

CALIFORNIA COASTAL COMMISSION

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Staff:
Staff Report:
Hearing Date:
Commission Action:

Fernie Sy-LB
August 24, 2006
September 13-15, 2006

**STAFF REPORT: REVISED FINDINGS**

APPLICATION NO.: 5-05-328

APPLICANT: Salvatore Palermo

AGENT: Brion Jeannette & Associates, Attn: Amy Creager

PROJECT LOCATION: 3317 Ocean Boulevard, Corona Del Mar
(Orange County)

PROJECT DESCRIPTION: Construction of a new two-story, 746 square foot pool house plus pool on the bluff face. The pool house will consist of an exterior stair linking the two floors, the upper level will consist of a recreation room and exercise room, and the lower level will consist of a sun deck and a pool. In addition, a connection to the existing unpermitted stairway to the beach will be constructed, as well as, modification of an existing unpermitted beach bathroom. Grading will consist of 888 cubic yards of cut and export to a location outside of the coastal zone. Deepened footings or a caisson foundation system is proposed to support the proposed project.

DATE OF COMMISSION ACTION: May 10, 2006

COMMISSIONERS ON PREVAILING SIDE: Commissioners Clark, Kram, Kruer, Wright, Padilla and Reilly.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of May 10, 2006 approving the applicant's proposal, with conditions, to construct a pool and associated structures on a bluff face. The major issues raised at the public hearing related to the appropriateness of approving the project given the scenic resources and hazard policies of the Coastal Act. In addition, concerns were raised at the public hearing regarding development proposed by the applicant on the existing unpermitted stairway and the existing unpermitted beach bathroom.

LOCAL APPROVALS RECEIVED: Approval in Concept (#2157-2005) from the City of Newport Beach Planning Department dated August 23, 2005.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-01-080-[Palermo]; Coastal Development Permit No. 5-04-339-[Palermo]; *Update Geotechnical Investigation For New Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No/ 71483/Report No. 04-5364)* prepared by Geofirm dated July 7, 2004; *Wave-Runup Study Update and Response to California Coastal Commission Staff Report CDP#5-01-080, 3317 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. (Skelly Engineering) dated August 16, 2004; Letter

to Commission staff from Brion Jeannette & Associates dated August 29, 2005; Letter to Brion Jeannette Associates from Commission staff dated September 29, 2005; *Geotechnical Feasibility for Updated Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No. 71483-01/Report No. 05-5659)* prepared by Geofirm dated October 31, 2005; *Coastal Hazard Discussion, 3317 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. (Skelly Engineering) dated October 19, 2005; *Structural Feasibility of Updated Swimming Pool, 3317 Ocean Boulevard, Corona Del Mar, CA* prepared by R.M. Volpe & Associates, Inc. Structural Engineering received November 1, 2005; Information to Commission staff from Brion Jeannette & Associates dated February 2, 2006; Information for Commission staff from Brion Jeannette & Associates received February 6, 2006; Letter to Commission staff from Brion Jeannette & Associates dated February 8, 2006.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Plan
4. Floor Plans/Conceptual Foundation Plans
5. Elevation Plans/Section Plans
6. Grading Plan
7. Aerial Photo of the Project Site and Surrounding Pattern of Development

I. STAFF RECOMMENDATION

MOTION:

I move that the Commission adopt the revised findings in support of the Commission's action on May 10, 2006 concerning Coastal Development Permit Application No. 5-05-328.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side who are also present at the September 2006 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners eligible to Vote on Revised Findings for Coastal Development Permit No. 5-05-328 are: Clark, Kram, Kruer, Wright, Padilla and Reilly.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for its approval of Coastal Development Permit Application No. 5-05-328 on the ground that the findings support the Commission's decision made on May 10, 2006 and accurately reflect the reasons for it.

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 on which the Commission voted on the application. 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 CONDITONS**

1. **Assumption of Risk, Waiver of Liability and Indemnify**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush; (ii) to assume the risks to the applicants 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. **Final Project Plans**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans (i.e. site plan, floor plans, elevations, cross-sections, grading, foundation, etc.). These final project plans shall show that the enclosed living space and any deepened foundation systems and any accessory development reliant upon such foundation system (e.g. pool) shall not extend seaward of the 48-foot elevation contour line and that other proposed accessory development not reliant upon a deepened foundation system (e.g. decks) and any preparatory work (e.g. grading) shall not extend seaward of the approximately 33-foot contour. No work is allowed on the existing unpermitted stairway. In addition, no connection from the proposed pool house or pool/deck to the existing

unpermitted stairway is authorized. Any repair and maintenance, upgrade, modification and/or any other form of development related to the existing unpermitted stairway is prohibited unless authorized in accordance with a separate Commission action.

- 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. No Future Shoreline Protective Device

- A.** By acceptance of this Permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-05-328 including, but not limited to, the pool house and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, bluff and slope instability, landslides, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waive, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B.** By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the pool house and decks, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-328. 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. 5-05-328. Accordingly, any future improvements to the development authorized by this permit, including but not limited to improvements to the pool house, pool, deck, hardscape, and 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. 5-05-328 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Conformance with Geotechnical Recommendations

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Geotechnical Feasibility for Updated Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No. 71483-01/Report No. 05-5659)* prepared by Geofirm dated October 31, 2005.
- 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.

6. Drainage and Runoff Control Plan

- A.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of drainage and run-off control plans. The drainage and runoff control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the pool house and all yard areas, shall be collected on site for discharge to Ocean Boulevard (or connection to an existing drainage system) through piping without allowing water to percolate into the ground.
- 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.
- C.** The applicant shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

7. Pool Protection Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of pool protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool. The pool protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor

with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool that conveys any water leakage to an appropriate drainage outlet. The applicant shall comply with the final pool plan approved by the Executive Director.

8. Landscaping Plan

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of landscaping plans prepared by an appropriately licensed professional which demonstrates the following:

(1) The plans 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 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 shall consist of native and drought tolerant 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 on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed.

(d) No permanent irrigation system shall be allowed within the property. Any existing in-ground irrigation systems shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system.

(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 on the developed site, the 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.

9. 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 landowner 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 as follows:

A. PROJECT LOCATION, DESCRIPTION, LOCAL GOVERNMENT APPROVAL AND PRIOR COMMISSION ACTION

1. Project Location

The proposed project is located at 3317 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits #1-2). The lot size is 7,881 square feet, and the City of Newport Beach Land Use Plan (LUP) designates the site as low density residential and the proposed project adheres to this designation. The rectangular shaped bluff face property fronts approximately 70-feet on the Ocean Boulevard right-of-way and extends southwesterly approximately 123-feet to the rear of the property boundary located along Corona Del Mar State Beach. The lot consists of a generally natural sea bluff at the middle and lower portions and a portion of the beach. The bluff is approximately 80-feet high, while maximum relief across the property is approximately 63-feet and the slope ratio is variable, between 1:1 to 2:1 (horizontal: vertical). The project site is underlain locally at the surface and at depth by bedrock strata of the Monterey Formation, which is overlain along the upper bluff by marine terrace deposits and by a slopewash talus, which mantles the middle and lower bluff face. Beach deposits occur along the shoreline and

are intertwined with the slopewash at the base of the bluff slope. The site is currently developed with a single-family residence with a two-car garage located at the upper bluff face. To the north, at the top of the bluff is Ocean Boulevard. To the west and east are existing residential development. To the southwest of the project site is the Breakers Drive street end, a quarry stone revetment covered with sand and vegetation (which terminates at the Breakers Drive street end and is near the southwest property line of the subject site), and further southwest is the Corona Del Mar State Beach Parking Lot. To the south, at the toe of the slope is a sandy beach and a normally 200-foot wide sandy public beach. The lower bluff face remains relatively undisturbed and vegetated, with the exception of an existing unpermitted wooden stairway located along the eastern property line. At the bottom of the bluff is an existing unpermitted 10' x 12' (120 square feet) bathroom located at the base of the stairs and a 6-foot high wooden fence at the rear and side property lines of the rear yard adjacent to the public beach area. The pattern of development along Ocean Boulevard primarily consists of structural development sited at the upper portion of the bluff face with minimal disturbance of the mid and lower bluff face and the toe of the bluff.

