

**CALIFORNIA COASTAL COMMISSION**

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**W18e**

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Staff: Karl Schwing-LB  
Staff Report: November 1, 2007  
Hearing Date: November 14-16, 2007  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-07-070

**APPLICANTS:** Earnest Alvarez, Jr. & Paulette Alvarez

**AGENTS:** John Erskine, Attorney (Nossaman, Guthner, Knox & Elliott, LLP)  
David York, Architect

**PROJECT LOCATION:** 317 La Rambla (Lot No. 5, Tract No. 4947)  
San Clemente, Orange County

**PROJECT DESCRIPTION:** Grade site and install caisson shoring/retaining walls and construct 4,468 sq. ft., 26 ft.-high, single family residence including offer to dedicate 2 ft.-wide public access easement and construct sidewalk within that easement at property line along Boca del Canon (adjacent to existing narrow sidewalk), and construct sidewalk along property frontage within La Rambla public right-of-way.

**LOCAL APPROVALS RECEIVED:** City of San Clemente Approval in Concept, dated March 13, 2006.

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

**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending **APPROVAL** of the proposed project with special conditions. The major issues, discussed in more detail below, relate to the protection of public access over the property that may have been acquired through public use and assurances related to provision of physical and visual access to a viewpoint and accessways to the ocean. The applicant has worked with staff to develop an access plan, that in staff's opinion, if implemented, would provide access that is equivalent in time, place, and manner to the access that would be lost as a result of the proposed project. That access would be implemented through Special Condition 1 (Revised Project Plans/Sign Plan), Special Condition 2 (Offer to Dedicate Easement), Special Condition 3 (Construction of Accessway along La Rambla), Special Condition 4 (Accessway Management and Maintenance), Special Condition 5 (Phasing) and Special Condition 6 (Memorandum of Understanding regarding Provision of Off-site Access and Phasing (MOU)). The MOU is particularly critical to assuring that the access proposed by the applicant, in place of the existing access, will continue to provide physical and visual access equivalent in time, place and manner to what presently exists. Geologic issues (i.e. offsite landslide and onsite conditions) are addressed through Special Condition 7 (Conformance with Geotechnical Recommendations) and Special Condition 8 (Assumption of Risk, Waiver of Liability and Indemnity). Water quality issues are addressed through Special Conditions 9 (Debris Disposal) and 10 (Construction Storage). Requirements related to future development (Special Condition 11), landscaping (Special Condition 12), fire authority requirements (Special Condition 13) and a deed restriction (Special Condition 14) are also imposed.

The subject site is one of 9 vacant lots located seaward of the first public road inland of and parallel to the sea ("first public road"), at the mouth of Toledo Canyon, along coastal bluffs within and adjacent to the La Ladera residential community in the southerly area of the City of San Clemente. Seven (7) of these nine lots, including the subject site, were identified on Tract No. 4947, which was filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map. Two (2) of the nine vacant lots (part of separate Tract No. 822) were once developed with single family residences, but those residences were destroyed in a landslide in 1966, and the lots have remained vacant since that time. The entire nine-lot area and the privately owned street, Boca del Canon, is the subject of an ongoing prescriptive rights survey. Surveys submitted to date show substantial public use of the subject site, the other eight lots, and Boca del Canon, for the past several decades for access to the beach and ocean. The survey also indicates substantial public use of these properties for public viewing to and along the bluffs, beaches and ocean (i.e. visual access).

Public use across the subject site (Lot No. 5, Tract No. 4947) follows a pathway that roughly bisects the property lengthwise. The proposed residence would be constructed in a location that would completely remove this existing pathway, and would have significant, direct adverse impacts upon public access.

Furthermore, the site is visually prominent as one approaches the bluffs from inland public streets. Presently, an individual walking from West Paseo de Cristobal toward the site along La Rambla street sees an existing vehicular gate at the head of Boca del Canon street, which is the entryway to the La Ladera residential community. The subject site is located to the right side (west) of the gated entry. The existing gate is a visual deterrent to public access. However, the individual approaching the site can see across the subject lot toward the bluffs and ocean beyond. In the current condition, not only does the subject lot provide a corridor through which the public can view the ocean, but there are clear visual cues available to guide individuals across the subject lot toward the bluffs and beach access beyond. However, the proposed development of this lot will significantly and adversely affect the public's perception regarding their ability to access the coast and will degrade existing public views. The existing views across the lot toward the bluffs and beach/ocean beyond would be eliminated. Thus, there would be significant adverse impacts upon public physical and visual access and the visual quality of the area.

There are several constraints associated with the development of the subject lot, as well as the other eight vacant lots. These constraints include the need to reserve areas to accommodate the existing and historic public use of the properties for public access and viewing and the need to address adverse geologic conditions on the property in a manner that is consistent with Coastal Act requirements regarding visual impacts, landform alteration, hazard minimization, and avoidance of bluff protective devices to accommodate new development. Commission staff believes that these issues would be best addressed in the context of a comprehensive development plan that involves all of the undeveloped lots. The current effort to seek development approvals for each individual lot will significantly limit the range of alternatives that need to be considered in order to achieve a plan that is consistent with all Coastal Act policies. However, if the applicant insists on proceeding with an application to develop a single lot, as it is doing here, Commission staff did not believe it could decline to file that application.

The applicant has presented an effort to address the access issues raised by the proposal including the provision of a sidewalk along the perimeter of Lot 5 where that lot has frontage along La Rambla (which is a public road) and an offer to dedicate a 2 foot wide easement and construct a 2 foot wide sidewalk within that easement, adjacent to an existing narrow sidewalk that exists

along Boca del Canon within the parcel for that private road. Commission staff believe the 2 foot wide easement is inadequate and is recommending expansion of the easement to 5 feet. The special condition gives the applicant two options: 1) establish the 5 foot wide easement entirely on their property; or 2) if the applicant can obtain the permission of the owner of Boca del Canon to expand the easement over the existing sidewalk area, then part of the 5 foot wide easement could include that existing sidewalk, such that part of the easement is on the applicants land and part of the easement is upon Boca del Canon. In addition, since the applicant is proceeding with development of the subject site on a piecemeal basis, Commission staff did not believe a recommendation of approval would be appropriate unless some assurances were in place that physical and visual access would be provided to the viewpoint and trails connecting to the beach and ocean. Thus, Commission staff have negotiated with the applicant to enter into a memorandum of understanding (MOU) between the various parties involved that lays out the requirements related to securing accessways and a viewpoint from the subject site to those other lots. Without the MOU, staff would not recommend approval of the proposed project.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of San Clemente has only a certified Land Use Plan (one component of a Local Coastal Program) and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity, and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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**LIST OF EXHIBITS:**

1. Vicinity Map
2. Parcel Map
3. Aerial Photo
4. Site Plans/Elevations
5. Photographs
6. Lot Size and Coverage
7. Excerpts from Certified LUP/Coastal Access Map
8. Summary of Results from Prescriptive Rights Survey as of October 31, 2006
9. Conceptual Access and Viewpoint Plan for Lots 5-11, Tract 4947
10. Applicant's 'Coastal Packet' submitted February 23, 2007
11. Letter from John Erskine dated February 22, 2007
12. Access Easement Alignment

**STAFF RECOMMENDATION:**

MOTION: I move that the Commission approve Coastal Development Permit No. 5-07-070 pursuant to the staff recommendation.

**STAFF RECOMMENDATION OF APPROVAL:**

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

**I. RESOLUTION TO APPROVE THE PERMIT:**

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

**II. STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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 CONDITIONS:**

**1. REVISED 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 Revised Final Project Plans which conform with the requirements of the special conditions of this permit and the specific changes identified in this condition below and indicate the final layout of all development including but not limited to grading, utilities and easements, water quality management system, public accessways, signs, walls, steps, fences, gates, landscaping and the residence:

Accessway/Sidewalk Improvements:

- i. Within the 5 foot wide public access easement identified in Special Condition 2 below, remove all development that is inconsistent with the requirements of Special Condition 2;
- ii. Final public access walkway plans shall indicate construction of a minimum 4 foot wide sidewalk free of obstruction within the entire length of the 5 foot wide easement along Boca del Canon required in Special Condition 2 and continuing along the entire perimeter of the property along La Rambla. Said plan(s) shall identify walkway alignment, width, surface and materials;

Public Access Sign Plan:

- iii. The final plans submitted for review and approval to the Executive Director shall include a detailed signage plan that directs the public to the public access walkways on the project site and physical and visual access seaward of the site. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to their locations. Signage shall include facility identification/directional monuments (e.g. location of amenities); informational signage and circulation; and roadways signs. Signs and displays not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is legally required.

Grading/Drainage Plans:

Final grading and drainage plan(s) prepared by an appropriately licensed professional that has been reviewed and approved by the City of San Clemente. The plan shall incorporate the following criteria:

- v. Runoff from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be directed to dry wells or vegetated/landscaped areas to the maximum extent practicable within the constraints of City requirements;
- vi. Where City code prohibits on-site infiltration, runoff shall be collected and discharged via pipe or other non-erosive conveyance to the frontage street to the maximum extent practicable. Runoff from impervious surfaces that cannot feasibly be directed to the street shall be discharged via pipe or other non-erosive conveyance to an alternative outlet point to avoid ponding or erosion either on- or off- site;

vii. The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.

- 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 legally required.

## **2. OFFER TO DEDICATE PUBLIC ACCESS AND RECREATIONAL USE EASEMENT**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the landowner(s) shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of either of the following options as generally depicted on Exhibit 12 to the staff report dated November 1, 2007: 1) a minimum 5 foot wide strip of land, on the subject lot (Lot 5, Tract 4947), extending from the La Rambla public right of way, along the subject lot's boundary with Boca del Canon, to the lot boundary between the subject lot and Lot 6, Tract 4947; or 2) a minimum 5 foot wide strip of land, comprised of a 3 foot wide strip of land on the subject lot (Lot 5, Tract 4947), extending from the La Rambla public right of way, along the subject lot's boundary with Boca del Canon, to the lot boundary between the subject lot and Lot 6, Tract 4947, adjoining a 2 foot wide strip of land within Boca del Canon extending from the La Rambla public right of way, along the boundary of Boca del Canon and Lot 5, Tract 4947, to a projection of the line which forms the lot boundary between Lot 5 and Lot 6, Tract 4947. Minor adjustments to the aforementioned alignment may be authorized by the Executive Director to ensure that a continuous 5 foot wide corridor is formed which connects with any easement offered for dedication in conjunction with the development of Lot 6, Tract 4947.

The recorded document(s) described above shall reflect the following restrictions: i) The public accessway shall be open to the general public for use for up to 24-hours per day; ii) The landowner(s) shall, or, at the election of the easement holder, the easement holder shall, maintain the easement area in accordance with the Management and Maintenance Program approved by the Executive Director in accordance with SPECIAL CONDITION NO. 4; iii) Any development, as defined in Section 30106 of the Coastal Act, that diminishes permanent public pedestrian access and passive recreational use of the easement is prohibited; iv) No development, as defined in Section 30106 of the Coastal Act, shall occur within the public access corridor except for the following development: grading and construction necessary to construct the public access walkway and appurtenances (e.g. signs, benches, trash receptacles) in accordance with the final plans approved by the Executive Director pursuant to SPECIAL CONDITION NO. 1, underground utilities to serve the proposed development on the subject lot in accordance with the final plans approved by the Executive Director pursuant to SPECIAL CONDITION NO. 1, vegetation removal and planting in accordance with the final landscape plan approved by the Executive Director pursuant to SPECIAL CONDITION NO. 12, construction of drainage devices in accordance with the final plans approved by the Executive Director pursuant to SPECIAL CONDITION NO. 1, and maintenance and repair of the approved development within the easement as identified in the Management and Maintenance Program approved by the Executive Director pursuant to SPECIAL CONDITION NO. 4.

The recorded document(s) shall include legal descriptions and graphic depictions, prepared by a licensed surveyor, of both the entire project site and the area of the offered easement. The offer

shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

### **3. CONSTRUCTION OF PUBLIC ACCESSWAY ALONG LA RAMBLA**

As proposed by the applicant, a minimum 4 foot wide sidewalk shall be constructed and made available for public access along the subject lots boundary with La Rambla, within the La Rambla public right-of-way.

### **4. PUBLIC ACCESSWAY MANAGEMENT AND MAINTENANCE PROGRAM**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall provide for the review and approval of the Executive Director, a Management and Maintenance Program for the proposed public accessway. The final program shall include the following:
- (1) **IDENTIFY ALL ENTITIES RESPONSIBLE FOR MANAGEMENT AND MAINTENANCE.** In general, the owner of the land shall maintain the public access areas until such time as any easement required to be offered by this permit is accepted. Where an easement is accepted by an entity in accordance with the terms and conditions of this permit, the holder of the easement shall be responsible for management and maintenance of the facilities within the easement unless the arrangements between the original landowner and the easement holder dictate that the original landowner shall retain all or part of said management and maintenance responsibility. All management and maintenance shall occur in accordance with the approved Management and Maintenance Program.
  - (2) **IDENTIFICATION OF MANAGEMENT AND MAINTENANCE ACTIVITIES AND ASSOCIATED FUNDING PROGRAM.** The Management and Maintenance Program shall include identification of management and maintenance activities including a funding program that will provide for the actual cost of maintenance and periodic repair and replacement of the public access walkways and associated appurtenances including, but not limited to, surfaces, landscaping (if any), and signage.
- B.** The permittee shall undertake development in accordance with the approved final program. Any proposed changes to the approved final program shall be reported to the Executive Director. No changes to the approved final program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## **5. CONSTRUCTION/DEVELOPMENT PHASING**

Construction of the public accessway improvements approved by the Executive Director pursuant to Special Condition 1 shall be phased so that they are open and available to the public prior to or concurrent with initial occupation of the residence approved by this coastal development permit.

## **6. MEMORANDUM OF UNDERSTANDING - OFFSITE ACCESS AND DEVELOPMENT PHASING**

PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall enter into an agreement (herein "Agreement") with the Commission and the landowners(s) (herein "Landowner(s)") of Lots 6, 7, 8, 9, 10, and 11 of Tract 4947 (herein "the Lots") regarding the applicant's and the Landowner(s)' provision of public pedestrian access and visual access upon and/or over Lot 5 and the Lots in conjunction with a comprehensive development proposal of the Lots. This Agreement shall include the following provisions: 1) the Landowner(s) shall agree to provide at least one public viewpoint from the bluff top within Lot 9, providing views to and along the beach and ocean, with public access thereto; 2) the Landowner(s) and applicant shall agree to provide one or two continuous public pedestrian accessways to the beach, which shall include at least one public accessway from La Rambla, along an improved easement upon Lots 5, 6, 7, 8, 10 and 11, immediately adjacent to the existing sidewalk on Boca del Canon, to a public beach access across Lot 11; and if determined to be feasible, one additional public accessway from La Rambla to the bluff top and down to the beach, which accessway cannot interfere with or impact the feasibility of development of such lots; 3) prior to any development on the Lots, the viewpoint and accessways shall be offered and/or dedicated to a public entity or non-profit entity approved by the Executive Director of the Commission; 4) the Landowner(s) and/or applicants shall agree to construct all improvements necessary to make the viewpoint and accessways on the Lots safely usable by the public prior to or concurrent with development of the Lots; 5) the Agreement shall be binding on the applicants and all successors and assigns of each and every Landowner(s) of the Lots; 6) the Agreement shall be disclosed in any real estate transaction involving the Lots and Lot 5 with any future Landowner(s); 7) the Landowner(s) must obtain all necessary regulatory permits and approvals, including but not limited to a coastal development permit prior to commencement of any development upon the Lots; 8) the Lots shall be developed in a comprehensive manner involving all of the Lots as part of a single application for a coastal development permit for future development thereof; and 9) until a comprehensive plan for the viewpoint, accessways and development is implemented on the Lots the applicants and Landowner(s) and any successors and assigns shall not interfere with any existing public use of the Lots. Subject to applicable coastal development permit requirements, the applicants and/or Landowner(s) may take reasonable steps to prevent any dangerous conditions on the lots, the exposure to which could foreseeably result in Landowner third party liability.

## **7. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS**

- A. All final design and construction plans, including foundations, grading and drainage plans shall be consistent with all recommendations contained in *Geotechnical Grading Plan Review Report for Lot 5 of Tract 4947, Boca Del Canon, City of San Clemente, California* prepared by Lawson & Associates Geotechnical Consulting, Inc. dated February 10, 2006. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 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 legally required.

**8. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY**

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from landslide, erosion, and earth movement; (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.

