

CALIFORNIA COASTAL COMMISSION

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**W18a**

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 Staff: Liliana Roman-LB
 Staff Report: October 17, 2007
 Hearing Date: November 14-16, 2007
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-06-298
APPLICANTS: David Baziak
PROJECT LOCATION: 4026 Calle Ariana, San Clemente, County of Orange
PROJECT DESCRIPTION: Request for new bluff face landscaping and after-the-fact approval of installation of four (4) rows of wooden retaining walls to stabilize bluff face and thirteen (13) caissons and grade beams beneath an existing residence and rear yard patio on a coastal bluff lot.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends Commission approval of the proposed landscaping plan and “after-the-fact” approval of the caissons/grade beam system and a modified terraced wooden retaining wall system with six (6) special conditions: 1) submittal of revised project plans, 2) conformance with final landscaping plan, 3) requiring assumption of risk, 4) informing the applicant that future improvements will require a permit amendment or new permit; 5) requiring recordation of a deed restriction recording the requirements of the permit; and 6) requiring timely compliance with the conditions of approval. The major issue of this staff report is development on the bluff face.

LOCAL APPROVALS RECEIVED: None issued, instead refer to City of San Clemente Planning Department correspondence dated July 29, 2005 and September 18, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente certified Land Use Plan; CDP 5-90-505 (Storment), Coastal Development Permit Application 5-05-268 (Baziak) withdrawn 7/12/06.

EXHIBITS:

1. Vicinity Map
2. Assessors Parcel Map
3. Project Plans
4. City of San Clemente Planning Dept. correspondence dated 7/29/05 and 9/18/06

5. Site Photographs

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP No. 5-06-298 pursuant to the staff recommendation.

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

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions:

1. Submittal of Revised Final Construction Plans for Bluff Face Retaining Wall System

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, two (2) sets of final site and building plans that substantially conform with the project plans by Peter and Associates dated 5/08/07, and the preliminary landscape plans by Summers/Murphy & Partners, Inc. dated 7/07/06 but shall be revised to include the following:

- 1) The wooden bluff face stairway located seaward of the bluff edge shall be shaded and clearly marked "*this element not permitted by any coastal development permit*" on each set of plans;
- 2) The chain link fence at the toe of the bluff shall be shaded and clearly marked "*this element not permitted by any coastal development permit*" on each set of plans;
- 3) The two rows of wood fence on the bluff face on Lot 76, Tract No. 422 shall be shaded and clearly marked "*this element not permitted by any coastal development permit*" on each set of plans;
- 4) The applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate certified engineering geologist has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the geologic evaluation approved by the California Coastal Commission for the project site.

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

2. Conformance with Final Landscaping Plan

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, two (2) sets of final landscaping plans that substantially conform with the preliminary landscape plans by Summers/Murphy & Partners, Inc. dated 7/07/06 but shall be revised to include the following:

- 1) The wooden bluff face stairway located seaward of the bluff edge shall be shaded and clearly marked *"this element not permitted by any coastal development permit"* on each set of plans.
 - 2) All areas affected by construction activities not occupied by structural development shall be re-vegetated for habitat enhancement and erosion control purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas, all landscaping on the coastal bluff shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible;
 - 3) 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. Except for the existing myoporum shrub located outside of the proposed project limits, any existing landscaping that doesn't meet all of the requirements in this special condition shall be removed;
 - 4) All planting will be completed within 60 days after completion of construction;
 - 5) Plantings on the bluff face shall be placed in a manner that obscures view of the retaining walls from the public beach;
 - 6) No permanent in-ground irrigation systems shall be installed on the bluff face. Temporary above ground irrigation is allowed to establish plantings.
 - 7) All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping plan.
- B. The permittee shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv)

to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-06-298. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6) and/or 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) and (b) shall not apply to the development governed by Coastal Development Permit No. 5-06-298. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-06-298 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government

5. Deed Restriction

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

6. Condition Compliance

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares as follows:

A. PROJECT LOCATION AND DESCRIPTION

Project Location

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

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

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

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

Prior Permit History

On July 12, 1990, the Commission approved CDP No. 5-90-505(Storment) for the demolition of an existing single-family residence that spanned two lots and construction of a 3,959 square foot, 22 ft. high single-family residence with a 1,045 square foot 3-car garage on the subject lot subject to one (1) special condition requiring conformance with geotechnical recommendations. A second home was constructed on the adjacent lot pursuant to CDP No. 5-90-504. The development was undertaken in the early 1990s. No bluff face stairways were approved as part of either permit. Based on an analysis of historical aerial photographs of the site, staff has determined that no stairway existed on the bluff slope prior to the Coastal Zone Conservation Act of 1972 (Exhibit 5). The current homeowner and applicant believes the stairs were constructed at the time the residence was constructed in the early 1990s.