2. Project Description

The proposed project consists of construction of a new, approximately 28-foot high, two-story, 746 square foot pool house and pool that would be notched into the bluff face below the existing residence. The pool house will consist of an exterior stair that links the two floors, the upper level will consist of a recreation room and exercise room, and the lower level will consist of a sun deck and a pool (Exhibits #3-6). In addition a retaining wall and a connection to the existing unpermitted stairway to the beach will be constructed, as well as modification of an existing unpermitted beach bathroom (discussed more fully below) (Exhibit #3). Grading will consist of 888 cubic yards of cut and export to a location outside of the coastal zone. Deepened footings or a caisson foundation system is proposed to support the proposed project. ~~This proposed development would result in a 17-foot encroachment beyond the predominant line of development and would necessitate the excavation of a 29-foot high notch into the bluff face (discussed more fully below).~~

The applicant is proposing work to the existing unpermitted beach-level bathroom consisting of only interior changes. Specifically, the plumbing fixtures will be replaced and the interior wall finish will be updated. In addition, the existing exterior unpermitted staircase from the single-family residence to the beach will be modified. More specifically, the upper portion of the treads, risers, and railing will be removed so the stair terminates at the proposed sun deck and pool level. No changes are proposed for the lower portion of the stair. However, at the May 2006 Hearing, the Commission prohibited any work seaward of the approximately 33-foot contour and also any work to the existing unpermitted stairway, including any connection from the proposed pool house or pool/deck to the existing unpermitted stairway, which also includes any work to the unpermitted beach bathroom with the proposed project. To accomplish this, the Commission imposed **Special Condition No. 2**, which required submittal of final project plans excluding any work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and unpermitted beach bathroom.

The existing stairway and bathroom were constructed after 1972 without a coastal development permit. According to information previously submitted by the applicant, the City approved a stairway in 1980 as stated in a Building Permit #576-80 dated June 12,

1980 from the City of Newport Beach Department of Community Development. The building permit states that the work to be done consisted of: *build new stairs*. Associated with these stairs is possibly the bathroom, since it is attached to the base of the stairs. Also, aerial photos from 1952 showed the existing residence, but did not show the existing stairway, bathroom or fence. However, aerial photos from 1972 show an existing footpath supported possibly with railroad ties; however, the location is more toward the center of the lot from the top of the bluff to the toe of the bluff as opposed to the current stairway configuration where the stairway is located along the eastern property line. The 1972 aerials also show a fence, but it appears that the fence has been altered since that time. The permit status of the fence is still currently under investigation by Enforcement staff. If the fence is determined not to be pre-coastal, then enforcement action would be recommended to remove the existing fence.

3. Prior Commission Action at the Subject Site

a. CDP No. 5-01-080-(Palermo)

At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-01-080-(Palermo) for the construction of a 864 square foot pool house, pool, spa and exercise room on the beach and the lower portion of the bluff face. In addition, two (2) retaining walls were proposed. One was to be a 6-foot high wall located along the western perimeter of the swimming pool at the beach level and one was to be a 12-foot high wall at the rear of the pool house on the lower bluff face. These walls varied from approximately 6 to 12 feet in height. The primary issues raised by the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

b. CDP No. 5-04-339-(Palermo)

At the June 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-339-(Palermo) for the removal of an existing beach bathroom and construction of a new 623 square foot pool house, pool, spa and patio area on the beach and lower bluff face. In addition, there would have been construction of new retaining walls, landscape planters, an outdoor barbeque area and modification of the existing stairway. Footings, retaining walls, slab on grade and a caisson foundation system were proposed to support the proposed project. The proposed project was similar to a previously denied project for the project site (CDP No. 5-01-080). The primary issues raised by proposed project were the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

4. Prior Commission Action in Subject Area

See Appendix "A"

B. SCENIC RESOURCES

Section 30251 of the Coastal Act states, in relevant 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 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...

The proposed project is located along a coastal bluff face immediately inland of Corona Del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated (Exhibit # 7). Although several lots have stairways traversing the bluff face, and some have permitted and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, and this is especially true if one does not consider the unpermitted development. Development at this site, if approved, must be sited and designed to be visually compatible with the 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, minimize the alteration of existing landforms, and limit the seaward encroachment of development. ~~The proposed project, as submitted, would be a significant new development encroaching seaward. This seaward encroachment also raises the concern over cumulative impacts as it could, if approved, lead to additional proposals for others to develop the coastal bluff face in a similar manner. The proposed project, as currently submitted, would be encroaching seaward approximately 17-feet from the existing residence located on the site. Although the proposed project encroaches seaward of the existing residence located on the site, it conforms to the predominant line of development and community character and will not affect public views of the vegetated lower bluff face from the adjacent public beach.~~

~~The proposed project will result in significant landform alteration and affect public views of the vegetated bluff from the adjacent public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. Impacts to views from Inspiration Point would be significant since the entire project site can be viewed from this elevated public vantage point. Inspiration Point provides sweeping views of the ocean and shoreline and the proposed project would impact these views. The views from Inspiration Point of the natural vegetated bluff and the beach at the project site would be marred by development located on the lower bluff face. The Commission finds that the proposed project does not minimize alteration of natural landforms, is not visually compatible with the character of surrounding development and will affect the scenic and visual qualities of the subject area. As such, the proposed project is inconsistent with Section 30251 of the Coastal Act as discussed below. In addition, the proposed project involves 888 cubic yards of cut and export to a location outside of the coastal zone. The proposed grading will substantially remove a portion of the bluff face and will result in a significant~~

~~alteration to the bluff landform to create space for construction of the approximately 28-foot high, two-story pool house. The grading is proposed in order to install the retaining wall and deepened continuous footings or drilled caissons.~~

1. Landform Alteration

~~The Coastal Act requires new development to be sited to “protect views to and along the ocean and scenic coastal areas” and “minimize the alteration of natural land forms.” The proposed project would be located along the lower coastal bluff face and beach. The existing bluff face is a natural landform visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. Any alteration of this landform would affect the scenic views of the coastline when viewed from public vantage points such as the State beach and Inspiration Point. Located at the upper bluff face and notched into the bluff is the existing residence and below the residence is the remaining bluff approximately 80 feet in height. The proposed pool house will be located below and adjacent to the existing residence (Exhibits #5-6). The proposed project would significantly alter the appearance of the vegetated bluff as an excavation approximately 29 feet in height, approximately 21 feet in width and approximately 57 feet in length resulting in 888 cubic yards of cut would be necessary to install the pool house into the bluff face. Thus, upon completion of the project, approximately 35 vertical feet of the 80-foot high bluff below the existing residence would be occupied by structures. The proposed project would significantly alter the appearance of the vegetated bluff. As such, the proposed development at the subject site is not appropriately sited to minimize the alteration of natural landforms.~~

12. City Setback, Stringline Analysis Community Character and Geologic Setback

Seaward encroachment of new development can often have adverse impacts on a variety of coastal resources. For example, the seaward encroachment of private development toward a beach can discourage public utilization of the beach adjacent to such development. The seaward encroachment of structures can also have adverse visual impacts. In addition, the seaward encroachment of structures can increase the hazards to which the new development will be subjected (the hazard and access issues are discussed elsewhere in these findings). Therefore, the Commission has often used either 1) City-required setbacks from the seaward property line; 2) a string line evaluation; 3) community character evaluation or 4) a minimal 25-foot setback in areas where geologic conditions are such that the site can be presumed stable for the useful economic life of the development so that a greater setback is not required for geologic purposes. If a stringline is used, two types of string lines are applied to evaluate a proposed project—a structural string line and a deck string line. A structural string line refers to the line drawn between the *nearest* adjacent corners of the adjacent structures on either side of the subject site. Similarly, a deck string line refers to the line drawn between the nearest adjacent corners of adjacent decks on either side of the subject site. Setbacks, string lines community character and geologic setbacks are applied to limit new development from being built any farther seaward than existing adjacent development. If not properly regulated the continued seaward encroachment of development can have a significant cumulative adverse impact on coastal resources.

a. City Setback

Section 30251 of the Coastal Act states that permitted development shall be designed “*to be visually compatible with the character of the surrounding area.*” Therefore, proposed development must be compatible with its surroundings. The plans submitted by the applicant show that the project conforms to the 10-foot rear property line setback required by City zoning, but conformance to the City required setback does not address the potential impacts that the seaward encroaching development will have on the project site, as development in this area is generally set back much farther than the generally-applicable City setback would require. Adhering to the City setback of 10-feet and no other setbacks would allow development on the beach and the lower bluff face and would not achieve the objectives of Coastal Act Section 30251. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration and visual impacts and preserve community character.

b. Stringline and Community Character

As noted above, one tool the Commission has often used is the string line evaluation to review seaward encroachment of development. String lines are applied to limit new development from being built any further seaward than existing adjacent development.