**9. LOCATION OF DEBRIS DISPOSAL SITE**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed development. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

**10. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS**

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;

- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

## **11. FUTURE DEVELOPMENT**

This permit is only for the development described in Coastal Development Permit No. 5-07-070. 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 entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities 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. 5-07-070 from the Commission or shall require an additional coastal development permit from the Commission.

## **12. FINAL 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) sets of a final revised landscaping plan prepared by an appropriately licensed professional which demonstrates the following:
  - (a) All areas affected by construction activities not occupied by structural development shall be re-vegetated for habitat enhancement and erosion control purposes;
  - (b) 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 affected by construction activities that doesn't meet all of the requirements in this special condition shall be removed;
  - (c) Landscaped areas shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas, all landscaping shall consist of drought tolerant plants, non-invasive plants, preferably native to coastal Orange County and appropriate to the habitat type. Invasive, non-native plant species that tend to supplant native species shall not be used;
  - (d) All planting will be completed within 60 days after completion of construction;
  - (e) No permanent in-ground irrigation systems shall be installed on the site. Temporary above ground irrigation is allowed to establish plantings.
  - (f) 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 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 legally required.

### **13. ORANGE COUNTY FIRE AUTHORITY APPROVAL**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide to the Executive Director a copy of a permit issued by the Orange County Fire Authority (OCFA) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the OCFA. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

### **14. GENERIC 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(s) 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.

## **II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION, LOCATION AND BACKGROUND**

The subject site is located at 317 La Rambla, in the City of San Clemente, Orange County (Exhibits 1 & 2). The subject lot is roughly rectangular (6,890 square feet) and is designated for residential use ("RL" (4.5 units/gross acre)) in the certified Land Use Plan. The lot is located southwesterly of the intersection of La Rambla street and Boca del Canon street. La Rambla follows the northerly and westerly boundaries of the lot, and Boca del Canon runs along the easterly property boundary. The lot contains a relatively level pad that drops off to the east toward Boca del Canon.

The proposed project is the construction of a 4,468 square foot single family residence, plus 750 square foot attached garage (5,218 square feet total). The structure will have two floors, one of which will be a partial basement. The maximum height of the structure will be 26 feet; however as viewed from the centerline of the portion of La Rambla that fronts the property, the structure would be 14 feet high above existing (natural) grade, and 14'7" as viewed from the road centerline. Both

floors would be visible when viewing the site from Boca Del Canon and vantages along La Rambla as one approaches the property. According to the precise grading plan, 1,040 cubic yards of excavation are required for the basement level, plus an additional 300 cubic yards of grading to accommodate other construction requirements; 100 cubic yards of fill is proposed, with the remainder to be exported off site.

1. History of Land Division and Ownership

The subject site is one of 9 vacant lots located at the mouth of Toledo Canyon along coastal bluffs in the southerly area of the City of San Clemente. All of these lots were once part of Tract No. 822 that was filed with the County in 1927. The subject site appears to have been a portion of Lot No.s 27 and 28 of Tract No. 822. These lots (27 and 28) were further divided with the filing of Tract No. 4947 (discussed below). Lot No. 29 and a remainder portion of Lot No. 28 of Tract No. 822 were once each developed with single-family residences that were destroyed in a landslide in 1966 and have remained vacant since that time.

Seven (7) of the nine vacant lots (Lot No.'s 5 through 11), including the subject site (Lot No. 5), were identified on Tract No. 4947 filed with the County in 1963 (a subdivision with 26 numbered lots), and have remained vacant since the filing of the map. These lots (along with title to the private road Boca del Canon) were held in common ownership by Olga C. Tafe and/or her husband Theodore Tafe from prior to the 1963 subdivision until 2002, when they were transferred together to Theodore Tafe, as trustee of a 1973 trust. Theodore Tafe subsequently transferred them, again as single block, to Boca del Canon LLC in 2005. In April 2006, Boca del Canon LLC simultaneously transferred Lot No.s 6 through 11 to six differently named limited liability companies (LLCs). Boca del Canon LLC retained Lot No. 5 (the subject lot) and title to the private road that bears its name. In January 2007, a grant deed was recorded which transferred Lot No. 5 to the applicants, Earnest F. Alvarez, Jr. and Paulette M. Alvarez.

2. History of Effort to Create Public Park

There is at least one written proposal, *La Rambla Park - A Proposal for Coastal Public Access in the City of San Clemente* (by Derehajlo et. al.), for a park design that would include the entire nine-lot area. The proposal is for a view park with parking, trails and native landscaping. In this design, the subject site, Lot No. 5, would have a small parking lot for the proposed park, a trail head, and landscaping.

In the late 1980's a group of local citizens approached the City of San Clemente regarding the purchase of at least three bluff top lots within the nine-lot area that includes the subject site for park purposes. Funding difficulties at the time prevented such acquisition from occurring. However, the City expressed interest in the park concept provided a source of funding could be identified. More recently, in a letter dated May 9, 2007, from the City of San Clemente, the City indicates that current zoning (Residential Low Density) does not allow development of a park on the property.

3. Prior Recent Commission Actions

On August 8, 2006, the Commission approved Coastal Development Permit 5-05-412 for the removal of an existing mechanized vehicular gate and construction of a new gate across the privately owned Boca del Canon street at the entrance to the La Ladera private neighborhood, between 311 La Rambla and 317 La Rambla (the subject site). The Commission imposed five (5) special conditions, which require: 1) submittal of revised plans showing reduction in project scope; 2) submittal of a signage plan; 3) that future development obtain Commission approval; 4)

recording of a deed restriction; and 5) clarifying that the Commission's approval of the project does not constitute a waiver of any public rights that may exist on the property. The sidewalks and gutters are currently unobstructed and are proposed to remain unobstructed such that the existing pedestrian access currently in use would remain available. However, the applicant did not offer to formalize the existing access (i.e. through dedication or other legal instrument). In addition, the Commission did not identify sufficient nexus between the limited gate project and public pedestrian access to mandate formalized public access over the privately owned street (Boca del Canon), in part, due to insufficient information regarding the nature of the existing public access.

Since the Commission's action, a prescriptive rights survey has been initiated that includes Boca del Canon and the nine vacant lots between this road and the beach. Survey submissions to date provide a strong indication of continuous public use of Boca del Canon and the other nine lots over the last several decades to gain physical access to the beach and visual access to the ocean. Thus there is strong evidence that a public right of access acquired through use has developed (i.e. that an implied dedication has occurred).

## **B. PUBLIC ACCESS**

Section 4 of Article X of the California Constitution states, in part:

*No individual, partnership, or corporation, claiming or possessing the frontage...of a...navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose...; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.*

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states,

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 of the Coastal Act states, in pertinent part,

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

*(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*

*(2) adequate access exists nearby, or,*

*(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

San Clemente Land Use Plan, Section 295, describes access in the subject area as follows:

*Access Point 11: La Boca del Canon*

*This private access is reached by either Avenida Presidio or El Camino Real exits from the I-5 Freeway. It is located on La Boca del Canon, a private residential street which connects to West Paseo de Cristobal. The beach is reached by crossing the railroad track via two at-grade locations.*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), states:

*IX.4 The maintenance and enhancement of public non vehicular access to the shoreline shall be of primary importance when evaluating any future public or private improvements in the Coastal Zone.*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.12, states:

*A resting/viewplace should be provided at appropriate accessways near the inland entry point. Such facilities would be of benefit to older people or others who would find negotiating steep accessways tiring, and would capitalize on the panoramic coastal views available from the bluff edges.*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.15, states, in part:

*New developments lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline.*

*a. Any new development proposed by the private communities listed below shall be required to provide an irrevocable offer of dedication of an easement to allow public vertical access to the mean high tide line....The access easement shall measure at least 10 feet wide. Development permits will require public vertical access for new development at the following private communities: ...La Ladera (La Boca del Canon)*

*b...*

San Clemente Land Use Plan, Section 303 B (Coastal Access Policies), Policy IX.17, states, in part:

*For the purpose of determining when a project is required to provide access, the following shall be considered:*

*a. ...*

*b. The provision and protection of public access to the shoreline can be considered a "legitimate governmental interest." If the specific development project places a burden on this interest, then the City may have grounds to deny the development or impose conditions on the development to alleviate the burden.*

*The following questions should be addressed to determine whether or not a development project places a burden on public access which would justify either requiring the dedication of public access or recommending denial of the project:*

1...

2. *Does the project interfere with public access rights that have been "acquired through use"?*

*Example - Is there reasonable evidence that the project may block a prescriptive easement?*

*If there is evidence of a prescriptive easement, then the City may recommend postponing the project until the landowner establishes clear title. If a prescriptive easement exists, then the City may deny the project or require that the project be modified to preserve the access easement.*

3...

4...

5...

6...

Assuring public access to the shoreline, including the protection of existing public access, is one of the strongest mandates of the Coastal Act. Section 30604(c) of the Coastal Act requires that any approval of a permit application for development between the nearest public road and the shoreline of any body of water within the coastal zone shall include a finding that the project is consistent with the public access and recreation policies of the Coastal Act, even in an area with a certified LCP. The proposed development is located between the first public road and the sea at the convergence of a coastal bluff and coastal canyon inland of the beach, bluff face and Orange County Transit Authority (OCTA) railroad tracks.

The subject site (Lot No. 5) and surrounding vacant lots, as well as the privately owned and gated (to vehicles) street, Boca del Canon, appear to have been used extensively for at least the past several decades, and continue to be used today, by the public as informal modes of vertical access to the adjacent bluff top, beaches and ocean below. There are several pathways across these lots that offer different modes of access. For example, the informal footpath that crosses the subject site leads to a bluff top view point of the beaches and ocean as well as to a network of other footpaths that eventually lead down the bluff to the beach and ocean. There are presently no physical obstructions to individuals using these footpaths. Signs were recently posted indicating 'no trespassing', although those signs have not been permitted by the Commission. Another mode of access is to utilize the existing paved gated street (Boca del Canon) and narrow sidewalks that descend from La Rambla down a steep incline to an informal footpath that crosses Lot No. 11 to the beach. Individuals using the road must navigate around the existing vehicular gate at the entryway to the street to utilize this access. The route down Boca del Canon and the dirt path that crosses Lot No. 11 is listed as a secondary access point in the City's certified Land Use Plan, but identifies this as a 'private access'. None of these informally used modes of access have been secured for public use through any formal means such as a written declaration of public rights or a judicial determination of an implied dedication for public use.

The preservation of these accessways is important due to their historical use, as well as their future use as a means of connecting to the San Clemente Coastal Trail. The San Clemente Coastal Trail (approved by the Commission April 2004 and currently under construction) is a three-

mile long pedestrian accessway that passes in front (seaward) of the La Ladera private neighborhood. The footpaths described above would provide direct access from inland areas to the Coastal Trail. For these reasons, and because of the statutory mandates listed above, the goal in this circumstance must be to—at minimum—protect the existing access and prohibit development that would increasingly privatize the area.

The nearest formal vertical coastal access available is approximately 1/2 mile upcoast of the subject site via the T-Street public access point (Exhibit 7). The T-Street public access point is an enclosed pedestrian overpass leading from Paseo de Cristobal to the beach below. Lateral access along the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. There is another formal access point approximately 3/4 mile downcoast of the subject site, known as Lost Winds, which is accessible from Calle de Los Alamos. However, this accessway is described in the City's LUP as being within a residential area that is more difficult for non-residents to find.

In order to more fully investigate potential public use of the subject site, Commission staff distributed a "Prescriptive Rights Study Public Use Questionnaire and Declaration" to City staff in the Planning Division, the San Clemente Sun Post News, the South Orange County Chapter of the Surfrider Foundation, and members of the public who requested the form, among others. The questionnaire and accompanying documents were also posted on the Coastal Commission's website at <http://www.coastal.ca.gov/access/BocadelCanon.pdf>. (A summary of results submitted to date are included as Exhibits 8a to 8c.) The Sun Post News printed a brief write-up on August 3, 2006 informing readers of the prescriptive rights analysis underway.

In order to approve the proposed project, the Commission would have to find the project, as submitted or as the Commission would condition it, to be consistent with the policies of Chapter 3 of the Coastal Act, including the public access policies outlined in Sections 30211 and 30212 listed above.

1. Consistency with Section 30211

Section 30211 states, in part, that "*development shall not interfere with the public's right of access to the sea where acquired through use.*" Applicants for coastal development permits must demonstrate that the proposed development is consistent with the Coastal Act, including the requirements of Section 30211. In implementing this section of the Act, the permitting agency, in this case the Commission, must consider whether a proposed development will interfere with public access to an area used by the public for access to the sea. If the agency finds that there may be such an interference, then it also must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use. Because the authority to make the final determination on whether such a dedication has taken place resides with the courts, both the Commission's Legal Division and the Attorney General's Office have recommended that agencies dealing with implied dedication issues should use the same analysis as the courts. Essentially, this requires the agencies to consider whether there is substantial evidence indicating that the basic elements of implied dedication have been met.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period," before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages “absentee landlords” and prevents a landowner from a long-delayed assertion of rights. The rule relates to the statute of limitation after which the owner cannot assert normal full ownership rights to terminate an adverse use. In California, the statute of limitation, and thus the prescriptive period, is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a) The public has used the land for a period of five years or more as if it were public land;
- b) Without asking for or receiving permission from the owner;
- c) With the actual or presumed knowledge of the owner;
- d) Without significant objection or bona fide attempts by the owner to prevent or halt the use, and
- e) The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with Section 30211, the Commission cannot determine conclusively whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public’s right of access to the sea where acquired through use or legislative authorization. As a result, the Commission must review the available evidence and make its own assessment of whether there is substantial evidence of such use. Where there is substantial evidence that such use has occurred, and thus that such public rights exist, the Commission must ensure that proposed development would not interfere with any such rights.

An exception to the need to assess the evidence of an implied dedication exists when an applicant proposes public access as part of the project. If the applicant were to propose public access, the Commission could evaluate the extent to which the proposed public access elements are equivalent in time, place and manner to any public rights that *may* exist. To the extent any proposed dedication of access is equivalent, proposed development is considered not to interfere with any existing public access rights.

a. Potential for Development to Interfere with Public’s Access to Sea Across this Lot

As described previously, the applicant’s proposed project involves the construction of a new two-story single-family residence with attached garage and associated landscaping and hardscape. The proposed structure would be sited on a vacant lot, which members of the public contend has been used for coastal access. The Commission has received 171 responses to its prescriptive rights questionnaire, which reveal that the property has been used by a wide variety of people, both local and from far away, for many years as if the land were public land. As depicted on many of the questionnaires returned, the lot has typically been crossed beginning from the northeasterly corner of the lot and subsequently across the lot via an alignment that roughly bisects the property lengthwise. A review of available photographs also shows a path crossing the lot in this manner. Construction of a house on the lot would obstruct this access across the site.

b. Provision of Public Access Equivalent in Time, Place and Manner

As noted previously, where there is substantial evidence of the existence of a public access right acquired through use, and a proposed development would interfere with that right, which is the situation presented here, the Commission may deny a permit application under Public Resources Code Section 30211. However, the Commission could also consider alternatives that would preclude the interference or adverse effect through modification or relocation of the development and/or an offer of public access that is equivalent in time, place and manner.

As described above, the public currently obtains access to an informal bluff top viewpoint and the beach by crossing, generally diagonally, across the project site, and then continuing on footpaths toward the viewpoint and beach access that are located on the lots seaward of the subject site along and at the end of La Rambla. The public also obtains access to the beach by walking along the perimeter of the property along Boca del Canon (the private street), continuing down along Boca del Canon which descends to beach level, and then across an informal footpath over Lot 11, Tract 4947, to the beach.

The applicant's proposed project would construct a home with appurtenances that would obstruct the access across the lot. The applicant is proposing to provide alternative access in two ways. The first involves construction of a sidewalk within the public right of way of La Rambla along the perimeter of the subject site (Lot 5). As contemplated by the applicant for development on the adjacent lot, Lot 6, that sidewalk would continue along Lot 6 toward the ocean and ultimately connect with the informal footpaths that lead out to the bluff top viewpoint and down to the beach. Thus, the public would still be able to gain access to the viewpoint and beach, although via a different alignment than is presently used. Special Condition 3 requires the applicant to implement the proposed access.

The applicant is also offering to dedicate a 2 foot wide easement with sidewalk within Lot 5 extending from the La Rambla public right of way along Lot 5's perimeter with Boca del Canon to Lot 5's boundary with Lot 6. This easement would connect with a similar easement proposed on Lot 6 under a separate permit application. Until similar easements are provided on Lots 7, 8, 10 and 11, individuals will need to step back onto Boca del Canon to continue their walk to the beach.