At the July 2006 Commission hearing, the current applicant withdrew CDP application 5-05-368 (Baziak) for new bluff face landscaping and irrigation system and "after-the-fact"

approval of installation of four rows of wooden retaining walls to stabilize the bluff face, thirteen caissons beneath existing residence and patio and wooden coastal bluff face stairway. The project scope for CDP application 5-06-298(Baziak) was initially limited to a request for after-the-fact approval of the installation of four (4) rows of level terraced wooden post and tie retaining walls approximately 3 ½ feet high and landscaping with an irrigation system to stabilize the bluff face of the subject property and a small portion of the adjacent property after a failure in winter 2005.

The retaining wall portion of the project was referred to the Coastal Commission after the City of San Clemente placed a "Stop Work Notice" on the property on February 16, 2005. After reviewing the work already undertaken (approx. 75% completed) and yet to be completed, City staff determined that the retaining wall system inconsistent with local requirements and referred the issue to the Commission for consideration.

Commission staff later learned from the applicant that thirteen (13) caissons and grade beams were installed in two rows beneath the residence and rear yard patio with a City building permit but without benefit of a coastal development permit in 2000. Additionally, a wooden bluff face stairway was also installed along the northernmost property line (upcoast) without benefit of a coastal development permit or a City building permit. A private stairway would also be considered inconsistent with local requirements. Although the current owner/applicant did not undertake the unpermitted caisson installation and bluff stairway construction, he requested after-the-fact approval of the caisson system and a bluff face stairway under CDP 5-05-368.

Staff recommended a two-part resolution to provide "after-the-fact" approval of the caissons and grade beam and denial of the "after-the-fact" retaining wall system (with associated landscaping and irrigation) and bluff face stairway since the development was considered to alter a natural landform and create adverse visual impacts. The application was withdrawn the day of the Commission hearing.

Project Description

The applicant is currently proposing new landscaping and requesting "after-the-fact" approval of installation of four (4) modified rows of wooden retaining walls to stabilize the bluff face and "after-the-fact" approval of installation of thirteen (13) caissons and grade beams beneath the existing residence and rear yard patio located on the bluff top.

Proposed landscaping consists of drought resistant, non-invasive California native plant species suitable to coastal bluff habitat including Australian saltbush, dwarf coyote brush, ceanothus, lupine, toyon and lemonade berry. Landscaping is anticipated to reduce the visual impact of the wooden retaining walls from the public beach. A temporary drip type irrigation system is proposed to establish new plantings.

The applicant is not seeking approval nor has he proposed removal of the unpermitted bluff stairs. The Commission's enforcement division will evaluate further actions to address this matter.

B. GEOLOGIC STABILITY

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

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

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

LUP Policy VII.13:

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

Bluff stability has been an issue of historic concern throughout the City of San Clemente. Coastal bluffs in San Clemente are composed of weak sedimentary bedrock and unconsolidated surface soils which are subject to sloughing, creep, and landsliding.

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

Caisson and Grade Beam System

The subject site is developed with a single-family residence set back 10 feet from the bluff edge. The concrete patio extends to the bluff edge. In 1997, the former property owner consulted a geotechnical consultant to evaluate rear patio damage and soil conditions at the subject site. A *Report of Geotechnical Investigation at Serrano Residence* was prepared by Dale Hinkle P.E., Inc. on December 9, 1997. The

geotechnical report concludes that a tied-back system constructed to prevent movement of the slope had failed and that lateral movement was occurring in the upper 18-20 feet. The report recommended stabilization measures to mitigate future distress to site improvements, including the existing residence and rear yard brick patio. The 1997 geotechnical report states the following:

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

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

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

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

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

Retaining Wall System

As previously described, the subject site has a history of instability, documented by a series of reports prepared in 1997-2000 describing damage to the structure and failure of the tie-back system.

The applicant submitted a *Geotechnical Assessment of January 2005 Slope Failure and Unfinished Slope Repair* prepared by William R. Munson dated May 26, 2005. The assessment provides a chronology of the site up to, and including, the partial construction of a wood revetment system in January-February 2005. The work was intended to repair a slope failure that occurred "*during or shortly after an intense rainstorm in January 2005 that followed several storms beginning in October-November 2004.*" The report notes that a major causative factor of the slope failure was sheet flow runoff from approximately the seaward half of the tiled lower deck. A secondary

causative factor was water from a pressure slope irrigation waterline that ruptured as a result of initial slope failure. Water from the ruptured pipe likely caused the slope failure to widen into the adjacent Lot 75 for a distance of 10-12 feet.