The predominant pattern of development along this segment of Ocean Boulevard where the proposed project is located includes the primary living structure sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. However, there are limited exceptions where development is located at the lower bluff face and toe and is in contrast to the pattern of development. These exceptions complicate application of a stringline. When reviewing development adjacent to one of these exceptions, application of the stringline doesn't yield a development limit that is consistent with the overall pattern of development observable in the area and does not, therefore, preserve community character.

In this case, there is a permitted enclosed living structure located upon the lower bluff face and toe on the property immediately adjacent and upcoast (west) of the subject site. That structure on the adjacent property is located so much further seaward than the predominant line of development in the area that applying the stringline yields a development limit that is significantly out of character with the remaining pattern of development. While stringlines can be drawn, they don't yield useful results.

The purpose of the stringline is to prevent seaward encroachment of new development such that adverse impacts on a variety of coastal resources is minimized or avoided. ~~In cases where stringlines and setbacks don't yield useful development limits, the Commission must look to other points of reference. The existing homes at the upper bluff face form a line of development, which establishes the community character and can be used to identify the applicable limits of seaward encroachment (hereinafter referred to as the 'predominant line of development').~~ The proposed project, as currently submitted, would be encroaching seaward approximately 17-feet from the existing residence located on the site. On the other hand, the seaward limit of proposed development is sited

landward of the alignment of accessory development (e.g. decks and pools) authorized by the Commission on two nearby properties: the Tabak project (CDP No. 5-02-203 and CDP No. 5-02-203-A1-[Tabak]) located at 3431 Ocean Boulevard and the Halfacre project (CDP No. 5-03-100) located at 3425 Ocean Boulevard, both of which have not yet been constructed. Again, the existing neighboring development doesn't provide a useful reference point for establishing community character, especially considering the recent Tabak and Halfacre approvals. Rather, other points of reference that represent the predominant appearance of the area and reflect recent Commission actions in the area must be used to establish a consistent limit of seaward encroachment (hereinafter referred to as the 'predominant line of development') along this section of Ocean Boulevard (i.e. from 3317 Ocean Boulevard to 3431 Ocean Blvd). Accordingly, development on each lot must be independently evaluated to take into consideration the overall pattern of development in this section of Ocean Boulevard.

~~The proposed project would be incompatible with the surrounding development. Although several lots have stairways traversing the bluff face and some have unpermitted development at the toe of the bluff (currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. The project site and six (6) lots (3207-3309 Ocean Boulevard) to the west and the three (3) lots (3329-3401 Ocean Boulevard) located to the east have lower bluff faces that are principally covered with vegetation (Exhibits #2 and #7). Further east of the project site are three (3) additional lots that have recently received Coastal Development Permits (CDP No. 5-01-112-[Ensign] and 5-05-095-[Circle] for 3415 Ocean Boulevard; CDP No. 5-03-100-[Halfacre] for 3425 Ocean Boulevard; and CDP No. 5-02-203-[Tabak] and CDP No. 5-02-203-A1-[Tabak] for 3431 Ocean Boulevard). Two of these approvals (which pertain to the 2 most distant lots identified herein — 3425 and 3431 Ocean Boulevard) have authorized some development to encroach upon the bluff face. In those instances, the livable space was limited to the 48-foot contour, and the decks/pools limited to extend no further seaward than the 33-foot contour. At the next closest lot, 3415 Ocean Boulevard, the Commission limited the livable area to the 56-foot contour, and the deck to the 46-50 foot contours. Thus, there is a pattern of approvals at the far eastern end of Ocean Boulevard (3415-3431 Ocean Boulevard) where some development has been allowed on the bluff face, but which have also stepped the footprint of these developments gradually landward so that they ultimately align with the existing footprint of the residential structures present at the project site and the nine (9) remaining homes located on Ocean Boulevard (3207-3401 Ocean Boulevard) where development is largely limited to the upper bluff face. As such, the proposed project would result in a visible intensification of use of the site, inconsistent with the surrounding undeveloped area.~~

~~As stated previously, the purpose of using a stringline or other applicable reference point (e.g. predominant line of development) is to prevent seaward encroachment of new development that can have adverse impacts on a variety of coastal resources. At this site and in the vicinity of it the predominant line of development can be found by drawing a line immediately seaward of the enclosed living space of the principal structures located along the upper bluff (Exhibit #7). The proposed project would encroach substantially seaward of this predominant~~

~~line of development. More specifically, the proposed project will extend approximately 17 feet seaward of the predominant line of development. There is a distinct community character where development is located upon the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. The proposed project would result in seaward encroachment and also be a visible intensification of use of the site, inconsistent with the surrounding undeveloped area.~~

In this case, useful points of reference are the Tabak and Halfacre properties located downcoast from the project site. At the January 2002 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-02-203-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence. The habitable area for CDP No.5-02-203 extended out to the 48-foot bluff elevation contour, while the pool and decks were required to be located landward of the 33-foot contour (the Commission placed a special condition on the project limiting the development to the 33-foot contour line). At the March 2005 Commission Hearing, the Commission approved an Immaterial Amendment to Coastal Development Permit Application No. 5-02-203-A1-[Tabak] that proposed redesign of the previously approved project. Just like the original approval, no habitable area would extend past the approved line of development for the enclosed area (48-foot contour) and the pool would not extend past the approved line of development for accessory structures (33-foot contour). At the January 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-03-100-[Halfacre]. The new habitable space on the Halfacre project is aligned at the 46-foot contour line. Due to undulations in the topography of the bluff face, the Halfacre project's livable space was located landward of the Tabak livable area therefore not appearing to be encroaching seaward. As conditioned, the Halfacre project also adhered to the 33-foot contour that was used in CDP No. 5-02-203-[Tabak] and CDP No. 5-02-203-A1-[Tabak] for accessory improvements.

The currently proposed pool house does not extend seaward of the 33-foot contour line. The project as proposed also included work on the existing unpermitted stairway and unpermitted beach bathroom, both of which are seaward of the 33-foot contour line. At the May 2006 Hearing, the Commission prohibited any work seaward of the approximately 33-foot contour and also any work to the existing unpermitted stairway, including any connection from the proposed pool house or pool/deck to the existing unpermitted stairway, which also includes any work to the unpermitted beach bathroom with the proposed project. To accomplish this, the Commission imposed **Special Condition No. 2**, which required submittal of final project plans prohibiting any work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and unpermitted beach bathroom. Thus, as conditioned, the proposed development would be consistent with the emerging pattern of development apparent from recent Commission approvals along this section of Ocean Boulevard.

The basis of the stringline is to prevent seaward encroachment of new development that can have adverse impacts on a variety of coastal resources. The proposed project would encroach seaward. However, the proposed project would be consistent with the distinct community character present in the area

where development is located upon the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. Furthermore, the development would be consistent with the pattern of development recently approved by the Commission (CDP No. 5-02-203, CDP No. 5-02-203-A1 and CDP No. 5-03-100).

c. Geologic Setback

Regardless of whether a stringline/predominant line of development setback is applied, Section 30253 of the Coastal Act requires that new development be sited to assure stability for its economic life. Such a "geologic setback" is derived for site-specific conditions. The Commission's staff geologist concurs with the applicant that the subject slope is stable and that no historic bluff retreat can be detected from examination of aerial photographs. A minimal setback may be warranted in situations such as this where slopes are stable and historic bluff retreat has been minimal. In these cases, the Commission typically requires that structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to allow for future changes in geologic processes operating at the site and to minimize the potential that the development will contribute to visual impacts. ~~However, the proposed development is entirely on the bluff face, inconsistent with a policy of siting development away from eroding bluffs.~~ However, the development site is located entirely on a coastal bluff face. Therefore, application of a bluff edge setback is not appropriate for this project.