The applicant's proposal for a 2 foot wide easement is a positive stride toward providing access the Commission could consider to be equivalent in time, place and manner to the existing access. However, in order to find that public access easement to be fully equivalent, the easement must be wide enough to construct a typical 4 foot wide sidewalk, with sufficient space (i.e. another foot) outside of the walkway to place any fencing, signs, trash receptacles or other appurtenances to make the accessway useful to the public. The applicant has suggested that the proposed 2 foot wide easement with sidewalk would be placed along an existing 2 foot wide sidewalk that presently exists within the privately owned street parcel for Boca del Canon. The applicant has suggested that pairing that existing sidewalk with the proposed sidewalk will create a sidewalk of sufficient width for use by the general public. While the Commission agrees that a 4 foot wide sidewalk would be adequate in this case, the public access easement must extend over the entire width of the sidewalk, plus additional space as noted above. Therefore, in order for the Commission to find the formalized access to be equivalent to existing access, the Commission requires that the easement be at least 5 feet wide. The goal is to create a 5 foot wide easement with minimum 4 foot wide sidewalk that is legally secured for use by the public. If the applicant can obtain the permission of the owners of the street parcel for Boca del Canon to extend the public access easement over the existing narrow sidewalk that is located in that parcel, the Commission would find the applicant's proposal acceptable. However, if the applicant cannot obtain such permission from the adjacent landowner, then, the applicant must provide the full 5 foot wide easement, with 4 foot wide sidewalk, on their own land. The easement must also align with the easement on Lot 6 contemplated under a separate application. Minor adjustment to the connection points of the easements may be considered by the Executive Director in order to assure a continuous 5 foot wide corridor.

Uses that would be allowable in the 5 foot wide access corridor include grading and construction necessary to construct the public access walkway and appurtenances (e.g. signs, benches, trash receptacles) in accordance with the final plans approved by the Executive Director pursuant to

SPECIAL CONDITION NO. 1, underground utilities to serve the proposed development on the subject lot in accordance with the final plans approved by the Executive Director pursuant to SPECIAL CONDITION NO. 1, vegetation removal and planting in accordance with the final landscape plan approved by the Executive Director pursuant to SPECIAL CONDITION NO. 12, construction of drainage devices in accordance with the final plans approved by the Executive Director pursuant to SPECIAL CONDITION NO. 1, and maintenance and repair of the approved development within the easement as identified in the Management and Maintenance Program approved by the Executive Director pursuant to SPECIAL CONDITION NO. 4. As proposed, there is development within the 5 foot wide corridor on the subject site that would be inconsistent with the list above and the provision of public access, such as but not limited to walls, stairs, a sign, and certain landscaping (trees, shrubs) that will need to be removed from the access corridor. Therefore the Commission imposes Special Condition 1.

Since the applicant is proposing alternative access in lieu of preserving existing access, the landowner(s) must maintain the easement such that the easement and its physical improvements are safe to use by the general public. Therefore, Special Condition 2 requires the landowner(s) to maintain the easement area in accordance with a Management and Maintenance Program that is to be submitted by the applicant for approval by the Executive Director in accordance with SPECIAL CONDITION NO. 4. Special Condition 2 allows the easement holder to take responsibility for such maintenance if the easement holder so chooses.

Furthermore, the site is visually prominent as one approaches the bluffs from inland public streets. Presently, an individual walking from West Paseo de Cristobal toward the site along La Rambla street sees an existing vehicular gate at the head of Boca del Canon street, which is the entryway to the La Ladera residential community. The subject site is located to the right side of the gated entry. The existing gate is a visual deterrent to public access. However, the individual approaching the site can see across the subject lot toward the bluffs and ocean beyond. In the current condition, there are clear visual cues available to guide individuals across the subject lot toward the bluffs and beach access beyond. Any alternative access proposed would need to address this issue as well.

Presently, there is a clear visual connection from La Rambla to the bluff top and ocean beyond. Upon construction of the proposed residence, that visual connection will be significantly diminished because the second floor of the residence will obstruct views across the site toward the bluff top and ocean. Without that visual connection, the public will not be aware of the view point and beach access available. Ideally, the project would be designed to preserve this visual connection. In the absence of that visual connection, signs are necessary to inform the public of the access and view opportunities available and instruct them on how to gain such access. Therefore, the Commission imposes Special Condition 1 which requires the applicant to prepare a public access sign plan. Signs shall invite and encourage public use of access opportunities and shall identify and direct the public to their locations.

The proposed project will result in a temporary interruption of public access during construction of the residence and the public accessways. However, that access must be restored prior to or concurrent with the occupation of the approved residence. Therefore, the Commission imposes Special Condition 5.

Development of the subject site will limit future access options over Lot 5 to the alignments the applicant is currently proposing. When considering development of the subject site, the Commission must also consider whether the access being offered will provide meaningful connection to accessways located off site. The provision of such access and the means of doing

so are primary considerations. Securing agreement from those off-site property owners that appropriate physical and visual access will be provided and documented through a memorandum of understanding (MOU), is a significant step in the direction the Commission wishes to take. However, the means of providing the access remains uncertain. There are significant geologic constraints upon the lots located seaward of the subject lot, Lot 5, and the adjacent lot, Lot 6. It is unclear at this time whether development of those other lots can be found consistent with the Coastal Act. Without the opportunity to comprehensively review a development plan for all of the lots, it is difficult to predict precisely how physical and visual access would be provided on those lots in a fashion that is consistent with the Coastal Act and can be reached via the proposed access across the subject lot. Piecemeal consideration of each of the lots would further confound the difficulties. However, the MOU to memorialize the alternative access offered by the applicant indicates an agreement that access will be provided and that a comprehensive, rather than piecemeal, plan would be presented to the Commission for consideration in the future.

The requirement for a MOU is identified in Special Condition 6. Parties to the MOU must include the applicant, the landowners of Lots 6, 7, 8, 9, 10 and 11 of Tract 4947, and the Commission. All of these lot owners must be involved because development of a comprehensive access plan, including visual access, will involve access and/or a viewpoint across or upon those lots. A conceptual access plan was presented by the applicant on a graphic attached as Exhibit 9. The MOU essentially envisions the conceptual access plan being carried out. However, the ultimate access alignments and the location of the viewpoint need to be decided upon at the time a comprehensive plan for the lots is considered. The MOU requires the landowner(s) and/or applicants shall agree to construct all improvements necessary to make the viewpoint and accessways on the Lots safely usable by the public prior to or concurrent with development of the Lots. Since the proposed project will interfere with views across the subject site toward the viewpoint and access beyond (i.e. visual access), the acknowledgement in the MOU that a viewpoint must be included is critical to the Commission allowing the second story that obstructs the existing view, and finding that visual access to the shoreline will continue to be provided. The MOU also contains certain assurances about proceeding with a comprehensive -instead of piecemeal- development plan, non-interference with existing public access until development is implemented, and an allowance that reasonable steps can be taken to prevent dangerous conditions on the property. Any such steps that constitute 'development' under the Coastal Act must obtain a coastal development permit and such steps cannot interfere with public access (e.g. no fencing that would interfere with public access would be allowed).

As conditioned, the Commission finds the proposed project will provide access that is equivalent in time, place and manner to the existing access.

## 2. Analysis of Project with regard to Section 30212

Section 30212 of the Coastal Act states that public access from the nearest public roadway to the shoreline and along the coast must be provided in conjunction with new development projects except where 1) it would be inconsistent with the protection of fragile coastal resources or 2) adequate access exists nearby. The Commission notes that Section 30212 is a separate section of the Act from Section 30211, the policy which states that development shall not interfere with the public's right of access to the sea where acquired through use. The limitation on the requirement for the provision of new access imposed by Section 30212 does not pertain to Section 30211. Even if public prescriptive rights of access have accrued over trails in areas near other public access, so that one could argue that preservation of those trails would be duplicative, Section 30211 requires that development not be allowed to interfere with those rights. As such, the presence of formal public access in the vicinity of the subject site would not preclude the potential for public rights on the subject site requiring Commission protection. The analysis regarding the existence of adequate alternative public access is only relevant in the context of assessing the proposed project's consistency with Section 30212.

In this case, the nearest formal vertical coastal access available is approximately 1/2 mile upcoast of the subject site via the T-Street public access point (Exhibit 7). The T-Street public access point is an enclosed pedestrian overpass with stairs leading from Paseo de Cristobal to the beach below. Lateral access along the Pacific Ocean and sandy beach is available adjacent to the T-Street access point, seaward of the OCTA railroad tracks. There is another formal access point approximately 3/4 mile downcoast of the subject site, known as Lost Winds, that provides access to the beach from Calle de Los Alamos via a steep stairway. This accessway is described in the City's LUP as being within a residential area that is more difficult for non-residents to find. Both accessways contain stairways that are more difficult to use by those of limited mobility.

According to the City's certified Land Use Plan, the subject site is located within an area of the City that individuals tend to prefer for beach access due to the presence of support facilities and more direct accessibility from major transportation routes than other areas within the City. The subject site is accessible from Paseo de Cristobal, which is one of a few streets that provide easy accessibility to the beach from the El Camino Real/Interstate 5 freeway exits. Clearly, adequate formalized public access does not exist to serve existing recreational demand, as evidenced by the significant informal use of the site for access. In this case, and particularly where there is substantial evidence of an implied dedication over the subject lot, Section 30212 requires that access across the lot be provided in connection with the new development. Since the proposed project offers such access, as conditioned, the proposed project can be found consistent with Section 30212 of the Coastal Act.

## 3. Response to Applicant/Agent Letter Circa February 2007

The applicant's attorney submitted a letter dated February 22, 2007 (Resubmittal of Application...)(Exhibit 11) which asserts that existing public beach access exists nearby the site, thus, access over the subject lot is not necessary. The access cited by the applicant is a storm drain easement present between Lots 17 and 18 that extends from Boca del Canon to the seaward side of Lots 17 and 18. The applicant indicates that this 'accessway' is identified in the San Clemente Land Use Plan (see Exhibit 7) as Access Point 11. However, although there appears to be a photograph of the gated utility easement, careful examination of the map depicted on Figure 2-16 in San Clemente Land Use Plan reveals that Access Point 11 crosses Lot No. 11, not between Lots 17 and 18 which are located further downcoast. That same map does show the storm drain easement, but it does not identify the storm drain easement as an access point.

Furthermore, the only right secured with the utility easement is the right of the public utility to install and maintain the utility – there is no specific right of access granted to the public to use this easement to pass and re-pass for the purpose of accessing the beach. In addition, the public can only gain access to this area from La Rambla via the privately owned and gated street, Boca del Canon, over which there is no secured public access easement.

The informal access across Lot No. 11, known in the LUP as Access Point 11, is a pathway over the southerly portion of that lot which provides a connection from the network of informal paths on the various vacant lots to the beach and ocean seaward of Lot No. 11, as well as a connection from Boca del Canon to the beach and ocean. The public may have acquired a right of access over Lot No. 11 through use, however, there is presently no legally secured public access rights to and across Lot No. 11. With regard to Lot No. 11, the February 22, 2007 letter states "...this will confirm that ... Carl Grewe (owner of Lot No. 11) will be present at the Commission hearing on the subject application, and will testify and/or provide an affidavit that the proposed public access easements across Lot Nos. ... 11 will be offered in conjunction with the approval of the CDP applications for Lot... No. 11."

#### 4. Conclusion

As discussed previously, the Commission cannot approve development that is inconsistent with the public access policies of the Coastal Act. Substantial evidence has been presented to indicate that prescriptive rights of access to the ocean have been acquired at this site and would be adversely impacted by the proposed development at this location. As conditioned, development at the subject site would not interfere with the public's right of access over this site. Therefore, the Commission hereby finds the proposed project consist with Section 30211 and 30212 of the Coastal Act.

### C. GEOLOGY/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 upon property near coastal bluffs is inherently hazardous. Development that requires a bluff or shoreline protective device or that may require one in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, natural landforms, and shoreline processes.

The subject site is an inland site located along a steep slope approximately 15 feet high that descends in an easterly direction to the street Boca Del Canon, which runs along the bottom of a coastal canyon. The majority of the site is flat, having been raised by the addition of a large wedge of artificial fill to the level of the street, La Rambla, which borders the north and west sides of the site. The fill is underlain by marine terrace deposits, and the bedrock is the Capistrano Formation.

There is a large landslide in close proximity to this site. In May of 1966 a large block slid on a clay seam in the Capistrano Formation approximately 52 feet below the ground surface, destroying several houses which were located on the west-facing coastal bluffs southwest of the subject site. According to the 10 February 2006 Lawson and Associates geotechnical report entitled "Geotechnical Grading Plan Review Report for Lot 5 of Tract 4947, Boca Del Canon, City of San Clemente, California," the headscarp of this landslide lies 128 feet south of the subject site. The subject site was not involved in the landslide. Although redevelopment of many of the lots that were affected by the landslide may be problematic from a geologic and Coastal Act perspective, the subject site presents fewer difficulties and is probably the easiest lot in the subdivision to develop from a geologic point of view.

The proposed development consists of a two story house, with the lowest story fronting on Boca del Canon and being excavated below the grade of La Rambla. The large wedge of artificial fill will be removed to make room for this story. Since the artificial fill is undocumented and may not have been properly compacted, there will be additional excavation below the finished grade in order to completely remove the artificial fill and recompact it to establish a safe pad to support the foundations. Excavations will be as great as 16 feet below the current ground surface.

The excavations associated with the development will need to be maintained in a safe condition by a temporary shoring system during construction. Specifications for the shoring system are presented in the 10 February 2006 Lawson and Associates report, and structural calculations have been prepared to these specifications and reviewed by the City. The finished development will consist of combined retaining walls/basement walls to support the western side of the site and La Rambla.

Because it is not clear what future development may take place off-site to the south, and to isolate the site from potential future slope movement should the buttressing effect of the landslide mass be removed through erosion, a row of caissons or a retaining wall will be constructed along the southern property boundary.

The site is not subject to wave run-up or to the direct effects of coastal erosion. No known faults traverse the site, and seismic design criteria are provided in the 10 February 2006 Lawson and Associates report. The Commission's staff geologist has reviewed the submitted information and visited the site, and concurs that the proposed development would 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 as required by Section 30253 of the Coastal Act.

#### 1. Conformance with Geotechnical Recommendations

The geologic consultant has found that the subject site is suitable for the proposed development provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in design and construction of the project. Adherence to the recommendations contained in the above-mentioned geotechnical investigations is necessary to ensure that the proposed project assures stability and structural integrity, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. Therefore, Special Condition 7 requires that the applicant conform to the geotechnical recommendations in the above mentioned geotechnical investigation.

## 2. Assumption of Risk

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. The site is adjacent to a significant landslide hazard. Given that the applicants have chosen to implement the project despite potential risks from erosion, landslides and earth movement, the applicants must assume the risks. Therefore, the Commission imposes Special Condition 8, requiring the applicants to assume the risk of the development. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

## 3. Future Development

In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability, the Commission imposes **Special Condition 11**. This condition informs the applicant that future development at the site requires an amendment to this permit or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping and fencing.

## 4. Landscaping

Because of the hazards known to be present, the Commission requires a special condition regarding the types of vegetation to be planted. The installation of in-ground irrigation systems, inadequate drainage, and landscaping that requires intensive watering are potential contributors to accelerated weakening of some geologic formations; increasing the lubrication along geologic contacts and increasing the possibility of failure, landslides, and sloughing. Use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation in nearby Toledo Canyon. Invasive plants are generally those identified by the California Invasive Plant Council ([www.cal-ipc.org](http://www.cal-ipc.org)) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications.

All 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>.

Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings encourage root penetration which increases bluff stability. Therefore, the Commission imposes Special Condition 12, which requires that prior to the issuance of this permit, the applicant shall prepare a revised 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 revised landscaping plan consistent with the requirements in the special condition shall be prepared by a licensed landscape architect. As

conditioned, to minimize infiltration of water, the development will be consistent with Section 30253 of the Coastal Act.

Therefore, as conditioned, the Commission finds the proposed development will be consistent with Section 30253 of the Coastal Act.

**D. PUBLIC VIEWS**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

San Clemente Land Use Plan, Section 305 A (Coastal Visual Resources Goals and Policies), Policy XII.9, states:

*Promote the preservation of significant public view corridors to the ocean.*

The subject site is located seaward of the first public road. Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be considered and protected. Consequently, impacts that the proposed project may have on existing public views must be considered.