According to the report, the slope failure is classified as “surficial (i.e. 4-feet or less in depth)”. The unfinished slope repair construction is described and conclusions are provided. The report concludes that *“the wood revetment design, when augmented by galvanized pipes or equivalent members that are engineered for depth and center-to-center spacing, should be suitable for the intended purpose.”*

The May 26, 2005 report was augmented by *Discussions of Existing and Alternative Slope Repair Methodologies for the January 2005 Slope Failure at the Rear of 4026 Calle Ariana* prepared by William R. Munson dated September 14, 2005. The report approves the slope repair construction methodology because *“it is a suitable tried-and-true stabilization measure for surficial slope failures...as well as a cost-effective means to practically re-build the slope.”* The report reiterates that the vertical members are insufficiently deep and require retrofitting with thick-walled galvanized iron pipe, or equivalent. Of particular interest, is the consultant’s following note:

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

The alternative slope repair presented by the applicant’s geology consultant is the removal of slide material and the unsuitable natural ground material, excavation of a toe keyway into competent bedrock and reconstruction of the slope with soil cement or geogrid reinforcement. This alternative would result in much greater disturbance to the bluff face than the proposed project. The alternative is considered *“both physically impractical and cost prohibitive”* by the consultant and the Commission geologist.

Peter and Associates, the applicant’s civil engineering/geotechnical engineering consultant provided a response letter to address Commission staff questions on December 12, 2005. The letter asserts that the slope repair construction (i.e. retaining walls) is deemed necessary to *“1) prevent further slope instability that could damage terrain of adjacent properties, and more so if they do not have benefit of caisson supported structures and 2) to create a stable condition to promote plant growth and drainage control to preclude or minimize slope erosion that could otherwise result in sedimentation with the railroad right-of-way.”*

Furthermore, a year later, an *Addendum to our 2005 Geotechnical Reports: Response to Specific Comments to the California Coastal Commission Report of CDP No. 5-05-368, dated 28, June 2006, that pertain to After-the-Fact Approval of the Installation of four (4) Rows of Wooden Post and Tie Retaining Walls...* was prepared by William Munson dated September 18, 2006 to dispute the staff recommendation of CDP application 5-05-368. In that addendum, the consultant makes the following conclusion, *“The logical conclusion from this discussion is that the slope stability of Lot 76 and contiguous Lots 77/75 is problematic. Any excavation on Lot 76 could cause slope destabilization and slippage on all three lots and endanger or damage the attendant residences, particularly those on Lots 77 and 75 that do not have deep caisson foundation systems.”*

Section 30235 of the Coastal Act requires protective devices, including “*cliff retaining walls*,” to be permitted when required to protect existing structures. In this case, the Commission staff geologist concurs with the applicant’s consultants that the proposed retaining wall system is necessary to protect adjacent existing structures from the 2005 slope failure. The residence at the subject property is supported by caissons and therefore does not fully rely on the slope for lateral support. The Commission agrees with the staff geologists’ conclusions and finds the retaining wall system is justified under Section 30235 of the Coastal Act.

Section 30253 of the Coastal Act requires new development to “*assure stability*.” The applicant proposes a retaining wall system which creates four plantable terraces along the bluff face. It has been shown that the site has experienced failure in the past where a contributing factor was water infiltration. As the introduction of additional water onto the slope may adversely affect stability of the development, the applicant proposes to utilize native California plants of the drought resistant variety that do not require an in-ground irrigation system. An existing large myoporum shrub on the north end of the bluff (not on the portion of the bluff face subject to proposed work) will be retained. Removal of the myoporum may cause additional disturbance to the bluff. The landscaping is integrally related to the applicant’s retaining wall proposal as it will help control soil erosion and not contribute to added water infiltration on the bluff. As such, the proposed development is consistent with Section 30253 of the Coastal Act.

Although the caissons and retaining wall system provide added levels of protection to the existing development, development on a coastal bluff is inherently hazardous. Consequently, the Commission typically requires applicants on blufftop lots to comply with certain specific special conditions to bring the project into compliance with the resource protection policies of the Coastal Act. In this case, those special conditions are as follows:

Condition No. 3 requires the applicant to assume the risk of development. The standard waiver of liability condition has been attached through Special Condition No. 3. By this means, the applicant is notified that the proposed development is built in an area that is potentially subject to bluff erosion that can damage the applicant’s property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicant to waive claims against the Commission and indemnify the Commission for third-party claims.

Special Condition No. 4 is a future development restriction, which states that any future improvements or additions on the property, including hardscape improvements, grading, landscaping, vegetation removal and structural improvements, require a coastal development permit from the Commission or its successor agency. This condition ensures that development on coastal bluffs, which may affect the stability of the bluffs and residential structures or may require future bluff protective structures, requires a coastal development permit.

