance of this permit, the applicants shall prepare a final landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, the landscaping plan shall be prepared by a qualified professional.

B. DEVELOPMENT

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area, has been designed to assure structural integrity, and will avoid cumulative adverse impacts on public access. Therefore, the Commission finds that the development, as conditioned, conforms with Sections 30250, 30251, 30252, 30253 and the public access provisions of the Coastal Act.

C. PUBLIC ACCESS

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

D. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes an additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

E. LOCAL COASTAL PROGRAM

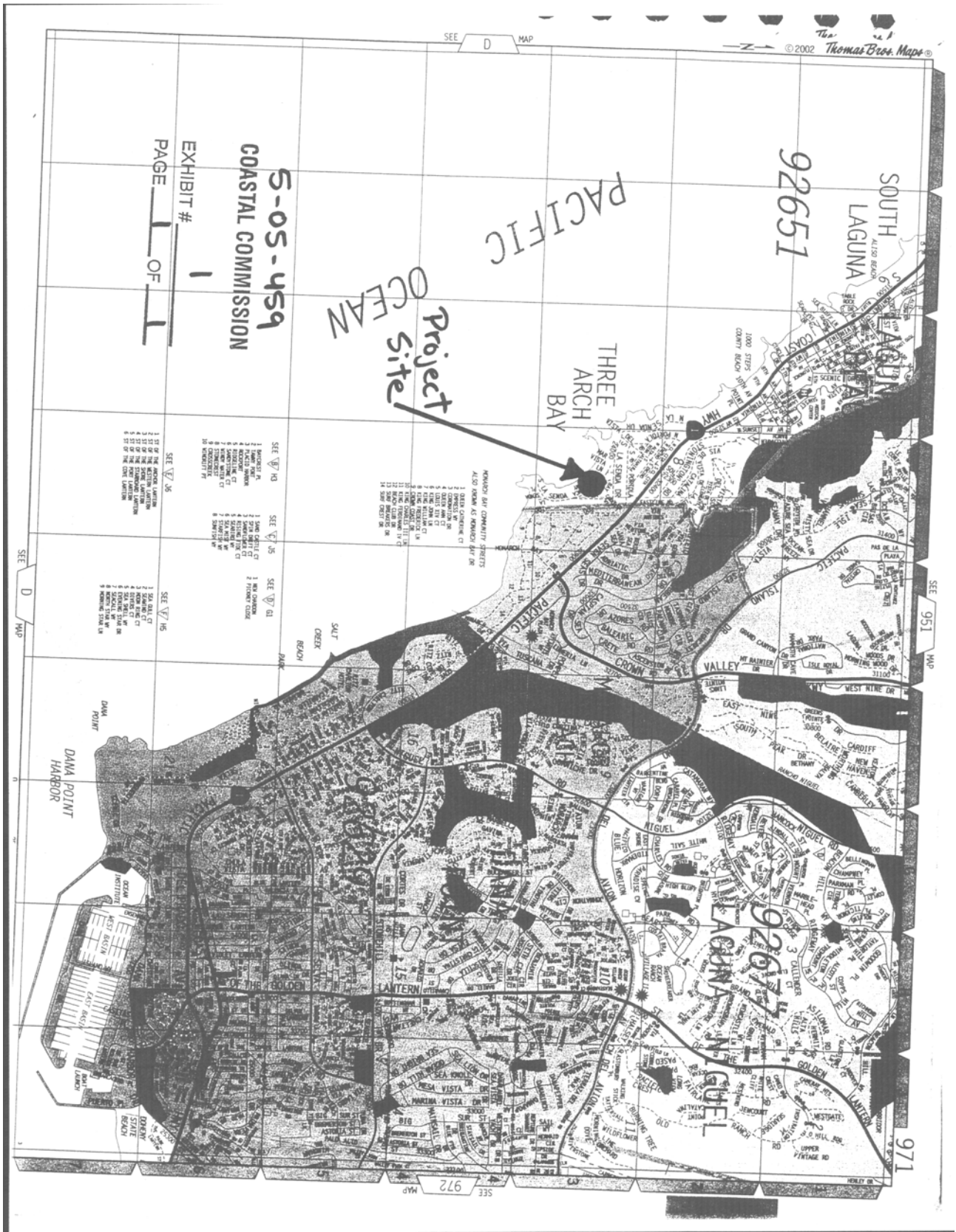
Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit-issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that 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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EXHIBIT # 1
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Project OCEAN Site