As noted previously, the subject site is located prominently in the viewshed toward the beach, ocean, and bluffs. Public views across the site and to the sea currently exist from a public roadway. As shown in Exhibit 5, there is a blue water view available across the property. The proposed project would place a structure that is approximately 14 feet tall above the centerline of La Rambla within this existing view corridor. As a result, some blue-water views presently available would be entirely blocked with the construction of the proposed residence. Such view blockage raises an issue as to the proposed project's consistency with Section 30251 of the Coastal Act which requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas.

A letter dated February 22, 2007 from the applicant's attorney (herein 'June 22nd letter') suggests that the view obstructions noted by staff have been overstated. The applicant contends that existing views across the site were virtually non-existent prior to the removal of vegetation on the lot which occurred in April 2006. The Commission's records indicate that the vegetation removal was undertaken at the direction of the local fire authority as that vegetation was considered a fire hazard and a nuisance that needed to be abated. The applicant provides several photographs of the site which depict the vegetated condition of the site at that time to demonstrate their point that views were more limited than they presently are (see Exhibit 10, page 9). However, one of the photographs provided by the applicant also shows that the view corridor depicted on Exhibit 5 (page 2 of 2), remained free of vegetation even at the time the site was vegetated. Thus, that view was not obstructed at the time the site was more extensively vegetated, whereas, the proposed project would obstruct that view.

A smaller residence with smaller garage could be designed as a single story structure with flat roof, partially recessed below ground in the same approximate fashion as the first floor/basement of the proposed residence. Based on the current design, this would provide for at least 1,200 square feet of living space plus 750 square feet of garage/storage. The amount of living space could increase with a smaller quantity of area devoted to garage/storage.

A smaller residence would be more consistent with the character of surrounding areas. According to the application submitted, the subject lot is 6,890 square feet (whereas data available from the County Assessor records provided to the Commission from RealQuest.com indicate the parcel is 7,920 square feet). According to statistics available to the Commission from RealQuest.com, there are at least fifty comparably sized lots (7,920 square feet +/- 15%) within 1/2 mile of the subject site. Other developed lots in the vicinity of the subject vacant lot contain residences that range in size from 987 square feet to 3,000 square feet, with the average being 1,835 square feet. The proposed residence would have 4,468 square feet of living space, plus a 750 square foot attached garage (5,218 square feet total). Thus, the proposed residence significantly exceeds both the average size residential structure and even the largest residential structure on comparably sized lots in the neighborhood, based on data available from RealQuest.

Members of the public interested in this project have compiled data regarding surrounding lots (see Exhibit 6). Their analysis indicates that the average percentage of lot coverage with residential structures in the vicinity of the subject lot is approximately 20%. The proposed project would have lot coverage of 3,402 square feet of the 6,890 square foot lot area, or 49% lot coverage.

The applicant has also presented information regarding the size of residences in the area. However, that information only identifies the size of the portions of structures that are 'above grade' on nearby lots, rather than the entire size of those structures. In addition, the analysis only provides a selection of lots nearby, rather than a complete inventory. There is also no information provided about the size of the lot, compared with the size of the home on the lot. Thus, that analysis does not provide an unfiltered perspective on which to base comparisons.

Although the project will have an impact upon public views, public views to and along the ocean will remain accessible upon completion of the proposed project. For example, a viewpoint is available if one continues seaward along La Rambla, past the subject site, to vantage points available on the remaining undeveloped lots. Signs directing the public to the viewpoint are necessary. The June 22nd letter submitted on behalf of the applicant states that "...the applicants have proposed signage at Lot No. 5 at the intersection of La Rambla and Boca del Canon, that will notify/direct any vehicular or pedestrian traffic approaching the site that public beach and ocean view access points are available immediately north and south of the Lot No. 5 and No. 6 peninsular parcels..." However, the applicants have not submitted a final sign plan for review and approval of the Executive Director. Therefore, the Commission imposes Special Condition 1. In addition, the continued provision of the viewpoint on these seaward lots is critical to a finding of no impact in this case. The applicant and the other involved landowners have agreed to enter into a MOU, described previously in the 'Access' section of these findings. That MOU is required by Special Condition 6.

Therefore, as conditioned, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

**E. CANYON HABITAT**

Section 30240(b) of the Coastal Act states:

- (b) *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.*

San Clemente's certified Land Use Plan (LUP) discusses the importance of coastal canyons and states:

*In most cases, coastal canyons are designated for natural open space, which limits potential development and helps to ensure preservation.*

Policy VII.12 of the certified LUP states:

*Encourage activities which improve the natural biological value, integrity and corridor function of the coastal canyons through vegetation restoration, control of alien plants and animals, and landscape buffering.*

Policy XV.13 of the certified LUP states:

*The removal of native vegetation and the introduction of non-native vegetation in the canyons shall be minimized. The use of native plant species in and adjacent to the canyons shall be encouraged.*

The proposed development is located adjacent to Toledo Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP. The applicant's property is separated from the area designated 'canyon' in the certified LUP by a road, Boca del Canon.

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. While no rare or endangered species have been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons, including Toledo Canyon, as environmentally sensitive habitat areas (ESHA). The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis.

The canyon adjacent to the subject site is considered somewhat degraded due to the presence of both native and non-native plant species. No portion of the applicant's site contains resources that rise to the level of ESHA. However, to decrease the potential for site instability, deep-rooted, low water use, plants, preferably native to coastal Orange County should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the canyon slope. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. 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" (a.k.a. WUCOLS) 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>.

Additionally, since the proposed development is adjacent to a coastal canyon where the protection and enhancement of habitat values is sought, the placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. 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/](http://www.CNPS.org/)) in their publications. The Commission typically requires that applicants utilize native plant species, particularly where the project site includes land within a coastal canyon. However, the subject site is separated from Toledo Canyon by a road and other parcels developed with single family residences. Thus, while strongly encouraging use of plant species native to coastal Orange County, use of non-native plant species that are drought-tolerant and non-invasive may also be used.

Therefore, Special Condition 12 requires submittal of a revised landscape plan that replaces plants requiring 'medium water use' or higher water use with non-invasive plants of 'low water use' or 'ultra low water use' and also encourages use of a native plant palette. Additionally, because the site is located adjacent to a canyon, the applicant must contact the Orange County Fire Authority (OCFA) for their review and concurrence with the landscape plan. Special Condition 13 requires the applicant to provide written evidence of OCFA approval of a fuel modification plan, or that no fuel modification plan is required.

The special conditions of this staff report are designed to protect and enhance Toledo Canyon as an environmentally sensitive habitat area. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30240(b) of the Coastal Act and the policies of the certified LUP.

#### **F. WATER QUALITY**

Section 30230 of the Coastal Act states, in pertinent part:

*Marine resources shall be maintained, enhanced, and where feasible, restored...*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

During construction, the applicant will be required to implement further best management practices (BMPs) designed to minimize erosion and prevent debris from entering the adjacent canyon or storm drain system. Special Condition 10 imposes these requirements. Due to the potential for increased landslide hazards in the area, which could be caused by encouraging water infiltration for water quality purposes, maximizing on site retention of drainage is not required. After construction, site runoff will be directed to area drains and piped directly to existing City storm

drains at the street. Special Condition 1 requires submittal of final drainage and runoff control plan prior to permit issuance.

Combined with the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, the project will minimize the project's adverse impact on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

#### **G. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes Special Condition 14, which requires that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

#### **H. 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 to 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 approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development, as conditioned, 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).

#### **I. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

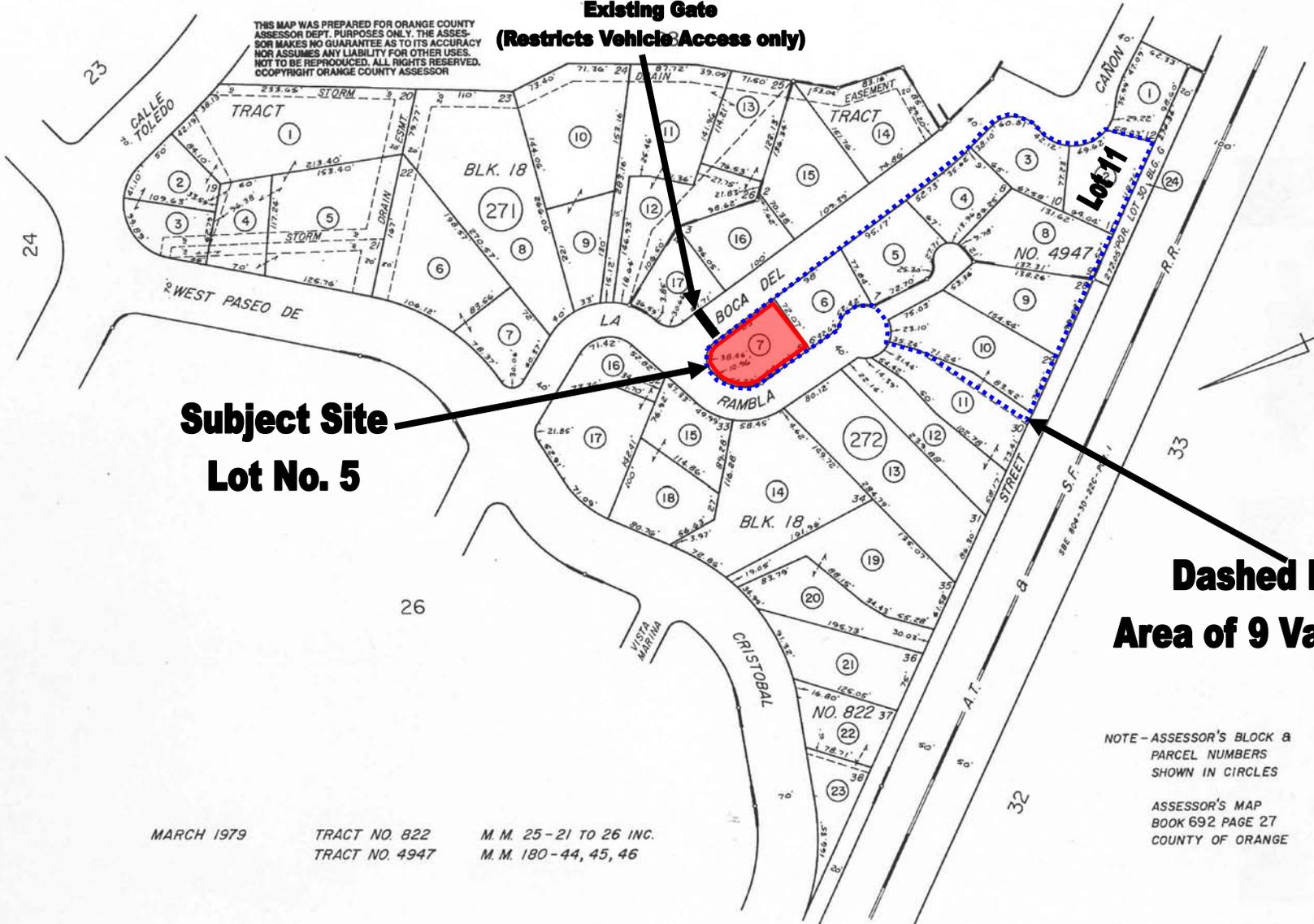
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental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

The City of San Clemente is the lead agency for purposes of CEQA compliance. The City determined that the project is categorically exempt from CEQA. However, the Commission adopts additional mitigation measures. The proposed project has been conditioned in order to be found consistent with the public access, visual resource, environmentally sensitive habitat, geologic hazards, and water quality policies of the Coastal Act. Mitigation measures, in the form of special conditions require 1) Revised Project Plans/Sign Plan; 2) Offer to Dedicate Easement, 3) Construction of Accessway along La Rambla, 4) Accessway Management and Maintenance, 5) Phasing, 6) Memorandum of Understanding regarding Provision of Off-site Access and Phasing (MOU), 7) Conformance with Geotechnical Recommendations, 8) Assumption of Risk, Waiver of Liability and Indemnity, 9) Debris Disposal, 10) Construction Storage, 11) future development , 12) landscaping, 13) fire authority requirements, and 14) a deed restriction. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.



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**Existing Gate  
(Restricts Vehicle Access only)**



**Subject Site  
Lot No. 5**

**Dashed Line =  
Area of 9 Vacant Lots**

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES  
ASSESSOR'S MAP BOOK 692 PAGE 27 COUNTY OF ORANGE

MARCH 1979      TRACT NO. 822      M. M. 25-21 TO 26 INC.  
                         TRACT NO. 4947      M. M. 180-44, 45, 46

<b>EXHIBIT#2</b>
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**Subject Site (317 La Rambla)  
Lot No. 5**

**Existing Footpath Across  
Subject Lot**

**Existing Gate**

Note: Color version of this page is available electronically from: [www.coastal.ca.gov/mtgcurr.html](http://www.coastal.ca.gov/mtgcurr.html) Scroll down to Wednesday, Item 18e and click on the

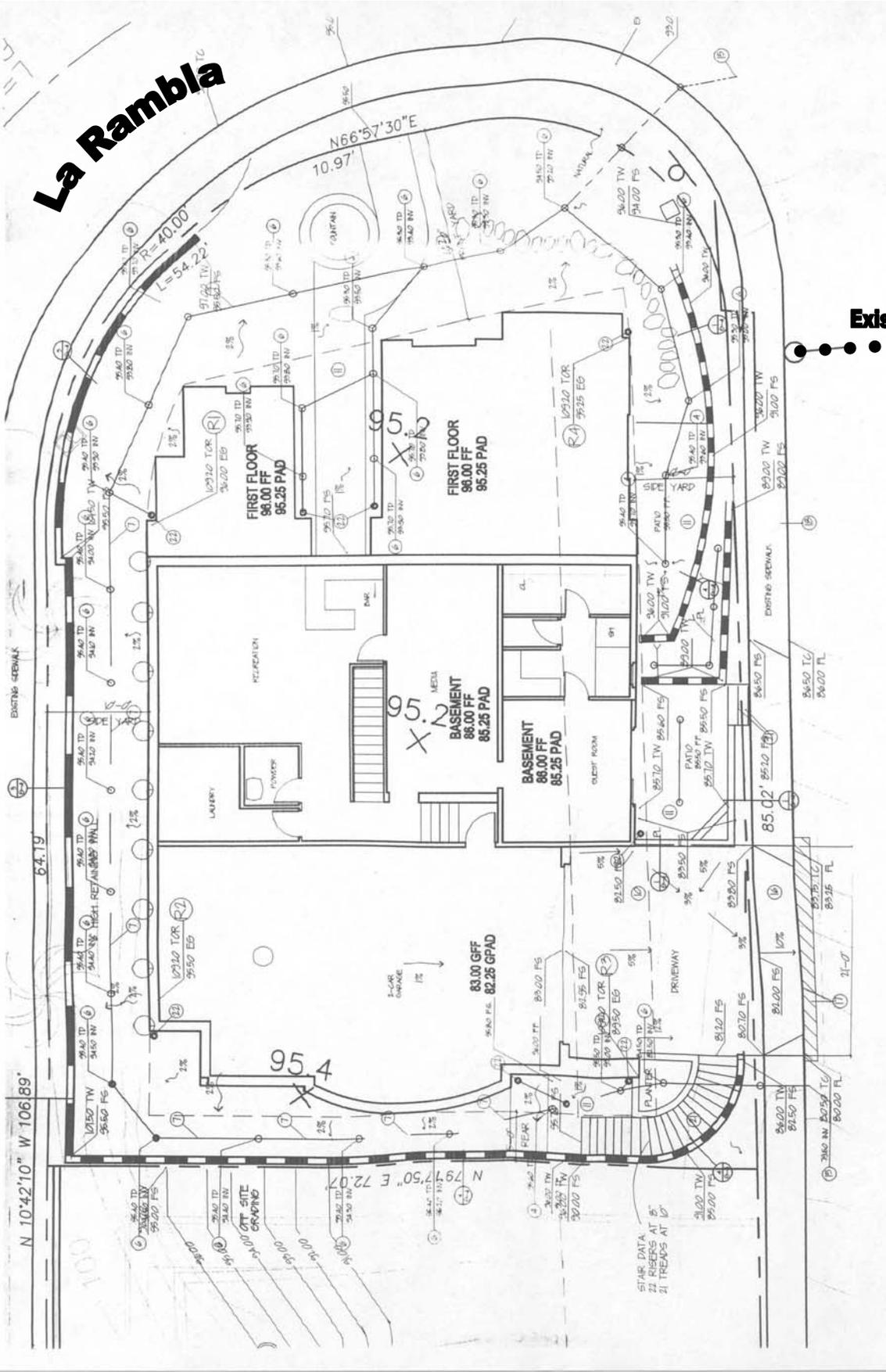
*Coastal Trail (Under Construction)*

*Beach*

Oblique Aerial View of the Nine Vacant Lots, Including the Subject Lot (Lot No. 5)