3. Cumulative Impacts

~~The proposed project is located along a coastal bluff immediately inland of Corona Del Mar State Beach, a public beach. The site is highly visible from public vantage points such as the sandy public beach and from elevated vantages such as Inspiration Point. Although several lots have stairways traversing the bluff face, permitted and unpermitted development at the toe of the bluff and some have unpermitted development at the toe of the bluff, the overall appearance of the bluff in this area is natural and undeveloped. Approval of the proposed project would set a precedent for the construction of substantial new development along the beach and the lower bluff face that would significantly alter the natural land form and the character of this area, and that would cause adverse visual impacts and encroach seaward. Scenic resources would not be preserved. Development at this site must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. Therefore, the Commission cannot allow the proposed project to be constructed as submitted.~~

2. Landform Alteration

Originally, the proposed project required grading consisting of 888 cubic yards of cut and export to a location outside of the coastal zone. The original grading was the minimal amount necessary in order to install the pool house into the bluff face. Since the project has been conditioned to be revised (**Special Condition No. 2**), the amount of grading required for the revised project is unknown. Nonetheless, since the project has been revised for less development (prohibiting any work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and unpermitted beach bathroom), the amount of grading should be less or at least equivalent to the previously

proposed amount and as conditioned, none of the grading will encroach beyond the predominant line of development. Thus, the amount of grading will be the minimal amount necessary.

Conclusion

~~The Commission finds that the project, as currently proposed, is not sited and designed to protect scenic and visual qualities of coastal areas as a source of public importance. Denial of the proposed project would preserve existing scenic resources and would be consistent with preserving the existing community character where development occurs at the upper bluff face. The alteration of the bluff would result in an adverse visual effect when viewed from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantages such as Inspiration Point. Allowing the proposed project would also lead to seaward encroachment of new development in an area where extensive unpermitted development has occurred that has encroached seaward and affected the community character. These are matters the Commission is presently trying to resolve through the coastal development permit process, and enforcement actions as necessary. The Commission finds that the proposed project 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 project is inconsistent with Section 30251 of the Coastal Act regarding coastal bluff sites and therefore must be denied.~~

As conditioned, the proposed project is sited and designed to protect scenic and visual qualities of coastal areas. The Commission imposes **Special Condition No. 2**, which requires submittal of final project plans prohibiting any work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and unpermitted beach bathroom. Approval of the proposed project, as conditioned, would preserve existing scenic resources and would be consistent with preserving the existing community character where structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. The alteration of the already developed upper bluff face would not result in a significant adverse visual effect when viewed from public vantage points such as the beach and would be visually compatible with the character of the surrounding area. Furthermore, the development would be consistent with the pattern of development recently approved by the Commission (CDP No. 5-02-203, CDP No. 5-02-203-A1 and CDP No. 5-03-100). Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

C. PUBLIC RECREATION

Section 30240 (b) of the Coastal Act 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 project site contains beach area and bluff face on the seaward side of Ocean Boulevard, which is the first public road immediately inland of Corona del Mar State Beach. The project site is highly visible from public vantage points, such as the sandy public beach and from elevated vantages such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. Although several lots have stairways traversing the bluff face and some have permitted and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, and this is especially true if one does not consider the unpermitted development. Public access is available on the sandy public beach (Corona del Mar State Beach) that is located directly seaward of the toe of the bluff and fence that encloses sandy beach area within the applicant's property line. Development at this site must be sited and designed to be compatible with Section 30240(b) of the Coastal Act. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to recreational coastal resources. The proposed project, as submitted, would be a significant new development encroaching seaward. The imposing structural features would be visible from the public beach and even more so from the elevated public vantage location, Inspiration Point. These structures would affect public use of the beach by discouraging the public from using the public beach area intended for public use adjacent to the fence. This would compel the public to move more seaward and thus have an impact on public use of the beach. Thus, the project, as submitted, would adversely impact recreation on the public beach. However, as conditioned to prohibit any development seaward of the 33-foot contour line, the development will be kept far off the beach, at the same height as other nearby development, and be visibly connected to the house at the top. Thus, it would be clear that the development is associated with the existing residence located at the upper bluff face and not taking over any part of the sandy beach. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 (b) of the Coastal Act.

~~The proximity of the proposed project to Corona Del Mar State Beach, a public beach, and Inspiration Point, an elevated public vantage point, raise Coastal Act concerns, as it would be new seaward encroaching development that would discourage use of the public beach. While an existing 6-foot high fence encloses a portion of the property at the beach level and separates the proposed private development from the publicly owned areas of the beach, the proposed project would still result in adverse impacts to public recreation by creating a much more significant 'presence' on the beach than currently exists as a result of the fence, which results in effectively privatizing public areas of the beach. The proposed, new, approximately 28-foot high, two-story, pool house consisting of an exterior stair, an upper level recreation room and exercise room, and a lower level sun deck and pool would be imposing structural features visible from the public beach and even more so from the elevated public vantage location, Inspiration Point. These~~

~~structures would affect public use of the beach by discouraging the public from using the public beach area intended for public use adjacent to the fence. This would compel the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project would adversely impact recreation on the public beach.~~

~~The Commission finds that the project, as currently proposed, is not sited and designed to protect public access to recreational coastal resources. Denial of the proposed project would preserve existing public recreational resources and would be consistent with preserving the existing community character where development occurs at the upper bluff face. The Commission finds that the area in front of the development is a recreation area and that the proposed project would degrade that area and, by discouraging public use of the area, would be incompatible with its recreational character, and thus, with Section 30240(b). Therefore, the Commission finds that the proposed project is inconsistent with Section 30240 (b) of the Coastal Act and must be denied.~~

D. HAZARDS

Section 30253 of the Coastal Act states, in pertinent part:

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.*

Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. 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 humans that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, and breaks in water or sewage lines.

1. Site Specific Bluff Information

a. Geotechnical Issues

To address site-specific issues, the applicants have submitted a geotechnical investigation, which evaluates the current proposal: *Update Geotechnical Investigation For New Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No/ 71483/Report No. 04-5364)* prepared by Geofirm dated July 7, 2004¹, as well as, an update for the newly redesigned proposal:

¹ This geotechnical investigation was submitted for the previously submitted CDP No. 5-04-339-[Palermo], which was denied at the June 2005 Coastal Commission Hearing.

Geotechnical Feasibility for Updated Swimming Pool, Pool House, and Associated Improvements, 3317 Ocean Boulevard, Corona Del Mar (Project No. 71483-01/Report No. 05-5659) prepared by Geofirm dated October 31, 2005. The information provided states that the bedrock materials backing the bluff are anticipated to remain seismically and grossly stable. However, slope wash deposits which mantle the bluff slope face are considered surficially unstable and may be prone to failure under conditions of saturation or seismic acceleration. The information submitted ultimately concludes the coastal bluff on the site is grossly stable and that the project is feasible from an engineering perspective provided the applicant complies with the recommendations contained in the investigation. As discussed previously, some of the recommendations for construction of the project site include: an approximate 30-foot high interior retaining wall and a foundation system consisting of drilled caissons or deepened continuous footings.

In addition to the previously stated geotechnical investigation, the applicant has also submitted a letter from R.M. Volpe & Associates, Inc. Structural Engineering that discusses the proposed retaining wall and the drilled caissons or deepened continuous footings. The letter received November 1, 2005 states that the foundations for the proposed improvements are feasible, although it will require some specialized construction methods, however, no specific methods were discussed.

The Commission's staff geologist has reviewed the project and agrees with the investigations' conclusions. The slope will be subject to subaerial erosion and surficial instabilities, but the geotechnical report makes recommendations that should assure safety of the development. The project can be built, but only with the support of a significant engineering effort.

b. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

The applicants have since submitted a *Wave-Runup Study Update and Response to California Coastal Commission Staff Report CDP#5-01-080, 3317 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. (Skelly Engineering) dated August 16, 2004² as well as, an update for the newly redesigned proposal: *Coastal Hazard Discussion, 3317 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. (Skelly Engineering) dated October 19, 2005. Ultimately, this study concludes: "... waves and wave runup will not significantly impact this property or improvement over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runup protection. The proposed project minimizes risks from flooding."