THREE ARCH BAY

92651

SOUTH LAGUNA

DANA POINT HARBOR

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NEIGHBORHOOD COMMUNITY STREET
ALSO KNOWN AS NEIGHBORHOOD MAP 28
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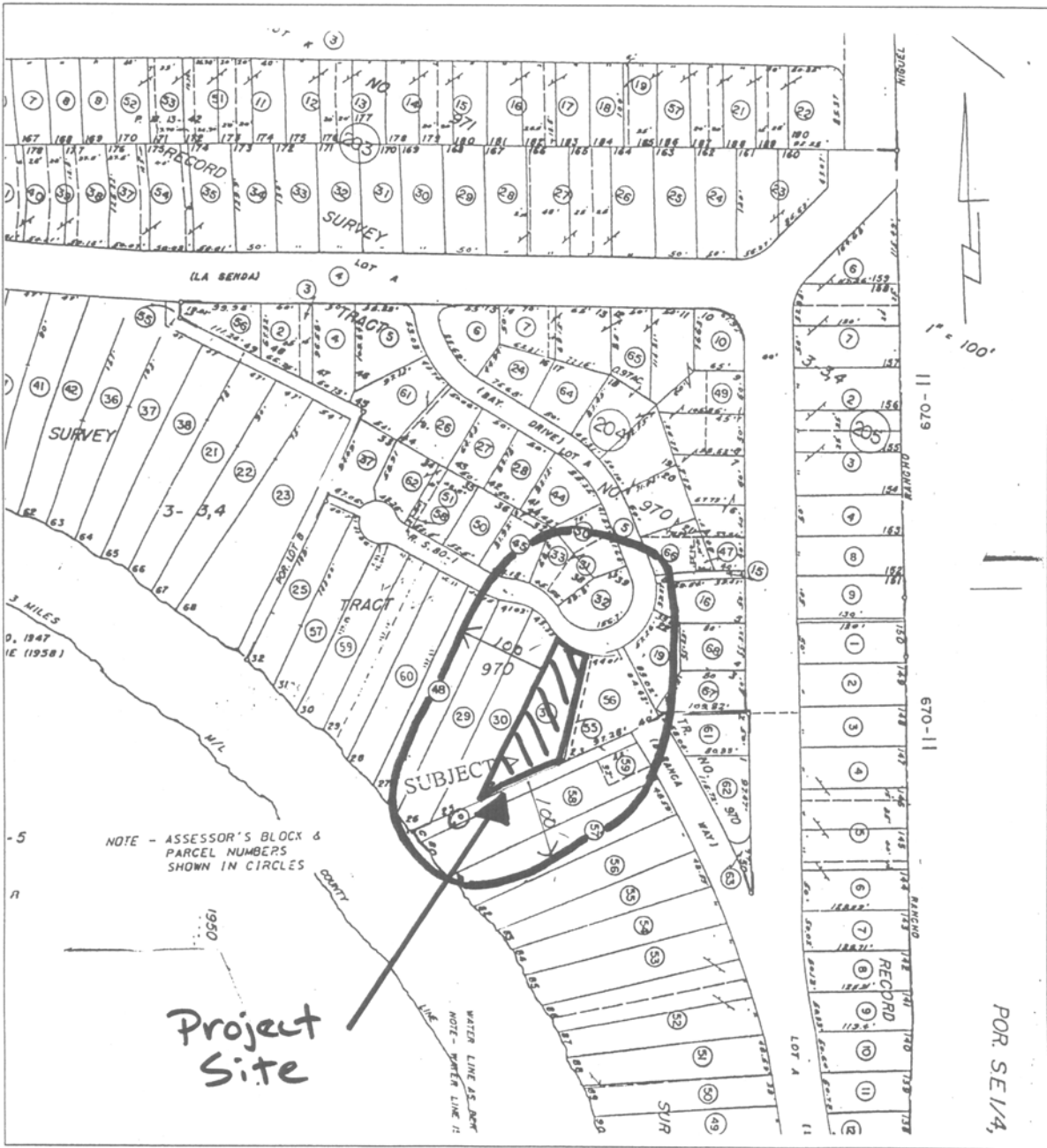
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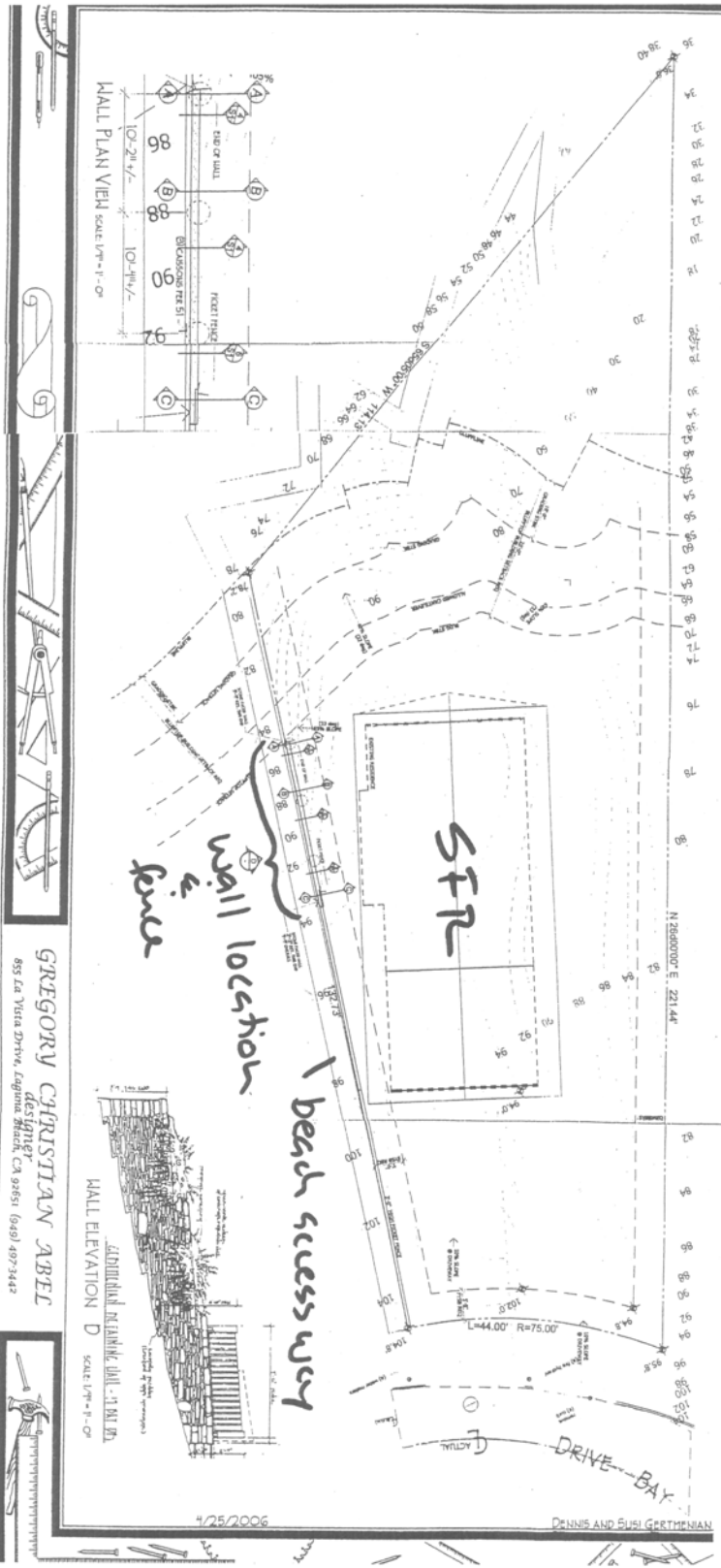
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EXHIBIT # 2
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APN: 056-180-31 Subject Address: 19 Bay Drive
100' radius (excluding roads) Laguna Beach, CA 92651