<b>EXHIBIT#3</b>
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 California Coastal Commission

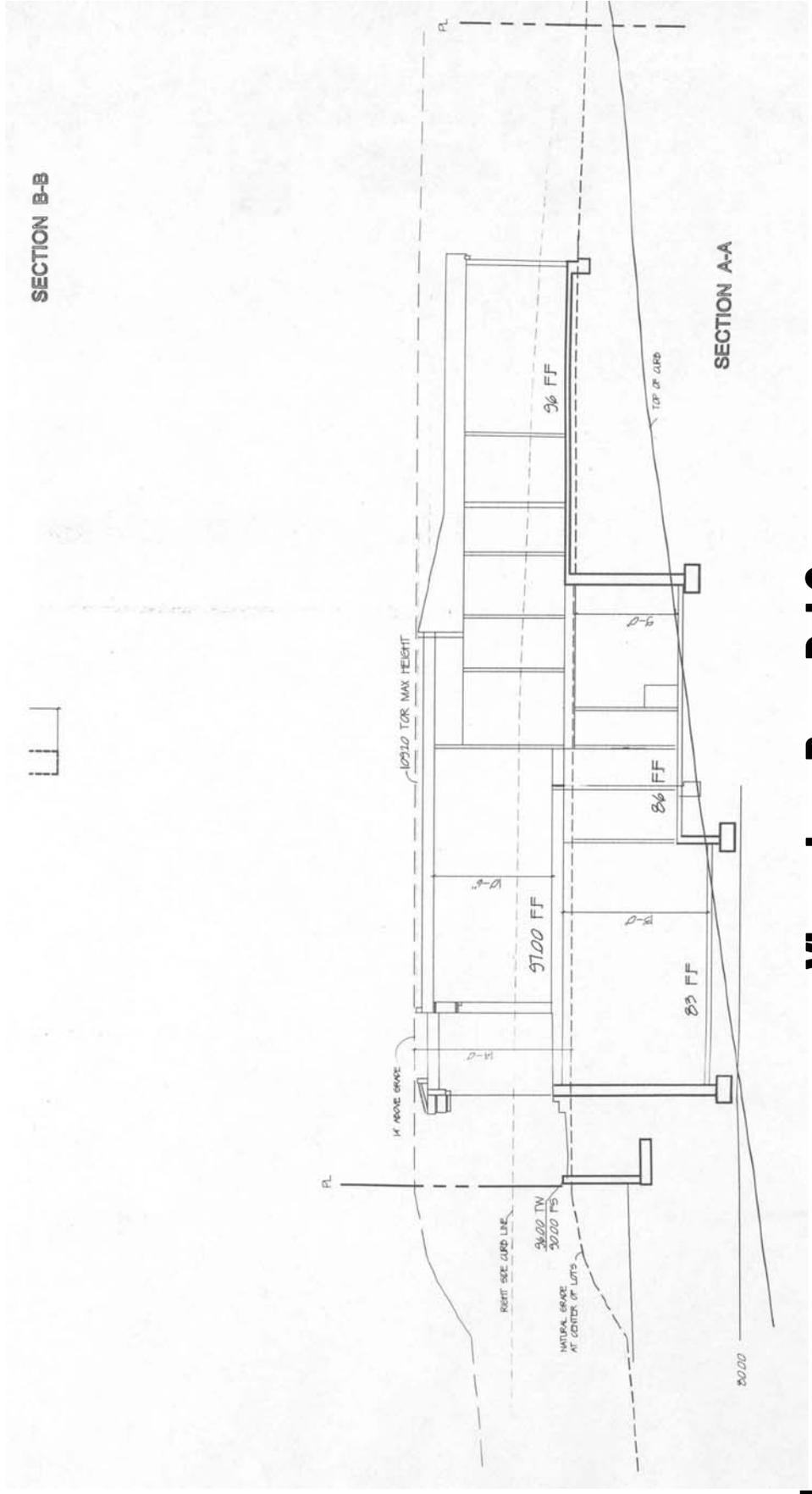
**La Rambla**



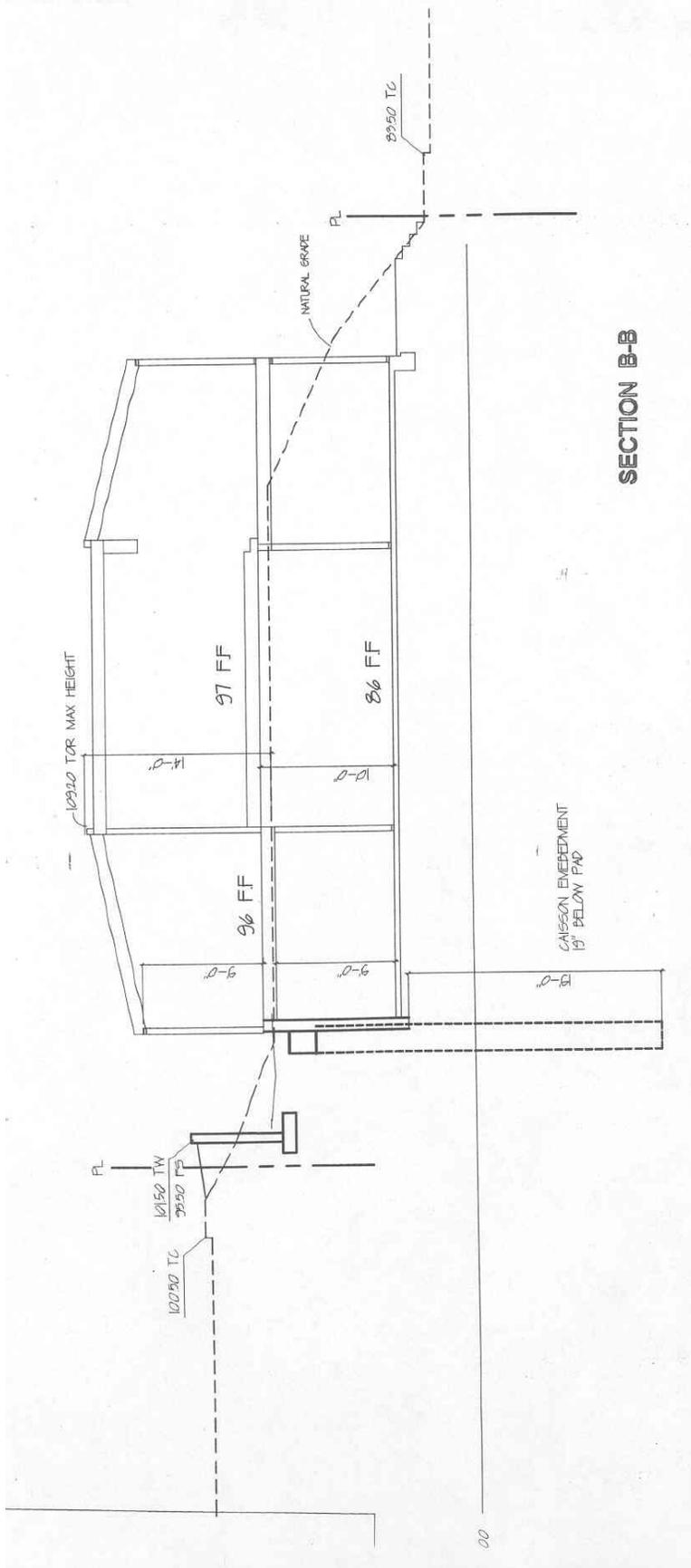
**Existing Gate**

**Boca del Canon**

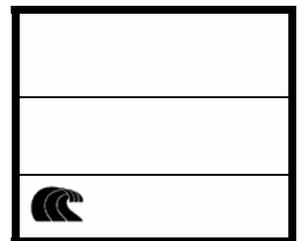
**Site Plans and Elevations**



**View along Boca Del Canon**



**View from La Rambla**





Entry to Footpath

Note: Color version of this page is available electronically from: [www.coastal.ca.gov/mtgcurr.html](http://www.coastal.ca.gov/mtgcurr.html)  
Scroll down to Wednesday, Item 18e and click on the blue-colored heading.

View of Gated Entry to Boca del Canon, the Subject Site Beyond and Entry to Footpath

**EXHIBIT#5**

Page 1 of 2

Application Number:

**5 - 0 7 - 0 7 0**



California Coastal  
Commission

Note: Color version of this page is available electronically from: [www.coastal.ca.gov/mtgcurr.html](http://www.coastal.ca.gov/mtgcurr.html)  
Scroll down to Wednesday, Item 18e and click on the blue-colored heading.



**View Across the Subject Site (Lot No. 5) from La Rambla  
Showing Blue Water View that will be blocked by the Proposed Development  
and Footpath Across Property**

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## Summary for properties with in 300' radius

<b>Address</b>	<b>lot size</b>	<b>living sq ft</b>	<b>%of lot</b>
303 LaRambla	0.2596	3342	11.5
304 LaRambla	0.1338	1594	27.4
305 LaRambla	0.1608	1088	15.5
307 LaRambla	0.3739	2673	16.4
309 LaRambla	0.2596	1617	14.3
310 LaRambla	0.1741	2600	34.2
311 LaRambla	0.1537	2358	35.2
316 LaRambla	0.2327	2257	22.3
317 La Rambla	0.1603	vacant	
319 LaRambla	0.1521	vacant	
320 LaRambla	0.2969	vacant	
323 LaRamba	0.1937	vacant	
324 LaRambla	0.2411	vacant	
325 LaRambla	0.1599	vacant	
326 LaRambla	0.2561	vacant	
303 Boca DC	0.1845	2324	28.9
305 Boca DC	0.2789	1673	13.7
307 Boca DC	0.2794	3778	31.0
312 Boca DC	0.169	vacant	
314 Boca DC	0.193	vacant	
315 Boca DC	0.142	1684	27.2
315 PD Cristobal	0.2931	2279	17.9
319 PD Cristobal	0.2047	2279	25.6
323 PD Cristobal	0.5087	4550	20.5
327 PD Cristobal	0.6004	5044	19.3
314 Gaviota	0.3155	1301	0.95
316 Gaviota	0.3852	2280	13.6
318 Gaviota	0.4495	2897	14.8
320 Gaviota	0.4341	2055	10.9
322 Gaviota	0.651	vacant	

Average % of lot used = 20.1% (401.15 divided by 20 homes)

Average sq footage/house = 2484 sq ft. (49673 /20)

**Summary of Lot Sizes, Building Sizes and Lot Coverage  
Submitted by C. Rios**

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 California Coastal Commission

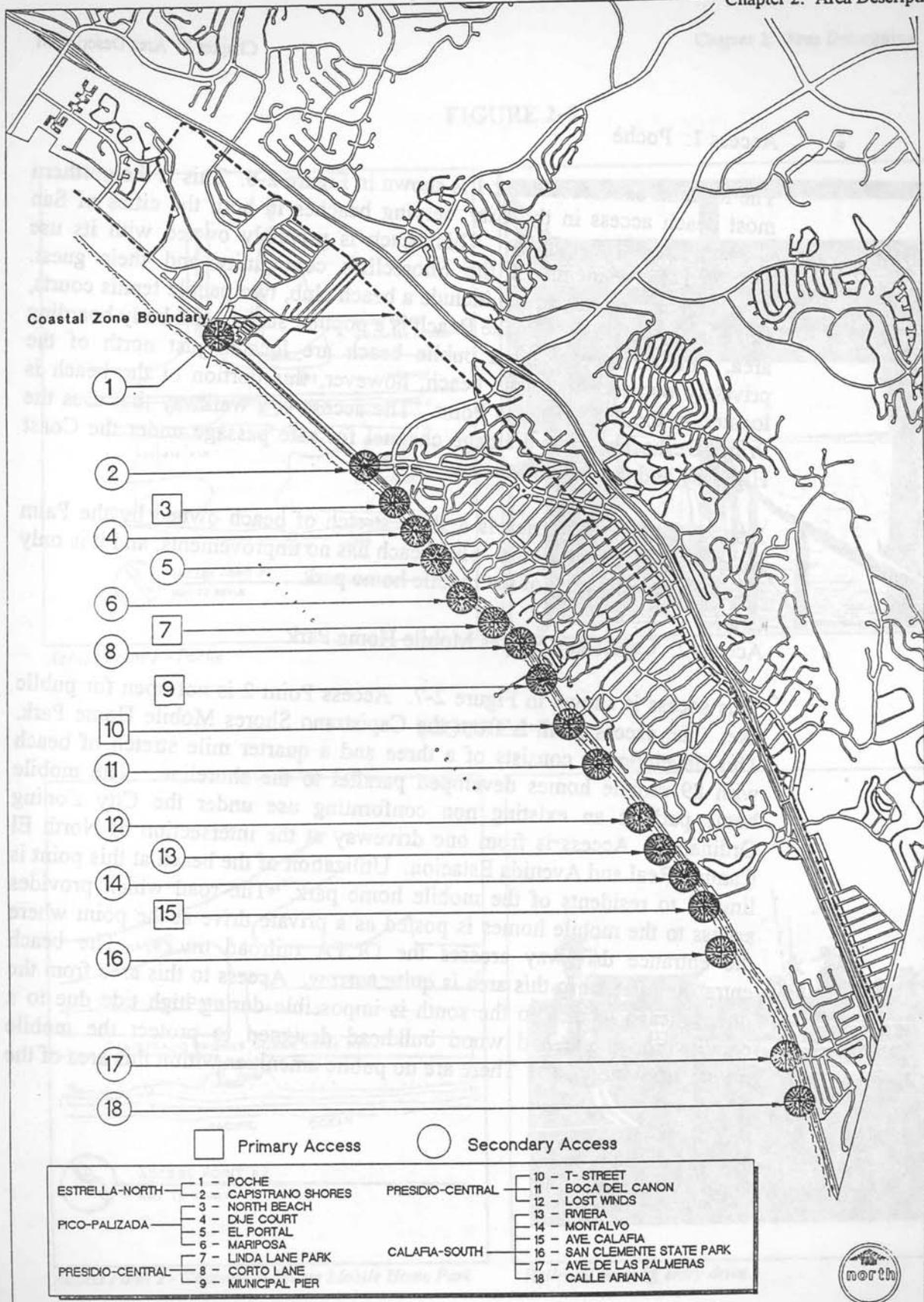


FIGURE 2-5

**CITY OF SAN CLEMENTE  
COASTAL ACCESS POINTS**



**EXHIBIT#7**  
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 California Coastal  
 Commission

**TABLE 2-2  
SUMMARY OF EXISTING SHORELINE ACCESS POINTS IN SAN CLEMENTE**

Area Division	Access Point #	Location/Name	Regional Access: Connection to I-5	Type of Developed Public Access	Type of Railroad Crossing	Amenities	# of Parkers	Off-St.	On-St.	Total
Estrella/ North	1	Poche	Ave. Pico	Stairs & tunnel beneath PCH	Storm Drain Tunnel	None	0	0	10	10
	2	Capistrano Shores Mobile Home Park	Ave. Pico	None (Private)	At-Grade	Picnic tables, snack bar, showers, restrooms, child play areas & fire pits	250	0	100	350
	3	North Beach	Ave. Pico	Foot-Path	Asphalt Paved At-Grade					
Pico/ Palizada	4	Dije Court	Ave. Pico or Ave. Palizada	Stairway	At-Grade	None	0	0	10	10
	5	Ave. W. El Portal	Ave. Pico or Ave. Palizada	Stairway	At-Grade/Below Trestle	None	0	0	10	10
	6	Mariposa	Ave. Pico or Ave. Palizada	Asphalt paved ramp	At-Grade	None	0	0	15	15
	7	Linda Lane City Park	Ave. Palizada/ Ave. Presidio	Foot-Path	Storm Drain Tunnel	Turf picnic area, restrooms, volleyball courts, showers	135	0	0	135
	8	Corto Lane	Ave. Palizada/ Ave. Presidio	Stairway	At-Grade	Shares Linda Lane Amenities	0	0	5	5
	9	San Clemente Municipal Pier	Ave. Palizada/ Ave. Presidio	Foot-Path	Underpass & Paved Asphalt At-Grade	Restaurant, tackle, restrooms, showers, picnic tables	133	0	102	235
	10	"T"-Street	El Camino Real	Foot-Path	Overpass	Restrooms, fire pits, showers, picnic tables, volleyball courts	0	0	150	150
Presidio/ Central	11	La Boca del Canon	El Camino Real	None (Private)	At-Grade	None	0	0	0	0
	12	Lost Winds	El Camino Real	Foot-Path/Stairway	At-Grade	None	0	0	10	10
	13	Riviera	Ave. Calafia	Stairway	Storm Drain Tunnel	None	0	0	10	10
	14	Montalvo	Ave. Calafia	Foot-Path/Stairway	Below Trestle	None	0	0	0	0
	15	Calafia - S. C. State Beach	Ave. Calafia	Foot-Path	At-Grade	Restrooms, snack bar, fire pits, showers	210	0	0	210
Calafia/ South	16	San Clemente State Beach	Ave. Calafia	Foot-Path/Tunnel	At-Grade Underpass	Restrooms, picnic tables, barbecues	200	0	0	200
	17	Ave. de Las Palmeras	Cristianitos	None (Private)	At-Grade Underpass	None	0	0	0	0
	18	Calle Ariana	Cristianitos	None (Private)	At-Grade	None	0	0	422	422
<b>Total</b>						<b>928</b>	<b>0</b>	<b>422</b>	<b>1,350</b>	

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- Access Point 11: La Boca del Canon

This private access is reached by either Avenida Presidio or El Camino Real exits from the I-5 Freeway. It is located on La Boca del Canon, a private residential street which connects to West Paseo de Cristobal. The beach is reached by crossing the railroad track via two at-grade locations (see Figure 2-16).