Although the applicants report indicates that the site is safe for development at this time,

² This wave-runup study was submitted for the previously submitted CDP No. 5-04-339-[Palermo], which was denied at the June 2005 Coastal Commission Hearing.

beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes. For example, the study states that there is no general overall shoreline retreat in the area due to the sheltering effect of the Newport Harbor jetty and rocky headlands. As long as this jetty and rocky headlands are present the study concludes that the beach should be fairly stable. However, if something were to happen that would cause damage to the jetty and rocky headlands, then shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

Conclusion

~~The proposed development is located in a hazard-prone environment. On the other hand, geotechnical investigations conclude that the proposed project is feasible from the engineering perspective, but only given a significant engineering effort. This engineering effort would require installation of a potential caisson foundation system to support the new pool house in an area where hazards do exist. The fact that a project could technically be built at this location is not sufficient to conclude that it *should* be undertaken. The project should be designed so that no massive engineering solutions are required for construction of the proposed project.~~

2. Conclusions and Special Conditions

Section 30253 of the Coastal Act states that new development shall minimize the impacts of the proposed development on bluff erosion and instability, and prevent the necessity for bluff protective structures. William Kockelman, U.S. Geological Survey, wrote an article entitled "Some Techniques for Reducing Landslide Hazards" that discusses several ways to minimize landslide hazards such as bluff erosion and instability, including:

- (A) Require a permit prior to scraping, excavating, filling, or cutting any lands.
- (B) Prohibit, minimize, or carefully regulate the excavating, cutting and filling activities in landslide areas.
- (C) Provide for the proper design, construction, and periodic inspection and maintenance of weeps, drains, and drainage ways, including culverts, ditches, gutters, and diversions.
- (D) Regulate the disruption of vegetation and drainage patterns.
- (E) Provide for proper engineering design, placement, and drainage of fills, including periodic inspection and maintenance.

Kockelman also discusses the option of disclosure of hazards to potential buyers by the recordation of hazards in public documents. The recordation of hazards via the assumption of risk is one means the Commission utilizes to inform existing and future buyers of property of the potential threat from soil erosion and slope failure (landslide) hazards. Several of these recommendations are routinely required by local government, including requiring permits for grading, minimizing grading, and requirements for proper engineering design.

The Commission has imposed many of these same recommendations, including requiring the consulting geologist to review foundation and drainage plans in order to confirm that the project conforms to the policies of the Coastal Act. The findings in this staff report regarding the general causes of bluff erosion and the specific findings from the geotechnical investigation confirm that the coastal bluff at this location is eroding and that measures to minimize bluff erosion are necessary. The following Special Conditions will mitigate the impacts of the proposed development on bluff erosion and instability, and will prohibit bluff protective structures, as required by Section 30253 of the Coastal Act.

a. Assumption of Risk

Coastal bluffs in southern California are recently emergent landforms in a tectonically active environment. Any development on an eroding coastal bluff involves some risk to development.

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings in sections 1-2 above, including site-specific geologic information, support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, although, as conditioned, the project will sufficiently reduce the risks to make it approvable, the applicant must be aware of the remaining risks and must assume responsibility for the project should he decide to proceed. Accordingly, the standard waiver of liability condition has been attached via **Special Condition No. 1.**

By this means, and by the recordation of this condition against the title to the property pursuant to **Special Condition No. 9** (discussed more later), the applicant and future buyers are notified that the proposed development is located in an area that is potentially subject to bluff erosion that can damage the applicant's property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the Coastal Development Permit.

b. Final Project Plans

The proposed project consists of construction of a new two-story, pool house and pool that would be notched into the bluff face below the existing residence. In addition, the applicant is proposing work to the existing unpermitted stairway and unpermitted beach-level bathroom. However, at the May 2006 Hearing, the Commission prohibited any work seaward of the approximately 33-foot contour and also any work to the existing unpermitted stairway, including any connection from the proposed pool house or pool/deck to the existing unpermitted stairway, which also includes any work to the unpermitted beach bathroom with the proposed project. To accomplish this, the Commission imposed **Special Condition No. 2**, which required submittal of final project plans such as site plans, floor plans, elevation plans, cross-section plans, grading plans, and foundation plans prohibiting any work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and unpermitted beach bathroom. Limiting the proposed development to the 33-foot contour line serves to prevent the

placement of development upon the lower bluff face and beach, which are areas that are more prone to coastal hazards.

c. Shoreline Protective Devices

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach and a revetment at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those, which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

No shoreline protection device is proposed. However, because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site is stable and that no shoreline protection devices will be needed. If not for the information provided by the applicants that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, as stated previously, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicants to, their information, which states that the site is safe for development without the need for protective devices. If the Commission were forced, in the future, to approve a shoreline protection device to protect the structures being approved now, it would mean that the project approved now is not consistent with Section 30253's prohibition on new development requiring shoreline protective devices. Therefore, the Commission imposes **Special Condition No. 3** which states that no shoreline protective devices shall be permitted to protect the proposed development and that the applicants waive, on behalf of themselves and all successors and assigns on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

d. Future Development

The development is located within an existing developed area and, as conditioned, is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicants could construct future improvements to the single-family house, including but not limited to landscaping, improvements to the residence and decks, that would have negative impacts on coastal resources, and could do so without first acquiring a coastal development

permit, due to exemption for improvements to existing single-family residences in Coastal Act Section 30610 (a). Unpermitted improvements could lead to negative geologic impacts such as slope instability. In order to prevent the current authorization from allowing such future negative effects, it is necessary to ensure that any future development -- including the development of amenities that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 4**, a future improvements special condition. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

e. Conformance with Geologic Recommendations

The geotechnical consultant has found that development is feasible provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in regards to the design and construction of the project. The geotechnical recommendations address things such as foundations and runoff on site. However, since the project has been conditioned to be redesigned so that there is no work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and unpermitted beach bathroom, an addendum to the geotechnical investigation needs to be prepared. Given the reduced work on the existing unpermitted stairway and unpermitted beach bathroom, the Commission does not anticipate that the revised plan will be subject to any greater hazards than the previous design. However, in order to assure that risks of development are minimized, as per Section 30253, the Commission imposes **Special Condition No. 5**, which requires the applicants to submit an addendum to the geotechnical investigation and evidence that the geotechnical consultants' recommendations are incorporated into the design of the project. If the addendum to the geotechnical investigation recommends the use of any deepened foundation elements (e.g. caissons) seaward of the 48-foot contour or any other development not reliant upon a deepened foundation system (e.g. decks) and preparatory work (e.g. grading) seaward of the 33-foot elevation contour, an amendment to this permit or a new permit shall be required in order to implement such recommendations.

f. Drainage and Run-Off Control and Landscaping

The applicants previously submitted a drainage and runoff control plan and it shows that drainage on site will be directed to the street drainage system at Breakers Drive with piping. Therefore, adverse impacts caused by possible infiltration of the bluff are avoided. However, since the project has been conditioned for final project plans, no updated drainage and run-off control plans have been submitted. Therefore, the Commission is imposing **Special Condition No. 6**, which requires that the applicants shall prepare prior to issuance of this permit a final drainage and run-off control plan.

The proposed project consists of a new pool on the bluff face. If water from the proposed pool is not properly controlled there is a potential for bluff failure due to the infiltration of water into the bluff. For this reason, the potential for infiltration into the bluff should be minimized. This can be achieved by various methods,

including having the pool double lined and installing a pool leak detection system to prevent the infiltration of water into the bluff due to any possible pool or spa problems. However, the applicants have provided a narrative stating that they propose a double lined shell and a matte drain system; however, no plans have been submitted. Therefore, the Commission imposes **Special Condition No. 7**, which requires the applicants to submit a pool protection plan.

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 applicant has landscape plans. However, since the project has been conditioned for final project plans, no updated landscape plans have been submitted. Any proposed vegetated landscaped areas located on site should only consist of native drought tolerant plants, which are non-invasive. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org).). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, 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>.