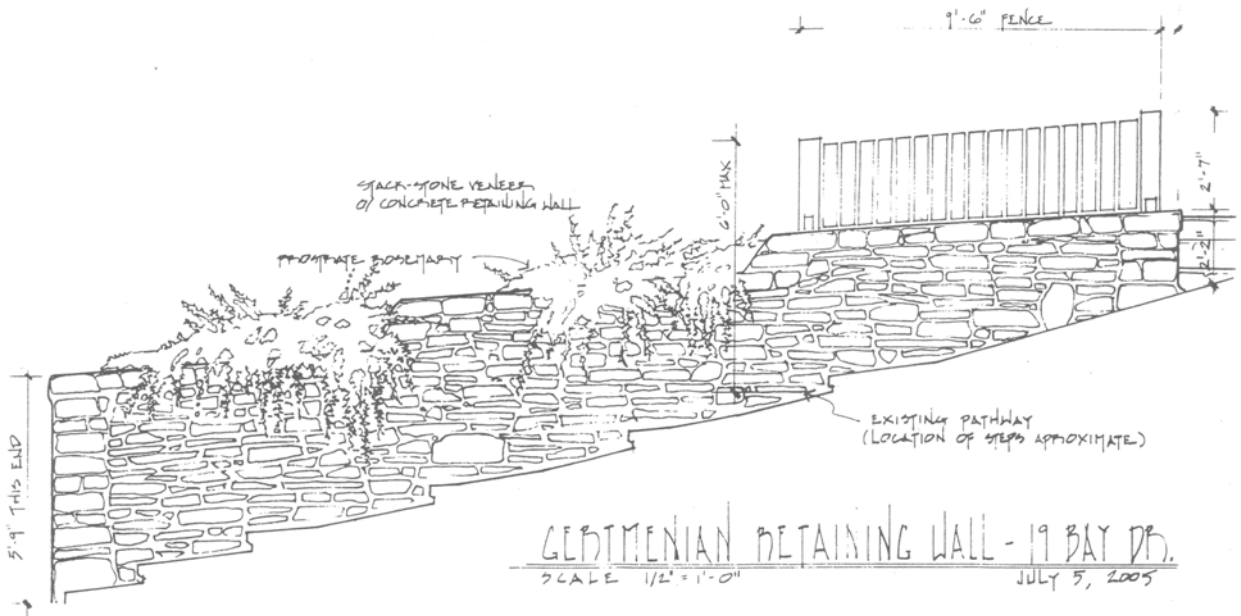




GREGORY CHRISTIAN ABEL
 design? architect
 855 La Vista Drive, Laguna Beach, CA 92651 (949) 497-3442

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EXHIBIT # 3
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