Parking is limited to on-street spaces for residents, and their guests, of La Boca del Canon. There are no public facilities on the beach at this location.

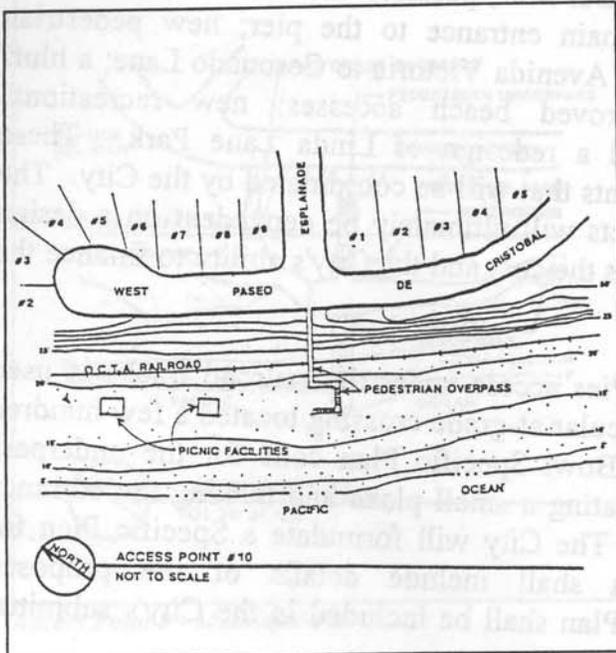
- Access Point 12: Lost Winds

The Lost Winds beach access is located 435 feet south of Leslie Park, off the streets Calle de Los Alamos and Calle Lasuen (see Figure 2-17). Originally named after the street "Lasuen," mispronunciation over the years has transformed the name of this beach to "Lost Winds." The Lost Winds access is a ten foot wide easement between two residences with a dirt path that leads from the street down a steep slope. Steps formed from railroad ties lead to a dirt path that slopes gradually down a small valley to the beach. The railroad is crossed at-grade, and there are no public facilities on the beach. Parking at both Leslie Park and Calle de los Alamos is limited to on-street spaces.

The Lost Winds access is located within a residential area, and for this reason, it is used primarily by local residents of San Clemente. Lost Winds is a popular surf break.



FIGURE 2-15



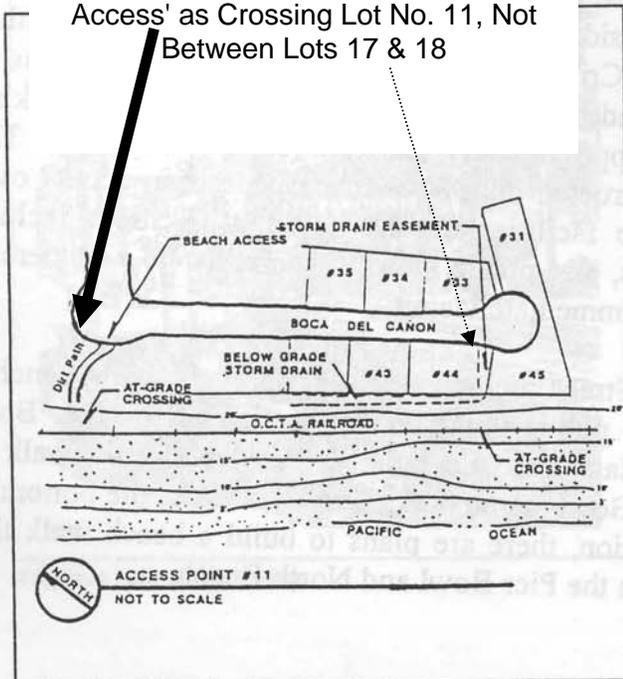
Access Point 10 - "T" Street

Pedestrian overpass to the beach

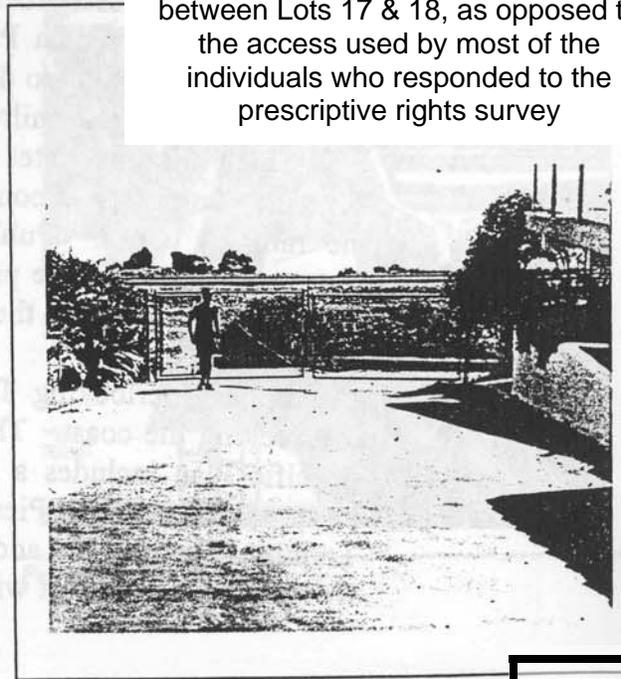
FIGURE 2-16

Note that Graphic Shows the 'Beach Access' as Crossing Lot No. 11, Not Between Lots 17 & 18

However, the photograph below shows the gated storm drain easement between Lots 17 & 18, as opposed to the access used by most of the individuals who responded to the prescriptive rights survey



Access Point 11 - La Boca del Canon



Gate access to an at-grade crossing

**EXHIBIT#7**  
 Page 4 of 4  
 Application Number:  
**5 - 07 - 070**  
 California Coastal  
 Commission

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Distance (Miles)</u>	<u>Location</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
1	FRANCISCO	ROSEMARIE	59.9	STATE	1974	DOZENS/100'S	2-10	YES
2	FRANCISCO	RICHARD	59.9	STATE	1974	DOZENS/100'S	1-15	YES
3	SHACKLEY	DANA	442	STATE	1987	10	2-10	Unclear
4	GAFFNEY	CHRISTINA	434	STATE/CITY	1974	100'S	2-10	Unclear
5	TRIMMER	BRAD & KELLY	89	STATE	1993	ON AND OFF	10-35	Unclear
6	FAYER	FRISER	77	STATE	1990	200	3	Unclear
7	BYERS	MELINDA	71	STATE/NEIGHBOF	1962	1000'S	no response	Unclear
8	CHAPMAN	PATRICIA	18.7	COUNTY	1980	100	3 - 5	YES
9	MESERVE	SUSAN	16.3	COUNTY	1959 (TO BE	100'S	3 - 5	YES
10	INSLEY	SHARYN	9.3	COUNTY	1965	3224	5	YES
11	CONLON	MIKE & FAMILY	7.6	COUNTY	1978	1,000	2 - 5	YES
12	MCBRIDE	JULIE	33	COUNTY/CITY	1974	100'S	2-10	Unclear
13	TATALA	JAN	31.8	COUNTY/CITY	1993	100+	2-4	Unclear
14	**Anonimity	Requested	15.2	COUNTY	1995	400	1 - 2+	Unclear
15	VAN DAM	MARK	8.9	COUNTY	1987	3800	2	Unclear
16	FOLEY	GERARD	8.8	COUNTY	1969	1000+	3+	Unclear
17	HAZLETT	GINA	7.2	COUNTY	1972	500	10 - 20	Unclear
18	RANDALL	KRISTIN	5.7	CITY	2000	NUMEROUS	5	YES
19	DARAKJIAN	SPIKE	1.9	CITY	1994	NUMEROUS	10	YES
20	MCINTYRE	KATE	0.8	CITY	1985	3000	3 - 5	YES
21	HAYDEN	DAVID	0.7	CITY	1991	100'S	3-6	YES
22	MCMURRAY	WAYNE	0.7	CITY	1995	100+	1-3	YES
23	MCMURRAY	JEAN	0.7	CITY	1995	100+	1-3	YES
24	PARLOW	WHITNEY	0.7	CITY	2000	NUMEROUS	5-7	YES
25	SCHMITT	KATHLEEN	0.7	CITY	1984	6864	0 - 10	YES
26	ADRIANCE	E. LEIGH	0.6	CITY	1980	4056	1 - 2	YES
27	CURRAR	JILL	6	CITY	1983	200	1 - 10	Unclear
28	DELANTY	RICK	5.8	CITY	1974	100'S	1 - 4	Unclear
29	GALLAGHER	KARIN	5.4	CITY	1986	300	2 - 5	Unclear
30	EADS	TOM & MARISA	3.2	CITY	1974	8320	2 - 10	Unclear
31	STROTHER	SUSAN	2.2	CITY	1976	3120	1 - 6	Unclear
32	MONTGOMERY	SAM	2.1	CITY	1978	1000'S	no response	Unclear
33	MONTGOMERY	SAM & LINDA	2.1	CITY	1986	1000	5 - 15	Unclear
34	HILL	JUSTIN	2	CITY	1990	100'S	1 - 2	Unclear
35	NAMIMATSU	KRISTEL	1.7	CITY	1990	100 +	10 +	Unclear

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36	HURLBUT	KARON & JEFF	1.2	CITY	1976	4680	8 - 10	Unclear
37	MAZIEK	JENNIFER	1.2	CITY	1999	100+	2-10	Unclear
38	MCCOY	BRIDGET	0.8	CITY	1984	DAILY	10-15	Unclear
39	KEISKER	JAMES B., JR.	0.7	CITY	1996	200-300	2 - 20	Unclear
40	SIMON	STEPHEN	0.7	CITY	1981	1000	no response	Unclear
41	BROOKS	EDWARD	0.6	CITY	1987	1000	1-10	Unclear
42	FERRANTO	DALE	0.6	CITY	1993	5 x/WEEK	2-3	Unclear
43	FREET	LARA	0.6	CITY	1989	100+	3+	Unclear
44	GOIT	JENNY & WILLIAM	0.6	CITY	1980	26,820	15	Unclear
45	JOSSE	ALAN	0.6	CITY	1998	1500+	2	Unclear
46	JOSSE	NICOLE	0.6	CITY	1999	DAILY	3	Unclear
47	MERRILL	ARLENE	0.6	CITY	1985	3-4 x/WEEK	2-10	Unclear
48	WIGGINS	ANDREW	0.6	CITY	1987	NUMEROUS	1-10	Unclear
49	WRIGHT	ALAN	0.6	CITY	1973	1000'S	5 - 10	Unclear
50	VLEISIDES	NICK	0.6	CITY/STATE	1963	2000-3000	2 - 20	Unclear
51	HELM	STANDIFORD	0.5	Neighborhood	1982	NUMEROUS	1 - 5	YES
52	LARWOOD	CHARLES & ALLIE	0.5	Neighborhood	1977	100'S	2-5	YES
53	ANDERSON	MARILY	0.4	Neighborhood	2000	900	1 - 6	YES
54	CADDY	ALISTER	0.4	Neighborhood	2000	500	1 - 7	YES
55	DURAN	EDWARD	0.4	Neighborhood	1996	100+	1-4	YES
56	GALLIGAN	DEBBIE	0.4	Neighborhood	1977	1000'S	2-6	YES
57	GALLIGAN	RICHARD	0.4	Neighborhood	1977	1000'S	2-6	YES
58	GASKIN	SHILOH	0.4	Neighborhood	1993	NUMEROUS	14	YES
59	SCHOENIG	TODD	0.4	Neighborhood	1995	600	3-5	YES
60	SIMONELLI	JANENE & FAMILY	0.4	Neighborhood	1990	10000	3 - 4	YES
61	DETTONI	JOHN	0.3	Neighborhood	1982	3-5 x/WEEK	1-10	YES
62	MACKEY	ELENE	0.3	Neighborhood	1981	UNKNOWN	4 - 8	YES
63	NEHER	RUSSELL	0.3	Neighborhood	1983	300	1 - 100	YES
64	RIOS	CHRISTINE	0.3	Neighborhood	1986	2862	1-5	YES
65	RIOS	MAGGIE	0.3	Neighborhood	2000	NUMEROUS	5-7	YES
66	SMITH JR.	WILLIAM	0.3	Neighborhood	1998	2900	1 - 30	YES
67	CROSS	ELIZABETH ANN	0.3	Neighborhood	1987	2660+	2-30	YES
68	BONAR	ANN	0.1	Neighborhood	1981	100'S	SEVERAL	YES
69	BONAR	MARIAN	0.1	Neighborhood	1990	DOZENS	SEVERAL	YES
70	BONAR JR.	KENNETH	0.1	Neighborhood	1975	100'S	4-6	YES

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

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71	HAYES	JOHN	0.1	Neighborhood	1973	2296	1 - 12	YES
72	HAYES	BETTYE	0.1	Neighborhood	1973	2296	1 - 12	YES
73	LEWIS	VIVIAN GIROT	0.1	Neighborhood	1988	DAILY	1-5	YES
74	MCGUIRE	HARRY	0.1	Neighborhood	1985	NUMEROUS	2-6	YES
75	MCGUIRE	SALLY	0.1	Neighborhood	1985	NUMEROUS	2-6	YES
76	MESERVE	KATHARINE	0.1	Neighborhood	1976 (AND E	300	3 +	YES
77	STEBLAY	MOLLY	0.1	Neighborhood	1992	728	4 - 5	YES
78	STROTHER	LEE	0.1	Neighborhood	1976	1000+	1 -5	YES
79	TAYLOR	SHALA	0.1	Neighborhood	1973	600+	3 - 6	YES
80	DALLABETTA	SUZANNE	0.5	Neighborhood	1979	2080	1-4	Unclear
81	HENDRICKSON	TED	0.5	Neighborhood	2000	30	2 - 100'S	Unclear
82	OMAR	STEVE	0.5	Neighborhood	1994	3-4 x/WEEK	8+	Unclear
83	OMAR	MARIA	0.5	Neighborhood	1994	3-4 x/WEEK	8+	Unclear
84	BANKS	D. SCOTT	0.4	Neighborhood	1994	3744	3	Unclear
85	CARTER	MATT	0.4	Neighborhood	1993	200 x/YEAR	50-100	Unclear
86	CUNNINGHAM	JEFF	0.4	Neighborhood	2000	800	3 - 4	Unclear
87	CUNNINGHAM	DONNA	0.4	Neighborhood	2000	1000	3 - 4	Unclear
88	CUNNINGHAM	KELSEY	0.4	Neighborhood	2000	1000+	2 - 10	Unclear
89	DOLLAR	MICHAEL	0.4	Neighborhood	1960'S	1000'S	1-10	Unclear
90	EMPERO	ED	0.4	Neighborhood	1995	4015	2 - 3	Unclear
91	EMPERO	JACK	0.4	Neighborhood	1995	1716	1 - 3	Unclear
92	EMPERO	SAM	0.4	Neighborhood	1995	1716	1 - 3	Unclear
93	EMPERO	TAMARA	0.4	Neighborhood	1995	2860	1 - 3	Unclear
94	FORTUNA	SAM	0.4	Neighborhood	1995	NUMEROUS	5 - 10	Unclear
95	GASKIN	LISA & FAMILY	0.4	Neighborhood	1978	2900+	3 - 5	Unclear
96	GASKIN	JAMES	0.4	Neighborhood	1980	(/WEEK-EVERYD/	3-5	Unclear
97	GIANNA	SIMONELLI	0.4	Neighborhood	1989	500	4-6	Unclear
98	HERRINGTON	TOM	0.4	Neighborhood	1990	3 x/WEEK	2+	Unclear
99	HERRINGTON	BECKY	0.4	Neighborhood	1990	3 x/WEEK	2+	Unclear
100	KING	PATRICK	0.4	Neighborhood	1987	1000 APPROX	3	Unclear
101	MCDONALD	CINDY	0.4	Neighborhood	1988	DAILY	10-100'S	Unclear
102	PEZMAN	THOMAS	0.4	Neighborhood	1986	500	1-10	Unclear
103	PIKE	ROXANNE & NELS(	0.4	Neighborhood	1990	5840	30	Unclear
104	SIMONELLI	JOHN J.	0.4	Neighborhood	1987	2 x/WEEK	4-6	Unclear
105	SIMONELLI	ANGELO	0.4	Neighborhood	1994	500	3-4	Unclear