Due to the potential impacts to the bluff from infiltration of water into the bluff, the Commission imposes **Special Condition No. 8**, which requires that the applicant shall prepare prior to issuance of this permit 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, a final landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) to minimize the introduction of water into the ground, no permanent in-ground irrigation shall be permitted, any existing in-ground irrigation system shall be disconnected and capped, temporary above ground irrigation to establish the plantings is permitted; and 2) landscaping shall consist of native drought tolerant plants, which are non-invasive. Invasive, non-indigenous plant species, which tend to supplant native species shall not be used.

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 **Special Condition No. 9** requiring that the property owners 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, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

Conclusion

The Commission has required **Nine (9) Special Conditions**, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These special conditions include: **1)** assumption of risk; **2)** final project plans showing no work seaward of the 33-foot contour line, which includes any work on the existing unpermitted stairs and beach bathroom; **3)** no future shoreline protective device; **4)** additional approvals for any future development; **5)** evidence of conformance with geotechnical recommendations; **6)** submittal of a final drainage and run-off control plan; **7)** submittal of a pool protection plan; **8)** submittal of a final landscaping plan; and **9)** a deed restriction against the property, referencing all of the special conditions contained in this staff report. Only as conditioned to comply with the provisions of these special conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

~~There are alternatives to the proposed project that would lessen or avoid the identified impacts. An alternatives analysis conducted by staff has been provided in Section II E. of this staff report.~~

E. ——— ALTERNATIVES

~~Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant already possess a substantial residential development of significant economic value on the property. In addition, several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):~~

~~1. ——— No Project~~

~~No changes to the existing site conditions would result from the "no project" alternative. As such, there would be no disturbance of the bluff face. The bluff face would remain as an undeveloped vegetated slope and would be consistent with community character. The applicants would still have full use of the residence. This alternative would result in the least amount of effects to the environment and also would not have any adverse effect on the value of the property.~~

~~2. ——— Remodeling of the Existing Home~~

~~The proposed project entails construction of private recreation facilities located on the bluff face. An alternative to the proposed project would be remodeling of the existing~~

~~home located at the upper bluff face to allow for these recreational facilities within the existing footprint. This alternative would accommodate the applicant's interest in adding recreational elements, but there would be no disturbance to the bluff face. The bluff face would remain as an undeveloped vegetated slope and would be consistent with community character as development occurs at the upper bluff face.~~

EF. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Scenic and Visual Resources, Policy 4.4.1-1 states,

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

Scenic and Visual Resources, Policy 4.4.1-3 states,

Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.

Natural Landform Protection, Policy 4.4.3-8 states,

Prohibit development on bluff faces, except private development on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Drive in Corona del Mar determined to be consistent with the predominant line of existing development or public improvements providing public access, protecting coastal resources, or providing for public safety. Permit such improvements only when no feasible alternative exists and when designed and constructed to minimize alteration of the bluff face, to not contribute to further erosion of the bluff face, and to be visually compatible with the surrounding area to the maximum extent feasible.

Natural Landform Protection, Policy 4.4.3-9 states,

Where principal structures exist on coastal bluff faces along Ocean Boulevard, Carnation Avenue and Pacific Coast Drive in Corona Del Mar, require all new development to be sited in accordance with the predominant line of existing development in order to protect public coastal views. Establish a predominant line of development for both principal structures and accessory improvements. The setback shall be increased where necessary to ensure safety and stability of the development.

Natural Landform Protection, Policy 4.4.3-15 states,

Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources.

Natural Landform Protection, Policy 4.4.3-17 states,

Identify and remove all unauthorized structures, including protective devices, fences, and stairways, which encroach into coastal bluffs.

Public Access and Recreation, Policy 3.1.2-1 states,

Protect, and where feasible, expand and enhance public access to and along coastal bluffs.

~~The construction of the proposed project is inconsistent with the policies in the City's certified LUP. The proposed project is not sited and designed to protect and, where feasible, enhance the scenic and visual qualities of the coastal zone. Denial of the proposed project would preserve existing scenic resources and would be consistent with preserving the existing community character where development occurs at the upper bluff face. In addition, the proposed project would encroach substantially seaward of the predominant line of development, more specifically approximately 17 feet seaward of the predominant line of development. Allowing the proposed project would lead to seaward encroachment that would affect public use of the beach by discouraging the public from using the public beach area intended for public use adjacent to the fence. This would compel the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project would adversely impact recreation on the public beach. The proposed development is inconsistent with the policies in the City's certified LUP, as well as the policies in Chapter 3 of the Coastal Act, as indicated above, and would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the project must be denied.~~

The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

FG. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment.

~~As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as remodeling of the existing home. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act~~

~~because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.~~

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard and scenic resource protection policies of Chapter 3 of the Coastal Act. Mitigation measures include Special Conditions requiring conformance with geotechnical recommendations, pool leak detection, submittal of a final drainage and run-off control plan and submittal of a final landscaping plan.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any remaining 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.

GH. UNPERMITTED DEVELOPMENT

Development has occurred on site without benefit of the required coastal development permit including construction of a staircase on the bluff face and a beach bathroom at the bluff toe. Commission Enforcement staff is currently considering options to resolve the unpermitted staircase on the bluff face and the beach bathroom.

Although development has occurred prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

Appendix “A”

A. 3431 Ocean Boulevard (Located 6 lots down-coast from the subject site):CDP No. 5-01-191-[Tabak]

At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-01-191-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence. The proposed structure would have covered virtually the entire upper and lower bluff face areas. The primary issues of the proposed project were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, the seaward encroachment of the development, the community character, and impacts to public access. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

B. 3431 Ocean Boulevard (Located 6 lots down-coast from the subject site): CDP No. 5-02-203-[Tabak]

At the January 2003 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-02-203-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence and also demolition and replacement of existing wooden staircase to the beach. The proposed project had been reduced compared with a prior proposal (CDP No. 5-01-191). The Commission found that the proposed development was consistent with the pattern of development in the immediate vicinity and the project would not have a cumulative adverse impact on visual coastal resources. Under this proposal, living space additions were located landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. However, no other additions were allowed below the 33-foot elevation contour upon the lower bluff face.

C. 3431 Ocean Boulevard (Located 6 lots down-coast from the subject site): CDP No. 5-02-203-A1-[Tabak]

At the March 2005 Commission Hearing, the Commission approved an Immaterial Amendment to Coastal Development Permit Application No. 5-02-203-A1-[Tabak] that proposed redesign of the previously approved project including revision of an approximate 22-foot long portion of the previously approved stairway located at the base of the bluff and also the grading would now consist of 3,400 cubic yards of cut and export to an area outside of the coastal zone. No habitable area would extend past the approved line of development for enclosed area (48-foot contour) and the pool would not extend past the approved line of development for accessory structures (33-foot contour).

D. 3425 Ocean Boulevard (Located 5 lots down-coast from the subject site): CDP No. 5-03-100-[Halfacre]

At the January 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-03-100-[Halfacre] for the conversion and addition to an existing basement to living area, construction of a new basement-level deck, construction of a new sundeck on the bluff face that does not extend any further than the 33-foot contour line, a new stairway connection to an approved stairway leading down to the toe of the bluff located on the downcoast adjacent property (i.e. Tabak), removal and replacement of existing side yard and rear yard fences, and after-the-fact approval of two 2nd floor decks on the seaward side of the existing single-family residence. The primary issues before the Commission were the appropriateness of approving the project given the importance of preserving scenic resources, minimizing landform alteration and avoiding development in hazard prone locations. The Commission found that the proposed development, as conditioned, was consistent with the pattern of development in the immediate vicinity and the project would not have a cumulative adverse impact on visual coastal resources and would be consistent with the hazard policies of the Coastal Act. The proposed new habitable space adhered to the 48-foot bluff elevation contour limit established for CDP No. 5-02-203-[Tabak]. As conditioned, the proposed project also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements. No other accessory improvements were allowed below the 33-foot elevation contour upon the lower bluff face or on the sandy beach.