Only as proposed and conditioned to require assumption of risk, future improvements require a permit amendment or new permit; and a deed restriction recording the requirements of the permit, does the Commission find the proposed development in conformance with Sections 30235 and 30253 of the Coastal Act.

C. SCENIC RESOURCES

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

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

The proposed development is located on the bluff top and face immediately adjacent to the public beach. Although the site is located within a private community, the site is highly visible from the shoreline or when traveling along the public beach below. The bluffs along this stretch of shoreline in San Clemente extend about 30 feet above beach level. From the beach, the houses on the top of the bluff are visible. There is little structural development other than stairways and minor landscape improvements along the face of the bluffs.¹ For the most part, the bluff faces—particularly the lower portions—are vegetated and largely undisturbed.

Development at this location must be sited and designed to be visually compatible with the relatively undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms, as further addressed below.

Caissons

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

Retaining Walls

The Coastal Act requires new development to be sited to “*minimize the alteration of natural land forms.*” The proposed project would be located upon a coastal bluff face. The existing bluff is a natural landform visible from public vantage points such as the adjacent beach. Additionally, pursuant to Section 30251 of the Coastal Act, new development must be visually compatible with the surrounding area.

Although the bluffs of the surrounding properties are not developed with structural stabilization features, the proposed retaining wall system has been shortened in height from the original withdrawn proposal in CDP application 5-05-368 with a 2:1 backfill slope so that the retaining walls will only be +/-18” visible above ground. The proposed retaining wall system and landscaping is sited and designed to protect scenic and visual qualities of the site as an area of public importance. The landscaping plan has also been modified to provide California native plantings appropriate to bluff habitats that would blend in with the natural surroundings. The plantings once established would simulate the pre-2005 slope appearance. The plantings would cascade over the walls

¹ Commission staff has determined that many of the existing stairways are either unpermitted or constructed prior to passage of the Coastal Act. Further investigation is required.

and grow tall enough to screen the retaining walls from the public view from the beach and ocean and would not adversely impact the visual quality of the subject area.

The proposed preliminary landscaping plan show an existing unpermitted wooden bluff face stairway. The stairway presents an adverse visual effect when viewed from public vantage points along the beach. To ensure conformance with Section 30251 of the Coastal Act, staff imposes Special Condition No. 2 requiring landscaping plans to show the existing wooden bluff face stairway shaded and clearly marked "this element not permitted by any coastal development permit."

As discussed previously, Special Condition No. 4 ensures that any future development on the site, which may affect the stability or appearance of the bluff, requires a coastal development permit. The "future development" condition will ensure that improvements are not made at the site that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. The proposed landscaping plan sufficiently mitigates for visual impacts so that the alteration of the bluff from construction of the retaining walls would not result in an adverse visual effect when viewed from public vantage points along the beach. Therefore, the Commission finds that, as proposed, the project is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

D. PUBLIC ACCESS AND RECREATION

Section 30212(a)(2) of the Coastal Act states, in pertinent part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby

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

The development is located between the sea and the first public road, however, it does not impact access either directly or indirectly to the ocean. The project site is currently developed with a single-family residence and the proposed caisson and grade beam system, retaining wall system and landscaping will not result in an intensification of use. The development will not create adverse impacts, either individually or cumulatively, on public access and will not block public access from the first public road to the shore. Additionally, adequate access exists nearby. Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

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

Special Conditions 1 and 2 require revised project and landscaping plans showing the existing wooden bluff face stairway shaded and clearly marked "this element not permitted by any coastal development permit." Similarly, Special Condition 1 addresses a chain link fence at the toe of the bluff and two rows of wood fence on Lot 76, both of which are off the applicant's property, depicted on the applicant's plans which haven't received Commission approval.

Special Condition No. 5 is imposed to require the applicant to record a deed restriction against the property so as to notify all prospective future property owners of the terms and conditions of approval to which they will also be required to adhere. It thus ensures that future owners of the property will be informed of the conditions as well as of the risks and the Commission's immunity for liability.

Additionally, to ensure that the unpermitted development components of this application are resolved in a timely manner, Special Condition 6 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The Executive Director may grant additional time for good cause.

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

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The project is located within an existing residential neighborhood. Development already exists on the subject site. In addition, the proposed development has been conditioned, as follows, to assure the proposed project is consistent with policies of the Coastal Act: 1) submittal of revised project plans; 2) conformance with final landscaping plan; 3) requiring assumption of risk; 4) informing the applicant that future improvements will require a permit amendment or new permit; 5) requiring recordation of a deed restriction recording the requirements of the permit; and 6) requiring timely compliance with the conditions of approval.