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

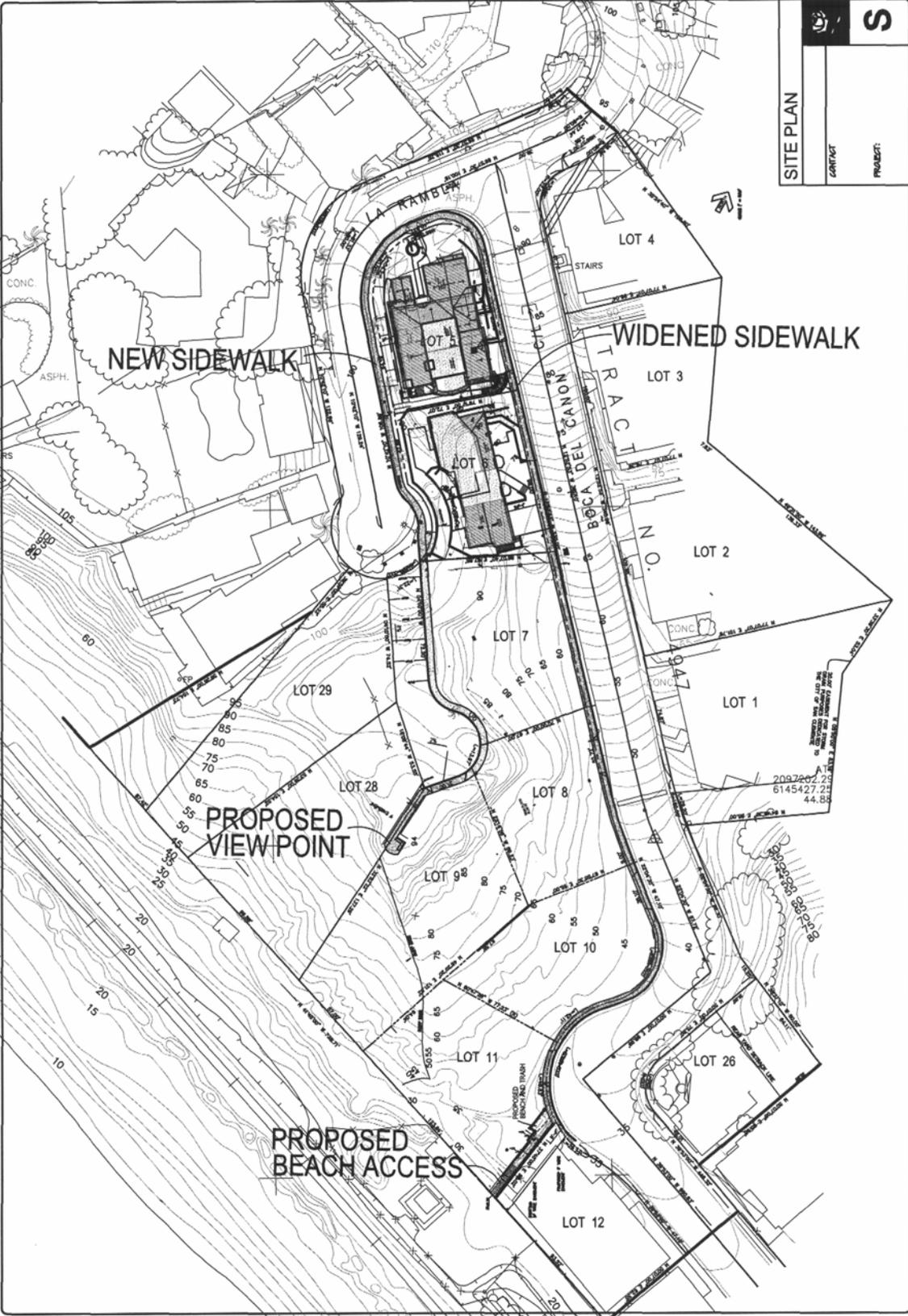
<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Distance (Miles)</u>	<u>Location</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
106	SIMONELLI	TONY	0.4	Neighborhood	1992	1000	2-3	Unclear
107	TURNEY	NORMA	0.4	Neighborhood	1986	100'S	1 - 3	Unclear
108	WHITAKER	JEFF	0.4	Neighborhood	1996	4-5 x/WEEK	SEVERAL	Unclear
109	WHITAKER	DARYL	0.4	Neighborhood	1996	4-5 x/WEEK	SEVERAL	Unclear
110	ARMSTRONG	CASEY	0.3	Neighborhood	1996	NUMEROUS	3-5	Unclear
111	CRUSE	GREG	0.3	Neighborhood	1987	100'S	2-12	Unclear
112	DIEHL	ROBERT & FAMILY	0.3	Neighborhood	2000	200	1-2	Unclear
113	FITZPATRICK	CAROLE	0.3	Neighborhood	1980	NUMEROUS	20 - 40	Unclear
114	RIOS	GARRETT	0.3	Neighborhood	1996	NUMEROUS	1-10	Unclear
115	VICK	MARCY	0.3	Neighborhood	1997	100'S	5-10	Unclear
116	YEILDING	DAN	0.3	Neighborhood	1970	1500 +	2 - 10	Unclear
117	MCGEE	MARY	0.2	Neighborhood	1968 (AND E	NUMEROUS	1 - 10	Unclear
118	WICKS	TOM	0.2	Neighborhood	1986	1000+	0 - 6	Unclear
119	WICKS	LINDA	0.2	Neighborhood	1986	1000+	0 - 6	Unclear
120	BOISSERANC	FRANK	0.1	Neighborhood	1989	5525	3 - 4	Unclear
121	BOISSERANC	SYLVIA	0.1	Neighborhood	1989	5525	3 - 4	Unclear
122	EADS	THOMAS	0.1	Neighborhood	1969	14, 400	5 - 10	Unclear
123	EADS	MARILYN	0.1	Neighborhood	1969	14, 400	5 - 10	Unclear
124	JASO	TOM	0.1	Neighborhood	1974	100'S	2 - 12	Unclear
125	JASO	LADONNA	0.1	Neighborhood	1974	100'S	2 - 12	Unclear
126	KABEL	ROBERT	0.1	Neighborhood	1981	1100	1 - 20	Unclear
127	LATTEIER	DOLORES	0.1	Neighborhood	1972	DAILY	3-5	Unclear
128	MORTON	JUDITH	0.1	Neighborhood	1975	10000	no response	Unclear
129	SCIBELLI	DALE	0.1	Neighborhood	1979	NUMEROUS	no response	Unclear
130	SCIBELLI	STEPHEN JR.	0.1	Neighborhood	1986	NUMEROUS	35-55	Unclear
131	STEBLAY	KELLY	0.1	Neighborhood	1992	5000 +	3 - 150	Unclear
132	STEBLAY	PHILIP	0.1	Neighborhood	1992	500+	2 - 6	Unclear
133	STEVENS	DIANE	0.1	Neighborhood	1985	100'S	2-3	Unclear
134	TAYLOR	CYNTHIA	0.1	Neighborhood	1980	1000'S	1 - 4	Unclear

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Record Number</u>	<u>Last Name</u>	<u>First Name</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>Specified Use of 317 La Rambla</u>
1	AMES	RAMONA	2002	3 TO 4?	4 - 5	Unclear
2	DOUGHERTY	STEPHANIE	2002	NUMEROUS	1 - 3	Unclear
3	BOLSTER	JULIE ANNE	2002	200	4 - 5	Unclear
4	ROSS	JOAN	2002	200	20	Unclear
5	WOLF	LYNN	2003	468	1 - 3	Unclear
6	COHEN	RUTH	2003	156	1 - 3	Unclear
7	SCIBELLI	MICHELLE & STEPHEN	2003	15-20	1 - 3	Unclear
8	MANDEL	ANDREA	2004	700+	1 - 25	Unclear
9	RIDGE	JIM	2005	250	1 - 15	Unclear
10	RIDGE	SAM	2005	700	50	Unclear
11	RIDGE	KIMBERLY	2005	250	3 - 15	Unclear
12	BRAIL	RICK	2006	100+	2 - 3	Unclear
13	VORELL	TERRY	No resposne	2 x per day/every c	no response	Unclear
14	HENDRICKSON	BRIGID	No resposne	MANY	2 - 100'S	Unclear
15	VAN DER MEULER	LAILA	No resposne	3?	1 - 4	Unclear
16	MACFADEN	NANCY	No resposne	20x/PER YEAR	no response	Unclear
17	WARNER	DORIS	No resposne	500+	2 - 3	Unclear
18	VICK	KAYLA	No resposne			Unclear
19	ROSS	JOAN	2002	200	20	YES
20	HILLYARD	BRETT	2002	3-4 x/WEEK	3-5	YES
21	CUEVA	JASMIN	2000	No Response		Unclear
22	COON	CINDY	2004	Several x/week	3 to 5	Unclear
23	HOWARD	CHRIS	2004	10	5	Unclear
24	HEALY	DOUG	2002	50	3 TO 5	Unclear
25	HEALY	NINA	2002	50	3 TO 5	Unclear
26	CADENHEAD	PHILIP	1986/2006 Unclear	100	1 TO 5	Unclear
27	MARSH	DREW	2006	200-300	5 TO 10	Unclear
28	KRAUS	CONSTANCE	2003	250+	1 TO 3	Unclear
29	FERRANTO	NANCY	2003	3X/WEEK	2	Unclear
30	MANDEL	RICHARD	ALL THE TIME	EVERYDAY	LOTS	Unclear

Summary of Prescriptive Rights Surveys Submitted as of October 31, 2006

<u>Last Name</u>	<u>First Name</u>	<u>Began Use</u>	<u>Times Used</u>	<u># Others Observed</u>	<u>OTHER COMMENT</u>
GARRETT	VICTORIA	1952	No Response	No Response	REC'D PERMISSION
SHEPLAY	JULIE	1968	6240+	40	ASKED FOR PERMISSION; but used as if public park
TAYLOR	WILLIAM	1960'S	300+	No Response	REC'D PERMISSION FROM TAFES
GIROT	CHARLES	1986	1000+	1-45+	NO RESPONSE TO 'DID YOU ASK PERMISSION'
JOBST	STEVEN	1986	300	5-10	NO RESPONSE TO 'DID YOU ASK PERMISSION'
CARTER	M.CHRISTINA	1993	Several x/week	3 TO 20	NO RESPONSE TO 'DID YOU ASK PERMISSION'
DETONI	CAROL	1980	Numerous	1 TO 10	NO RESPONSE TO 'DID YOU ASK PERMISSION'



**S**

**SITE PLAN**

CONTRACT: \_\_\_\_\_

PROJECT: \_\_\_\_\_

**Conceptual Access and Viewpoint Plan  
for Lots 5-11, Tract 4947**

**EXHIBIT#9**  
Page 1 of 1  
Application Number:  
**5 - 07 - 070**  
California Coastal  
Commission

**ALVEREZ RESIDENCE**  
**317 LA RAMBLA**  
**SAN CLEMENTE, CA.**

**RECEIVED**  
South Coast Region

FEB 23 2007

CALIFORNIA  
COASTAL COMMISSION

**COASTAL PACKET**

5-07-070



**DAVID YORK, ARCHITECT**

**ATTACHMENT 3**

**David York "Coastal Packet - Alvarez Residence"**

**Exhibit 10**

5-07-070

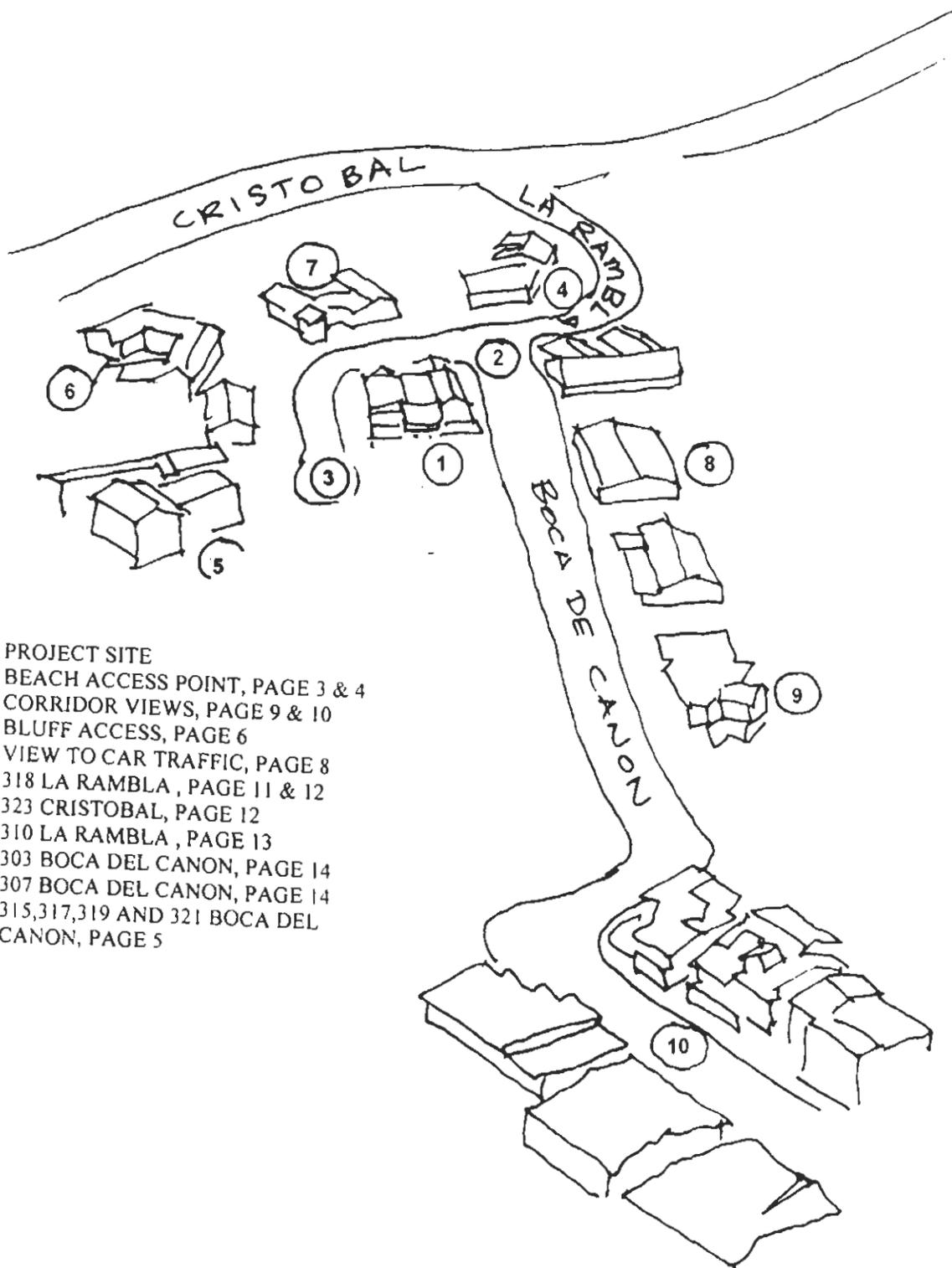
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DAVID YORK, ARCHITECT  
(949) 887-8034