E. 3415 Ocean Boulevard (Located 4 lots down-coast from subject site): CDP No. 5-01-112-[Ensign]

At the February 2002 Commission Hearing, the Commission approved Coastal Development Permit No. 5-02-112-[Ensign] for the after-the-fact authorization of a new switchback bluff face stairway with keystone-type earth retention blocks, landscaping and in-ground irrigation. The primary issues before the Commission were the appropriateness of approving the project given landform alteration, the importance of preserving scenic resources, community character and impacts to public access. As submitted, the proposed project raised issues with Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The Commission found that the proposed stairway that may have followed a pre-Coastal Act pathway, as conditioned, does not present an adverse visual impact because it follows the natural topography of the bluff, was effectively screened with vegetation and was consistent with the character of the surrounding area.

F. 3415 Ocean Boulevard (Located 4 lots down-coast from the subject site): CDP NO. 5-05-095-[Circle]

At the October 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-05-095-[Circle] for the demolition of an existing approximately 2,100 square foot, two (2) story single family residence with an attached garage and construction of a new 4,488 square foot two (2) story single-family residence with a basement and an attached 388 square foot four (4) car garage. Associated construction consisted of: a 141 square foot basement deck, a 392 square foot 1st floor deck and a 383 square foot 2nd floor deck. The foundation for the residence consisted of a caisson and deepened conventional footings system. The primary concern before the

Commission on this matter were to assure that the project conformed to the predominant line of development such that scenic resources were preserved, landform alteration was minimized and development in hazard prone locations was avoided. The Commission found that the proposed development, as conditioned, conformed to the predominant line of development and would not affect public views and would be consistent with the hazard policies of the Coastal Act. The project's proposed livable area aligned approximately with the 56-foot elevation contour line, while the basement level deck did not extend seaward from approximately 46-foot contour to the east and the approximately 50-foot contour to the west, thus the project was landward of the Tabak and Halfacre projects.

G. 3401 Ocean Boulevard (Located 3 lots down-coast from the subject site): CDP NO. 5-01-199-[Butterfield]

At the December 2001 Commission Hearing, the Commission approved in part and denied in part Coastal Development Permit Application No. 5-01-199-[Butterfield] for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels on the existing pre-Coastal Act bluff face stairway. The Commission denied the toe of slope cut-out and approved the portion of the lattice work and gate located on a previously approved landing area. The Commission found that the gate replacement and lattice enclosures on the previously permitted landing areas to be consistent with the scenic and visual resources policies of the Coastal Act, as they will not obstruct views to or along the shoreline and are in keeping with the pattern of development in the area and therefore is consistent with Section 30251 of the Coastal Act. However, the Commission found that the proposed sand pit cut-out would not minimize alteration natural landforms, was not visually compatible with the character of surrounding development and would affect the scenic and visual qualities of the subject area. As such, the portion of the proposed project involving the establishment of a sand pit cut-out area was inconsistent with Section 30251 of the Coastal Act.

H. 3335 Ocean Boulevard (Located 2 lots down-coast from the subject site): CDP No. 5-04-214-[Battram]

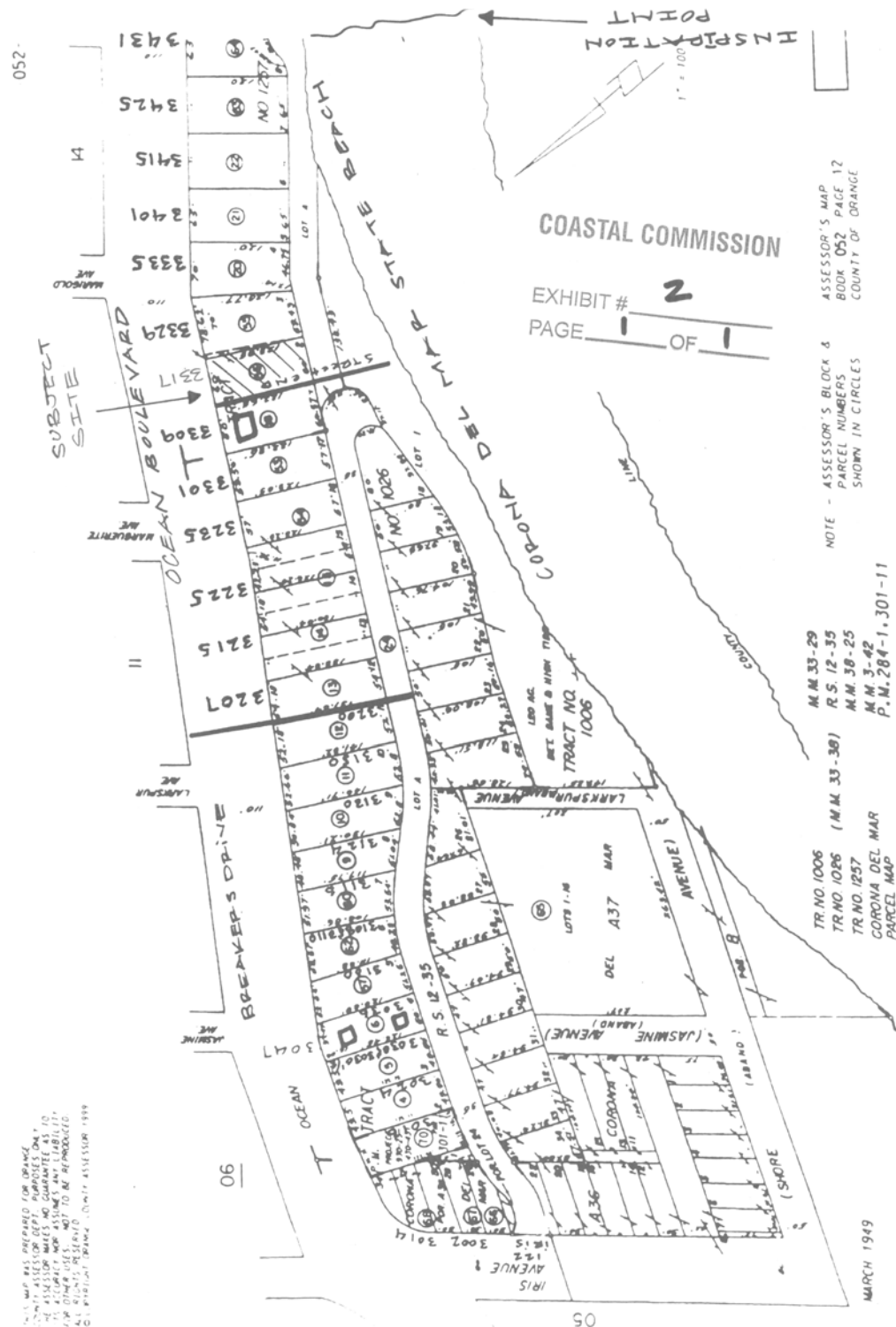
In October 2005, the Commission opened a public hearing on Coastal Development Permit Application No. 5-04-214-[Battram]; however, the applicant withdrew the application before the Commission took their action. The application was for the after-the-fact approval for a stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. The applicant also proposed the following: adding landscaping along the stairway; painting the upper portion of the stairway a color that helps blend into the background; removing the existing iceplant at the bottom of the lot; and the granting of a non-exclusive easement for public use and enjoyment of the sandy portion of the lot adjacent to the public beach. Staff recommended denial of the proposal. Since the October 2005 hearing, the Battram's sold the property to a new owner who has stated to staff that they intend to take over and process an after-the-fact permit application.