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

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

Subject Site

PACIFIC OCEAN

92055

CAMP JOSEPH H. PENDLETON
MARINE CORPS BASE

SAN DIEGO COUNTY

SAN ANTONIO

CLEMENS

SAN CLEMENTE
STATE BEACH

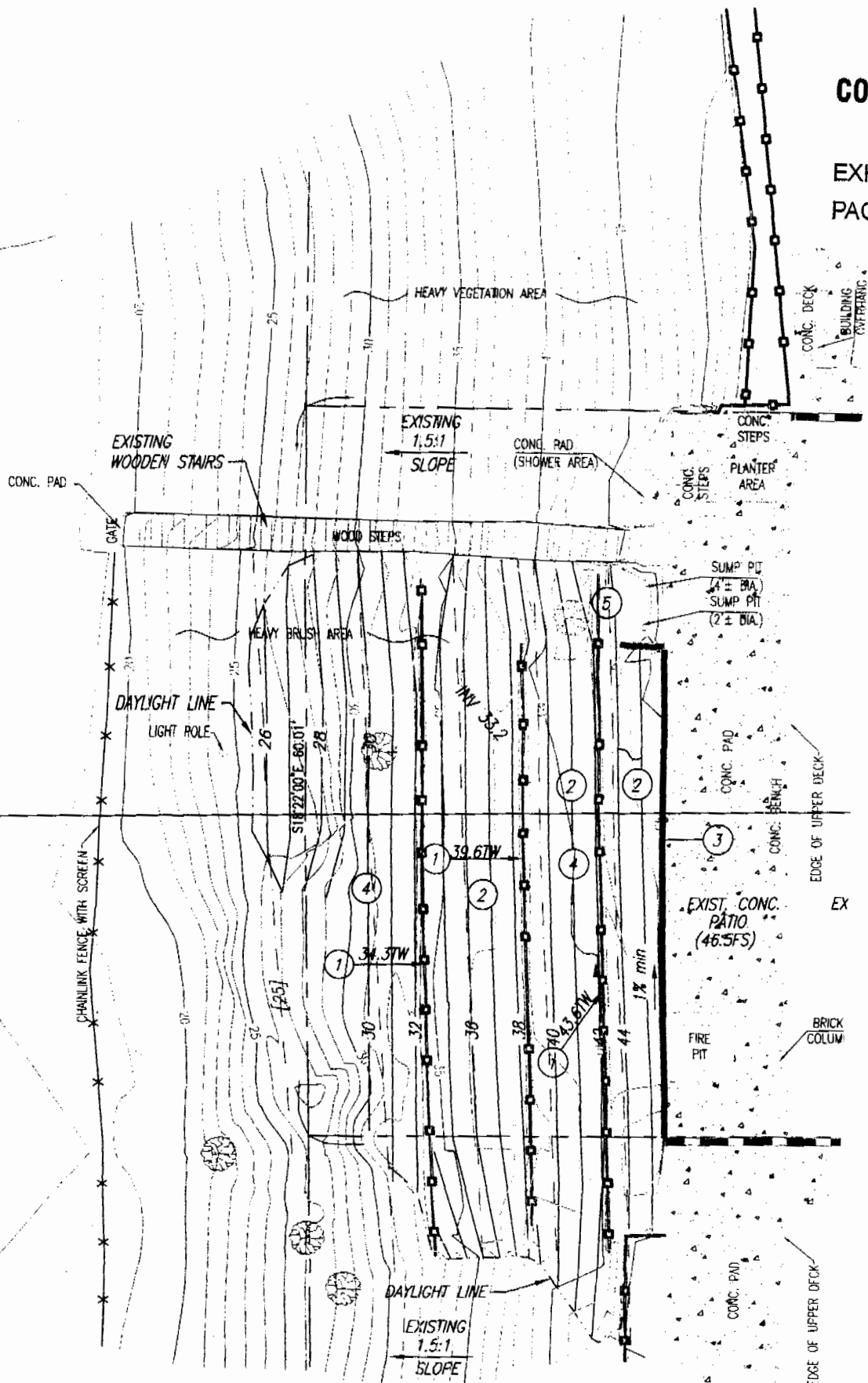
SEE 993 MAP

3

SEE V11 MAP

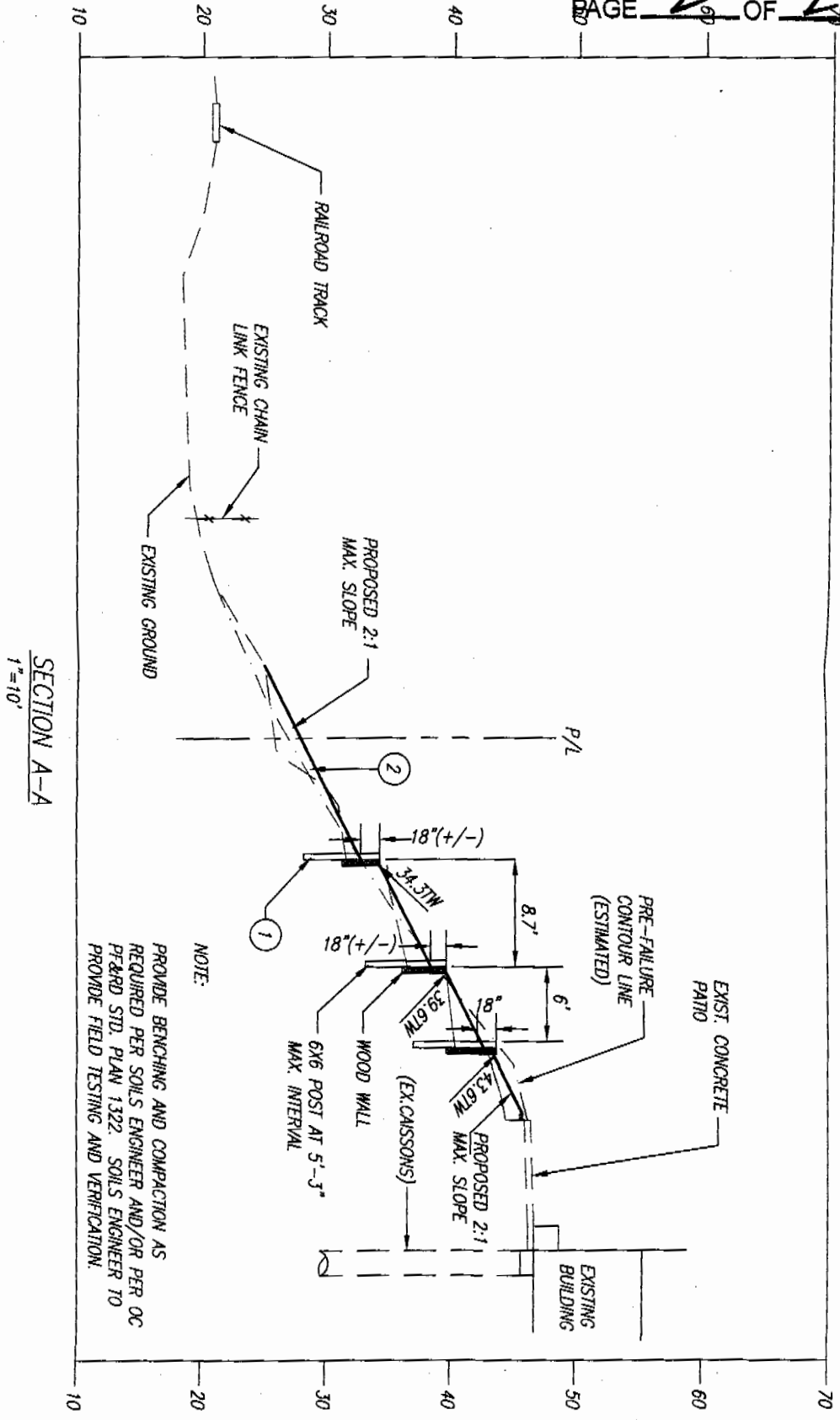
SEE V11 MAP





CONSTRUCTION NOTES:

- ① — CONSTRUCT WOOD RETAINING WALL PER DETAIL HEREON.
- ② — BACKFILL AT 2:1 (H:V) MAXIMUM SLOPE.
- ③ — CONSTRUCT 4-IN. SPEE-D CHANNEL GRATE & DRAIN NDS 400-10/NDS 243 GRATE.
- ④ — LANDSCAPE SLOPE PER LANDSCAPE ARCHITECTS PLANS.
- ⑤ — OUTLET SPEE-D CHANNEL AND ATRIUM INLET TO EXISTING SUMP PIT.





City of San Clemente Planning Division

Carrie Tai, Associate Planner
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TaiC@San-Clemente.org

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 2

September 18, 2006

RECEIVED
South Coast Region

SEP 21 2006

CALIFORNIA
COASTAL COMMISSION

Mr. Karl Schwing
Planning and Regulatory Supervisor
California Coastal Commission
200 OceanGate, 10th Floor, Ste. 1000
Long Beach, CA 90802-4302

Re: Baziak Property, 4026 Calle Ariana, San Clemente

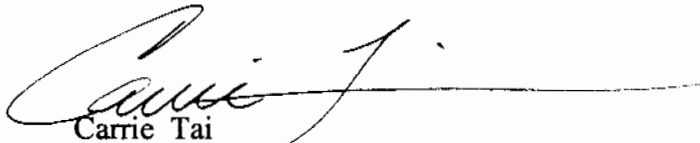
Dear Karl:

Per our recent telephone conversation, this is a letter to follow up with the permitting of retaining walls on the bluff property at 4026 Calle Ariana. As a recap, a Building Permit application was submitted to the City of San Clemente in July 2005 requesting approval for several retaining walls installed on the bluff face to stabilize the bluff. The request was forwarded to Anne Blemker, then Coastal Commission Analyst, per Zoning Ordinance Section 17.56.050(D)(1). (See the attached letter for more details.)

The applicant and their representative have contacted me requesting that I follow up with the Coastal Commission on this issue. Because the City is not able to grant an approval in-concept in this matter, we are referring the approval of this matter to the Coastal Commission. Per Zoning Ordinance Section 17.56.050(D)(7), the City does not have objections to this project. Can you advise as to the Coastal Commission's position and process on this matter?

Your help is appreciated. Please call me with any questions.

Sincerely,


Carrie Tai
Associate Planner

Enclosure

Cc: Patrick Murphy



City of San Clemente Planning Division

Carrie Tai, Associate Planner

Phone: (949) 361-6186 Fax: (949) 366-4750

TaiC@San-Clemente.org

July 29, 2005

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

RE: 4026 Calle Ariana

Dear Anne:

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

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

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

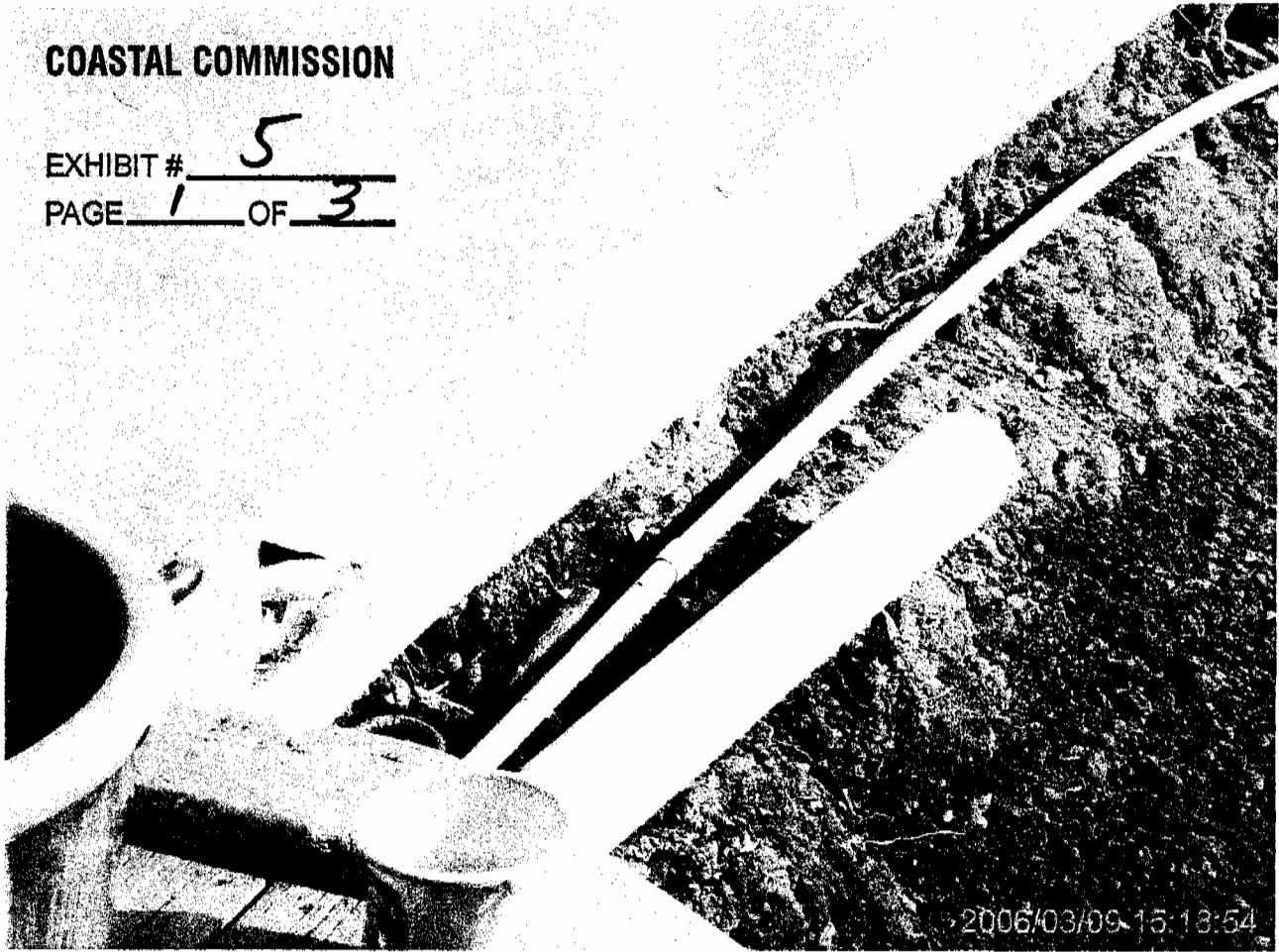
Please review and advise as to the Coastal Commission's position on this application.
Thank you.