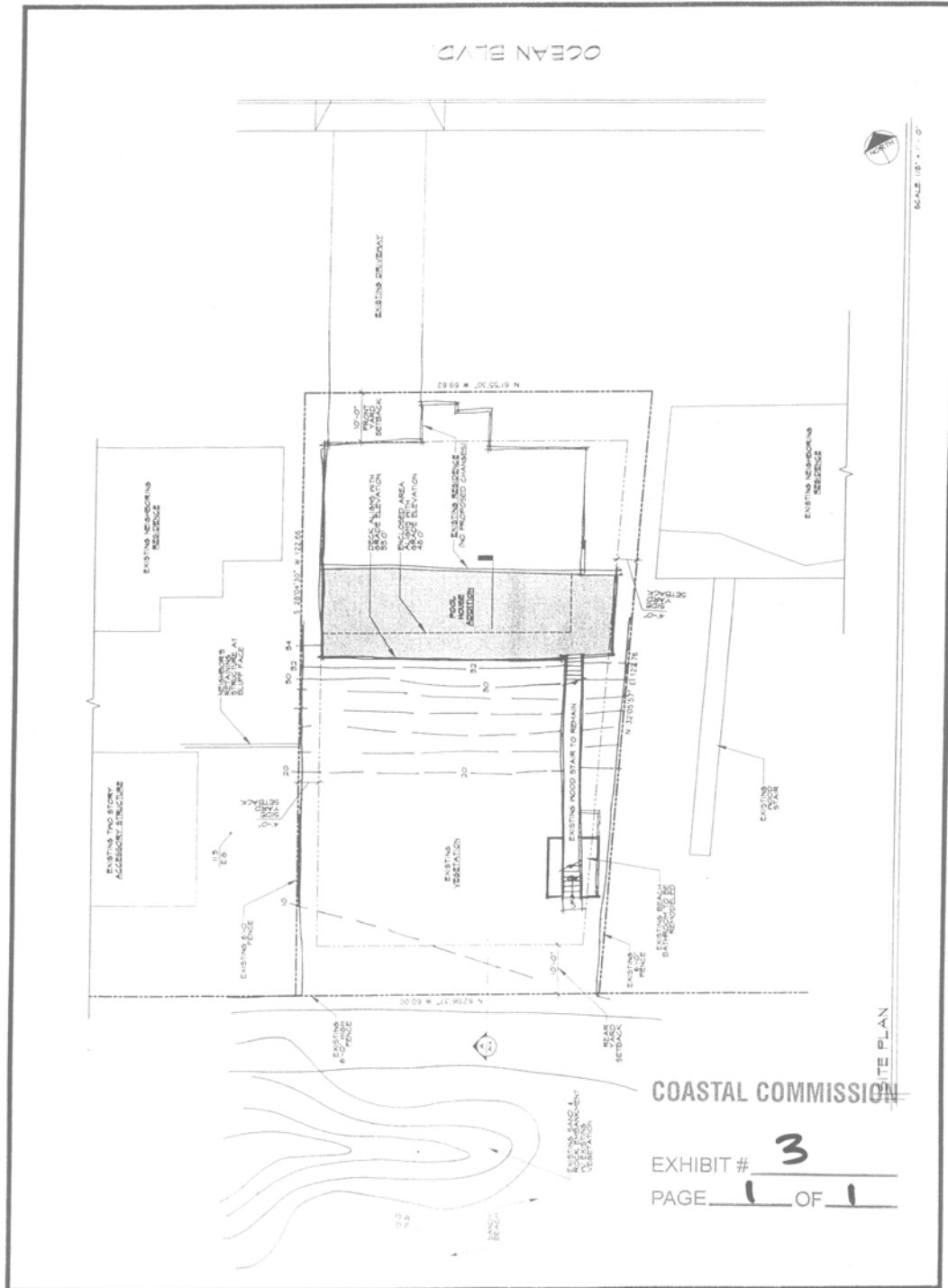
I. 3329 Ocean Boulevard (Located 1 lot down-coast from the subject site): CDP No. 5-04-482-[McNamee]

At the July 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-482-[McNamee] for the after-the-fact approval of existing storage lockers; built-in barbeque and cabinets; counter with sink and cabinets; shower at stair base; thatched shade palapa with four posts; two concrete tables and benches—all located on a sandy beach and, on the bluff face, a shed with refrigerator storage and toilet and floral garden improvements. The primary issues before the Commission was whether the development preserves scenic resources, minimizes landform alteration and avoids development in hazard prone locations. The applicant was seeking after-the-fact approval of development on the sandy beach and lower bluff face/bluff toe. Along this segment of Ocean Boulevard, there is no history of Commission approval of development on the sandy beach (associated with a single-family residence). The toe of the bluff and sandy beach area are immediately inland of Corona Del Mar State Beach, which is a public beach. Thus, the development is highly visible from the public beach and other public vantage points, such as Inspiration Point. In addition, the proposed project is not needed for full use and enjoyment of the property as they have a substantial improvement in the form of a single-family dwelling on site. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

Vicinity Map: 3317 Ocean Blvd, Corona Del Mar, CA 92625







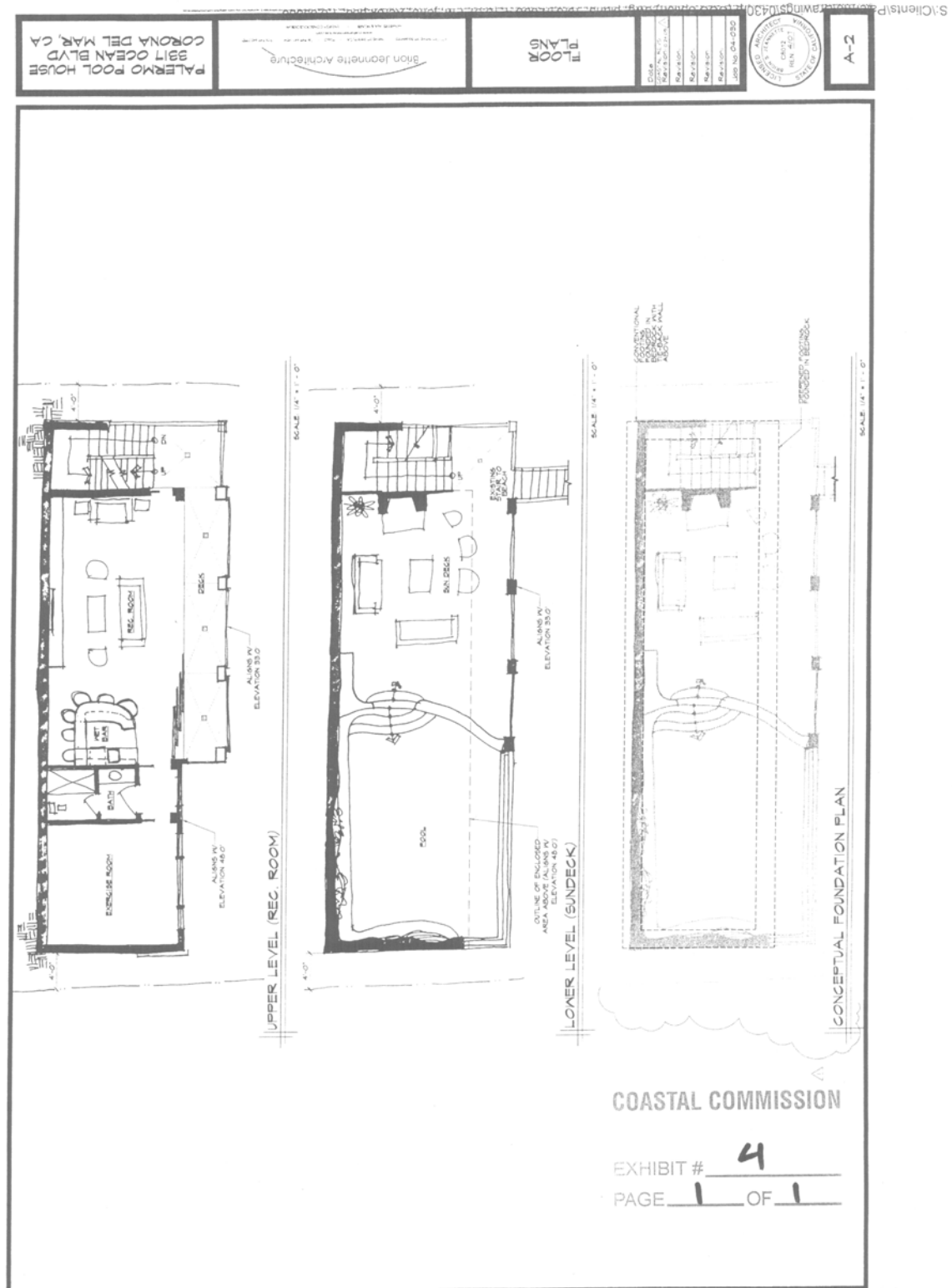


EXHIBIT # 5
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