Sincerely,

Carrie Tai
Associate Planner

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 3



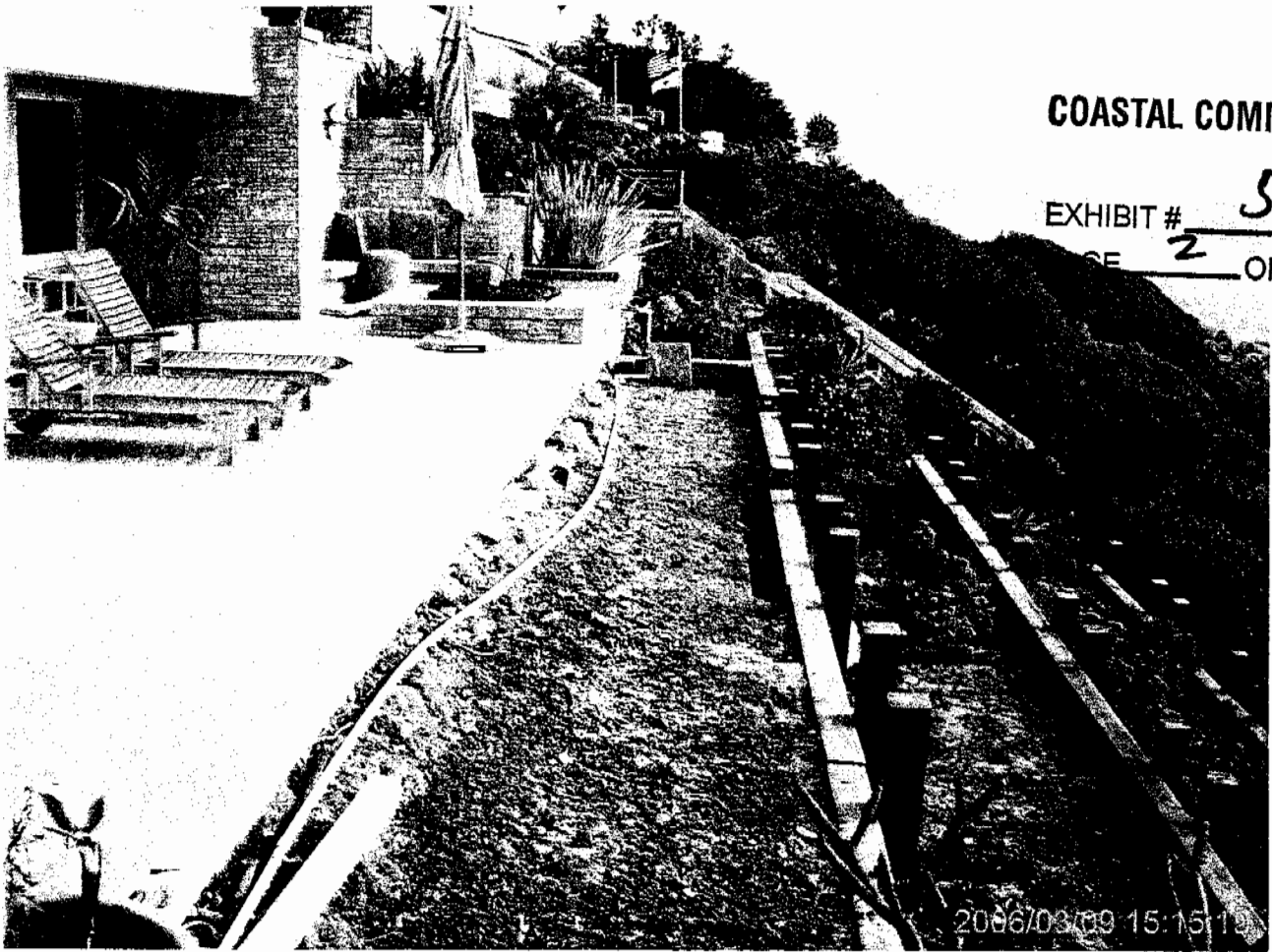
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COASTAL COMMISSION

EXHIBIT # 5
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