**SHEET INDEX**

<b>PROJECT SITE PLAN</b>	<b>S</b>
<b>AERIAL VIEW LEGEND</b>	<b>1</b>
<b>AERIAL PHOTO OF PROJECT</b>	<b>2</b>
<b>COASTAL ACCESS TO BEACH</b>	<b>3</b>
<b>ACCESS POINT SECTIONS</b>	<b>4</b>
<b>COASTAL ACCESS TO BLUFF</b>	<b>5</b>
<b>SITE DIAGRAM</b>	<b>6</b>
<b>HISTORICAL VIEWS ACROSS LOT</b>	<b>7</b>
<b>VIEW FROM LA RAMBLA</b>	<b>8</b>
<b>MAIN VIEW, STREET CORRIDOR</b>	<b>9</b>
<b>MAIN VIEW WITH RESIDENCE</b>	<b>10</b>
<b>HOME SIZES</b>	<b>11-16</b>
<b>APPENDIX</b>	
<b>CITY APPROVAL</b>	<b>A1</b>
<b>PARK HISTORY</b>	<b>A2</b>
<b>HOA APPROVAL LETTER</b>	<b>A3</b>

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(949) 887-8034



1. PROJECT SITE
2. BEACH ACCESS POINT, PAGE 3 & 4
3. CORRIDOR VIEWS, PAGE 9 & 10
4. BLUFF ACCESS, PAGE 6
5. VIEW TO CAR TRAFFIC, PAGE 8
6. 318 LA RAMBLA, PAGE 11 & 12
7. 323 CRISTOBAL, PAGE 12
8. 310 LA RAMBLA, PAGE 13
9. 303 BOCA DEL CANON, PAGE 14
10. 307 BOCA DEL CANON, PAGE 14
11. 315,317,319 AND 321 BOCA DEL CANON, PAGE 5



Exhibit 10

5-07-070

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3

COASTAL ACCESS TO BEACH

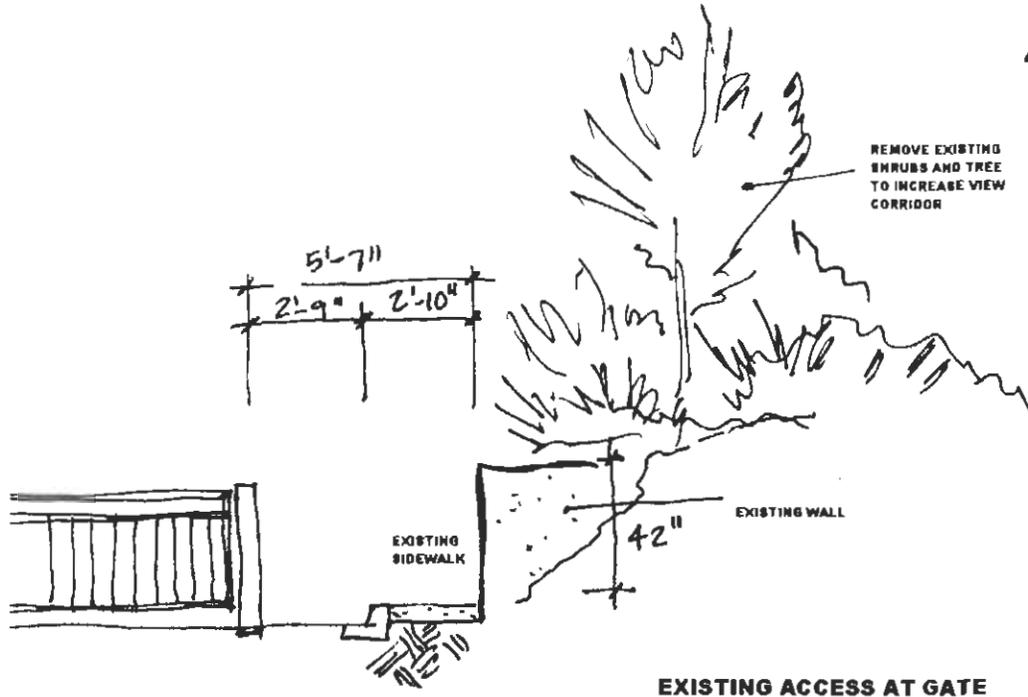
Coastal access past our project down Boca Del Canon.

Existing side walk is 30" wide. Proposal includes widening sidewalk to 48" and the retaining wall adjacent to sidewalk removed. A new radiused retaining wall will be constructed 12" from the sidewalk.

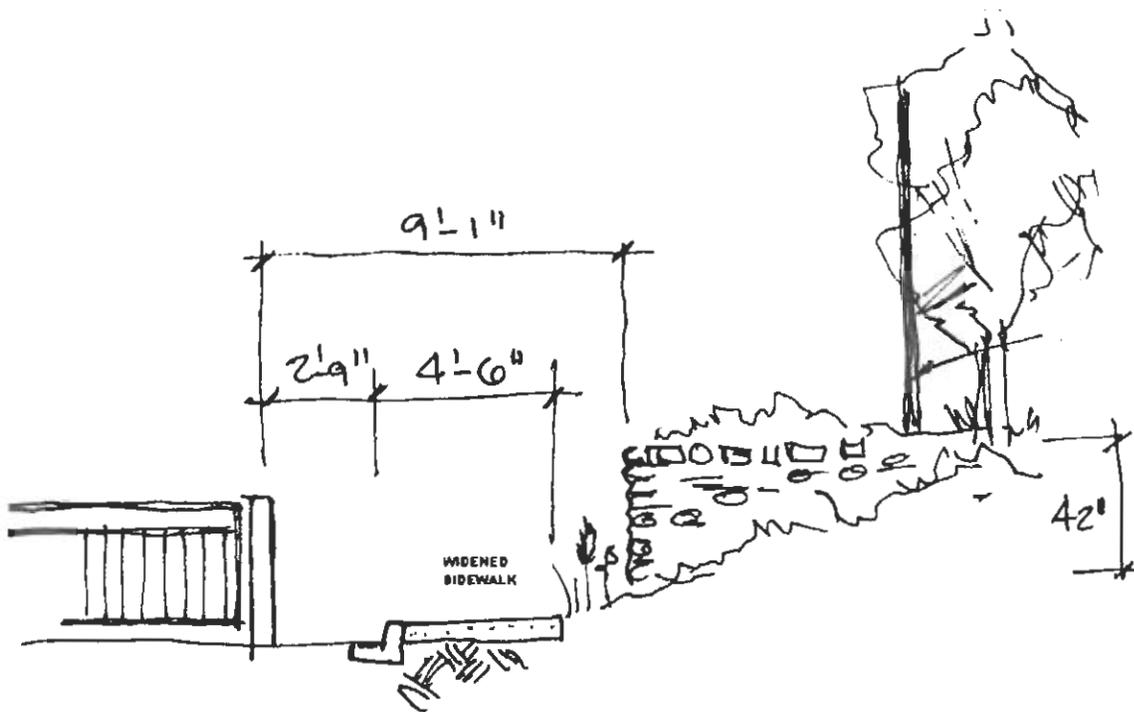
We suggest signage to direct people past the gate to the beach and handicap sidewalk access.



View of sidewalk along Boca Del Canon. This sidewalk will be widened to 48 and leads to the access at the end of Boca Del Canon.



EXISTING ACCESS AT GATE



PROPOSED WIDENED ACCESS POINT

COASTAL ACCESS TO BLUFF

Foot path across lot 5. Pedestrian traffic leaves the public right of way of LaRambla at NORTHEAST end of lot 5  
And returns to the public right of way of the same street, La Rambla at the SOUTHWEST end of lot 5  
Lot 5 does not provide direct access to coastal bluff . Access is taken from the end of LaRambla.



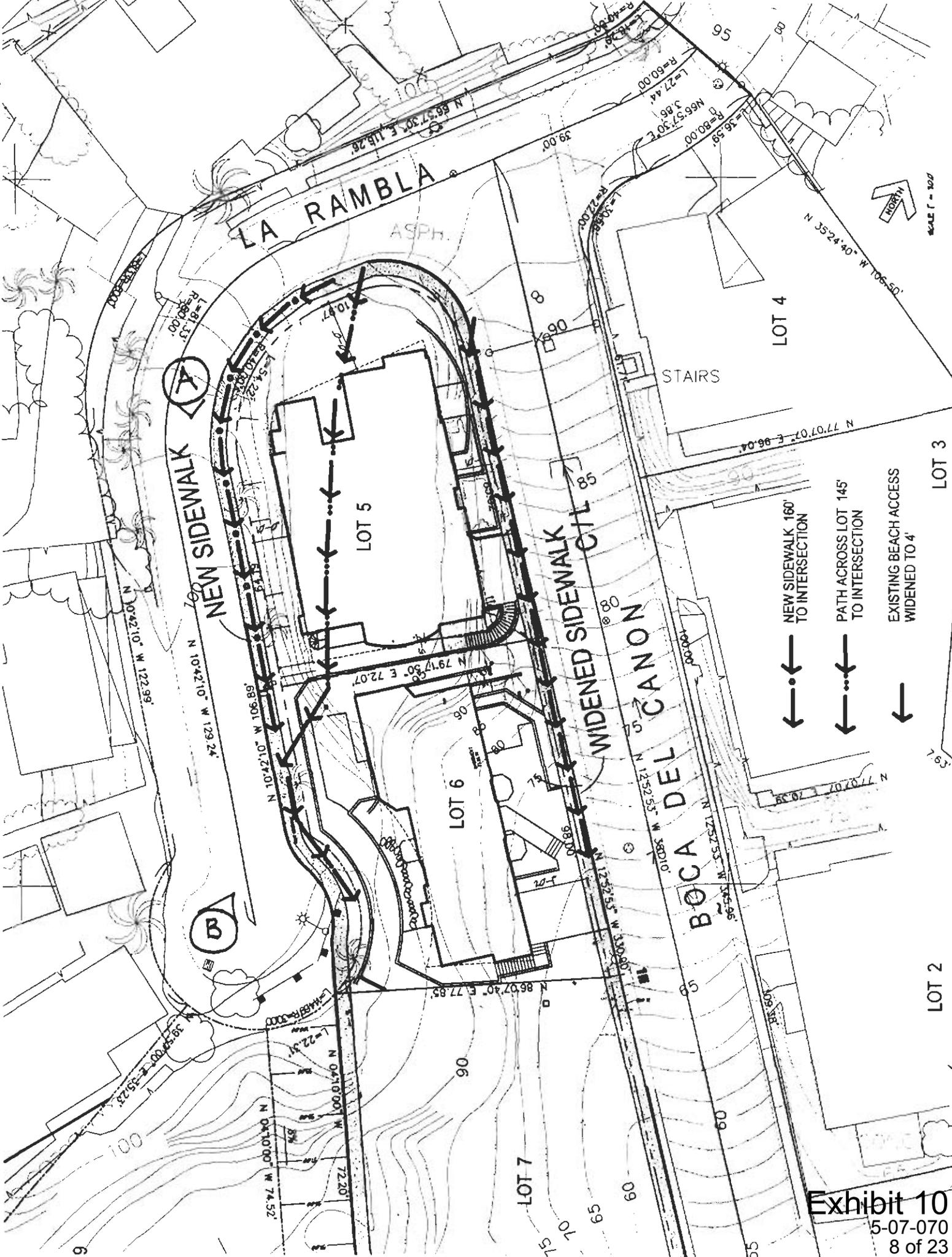
Project proposes sidewalk 48" around Lot with handicap access at start and end . Distance across path to cul de sac is 145 feet and distance along proposed sidewalk is 165 feet . This is a difference of 20 feet of travel.  
We are providing a safe, all weather path which will be handicap accessible.



View 50' from rear property line. VIEW "A"



END OF PATH ACROSS LOT 5 VIEW "B"



- 
 NEW SIDEWALK 160'  
TO INTERSECTION
- 
 PATH ACROSS LOT 145'  
TO INTERSECTION
- 
 EXISTING BEACH ACCESS  
WIDENED TO 4'

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7

HISTORICAL VIEWS ACROSS LOT 5:



Existing growth of trees and shrubs have obstructed views of the ocean and beach.

Shrubs above eye level blocked views of the ocean and beach along north property line of lot five along La Rambla. These shrubs were removed to satisfy fire department request for weed abatement.

Views Prior to April 06.



DAVID YORK, ARCHITECT, #12 W. Avenida San Gabriel, San Clemente, Ca. 92672 (949) 887-8034  
LIC # C24908

Exhibit 10  
5-07-070  
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(949) 887-8034

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VIEW TO CAR TRAFFIC DOWN LA RAMBLA:



There is no view of the ocean as seen traveling down La Rambla



As travelers turn on to Boca Del Canon from La Rambla our project on the right does not block any of the view.

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Main View Down Boca Del Canon:

This view will be unchanged from our project .

Shrubs and trees along Boca Del Canyon will be removed along the 10' side yard setback  
Widening the main view corridor.



View is 90 degrees of La Rambla.

Adjacent page shows main view and project superimposed.

Clearly our project does not block the view down Boca De Canon.



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11

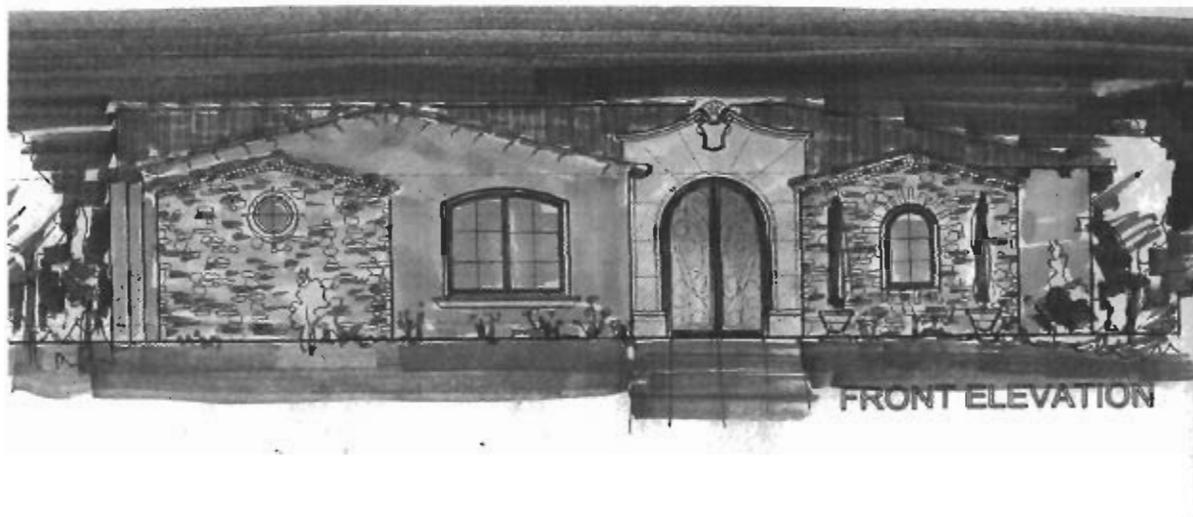
HOME SIZE:

Proposed home is One story with a basement.

With main floor area = 3364 s.f. above grade.

Basement area and basement garage total 1954 sq. ft. below grade.

We have placed as much of the building below grade as possible because geology request that the uncertified fill be removed or replace. We fill making this area basement will eliminate required earth work.



Neighboring house are one, two and three story buildings. With sizes up to 4666 s.f. above grade.  
I search building department data which includes additions added since the original construction sf.



318 LaRambla total building area 4666 s.f. above grade with front setback of 7.4' building department data.

DAVID YORK, ARCHITECT  
(949) 887-8034

12

End of LaRambla cul de sac .

Left house 318 La Rambla, 4666 sf. Above grade.  
Right house 316 LaRambla 3700 sf. above grade.



323 Cristobal 5132 s.f.  
above grade

DAVID YORK, ARCHITECT  
(949) 887-8034

13

Across street from lot 5



310 LA RAMBLA  
3387 sf above grade

Across street from lot 5



308 LA RAMBLA  
2885 s.f. above grade

DAVID YORK, ARCHITECT  
(949) 887-8034

14



303 BOCA DEL CANON  
2906 S.F.



307 BOCA DEL CANON  
4178 S.F.

DAVID YORK, ARCHITECT  
(949) 887-8034

15



UPPER LEFT: 315 BOCA DEL CANON, 3760 S.F.  
UPPER RIGHT 317 BOCA DEL CANON, 4769 S.F.

319 BOCA DEL CANON, 4200 S.F.



321 BOCA DEL CANON, 4475 S.F.



APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT) (949)887-8034 DAVID SCHNIEDER

Applicant DAVID YORK, ARCHITECT / 949 350-1045

Project Description LOT#5 TRACT 4947

317 - LA RAMBLA

Location SAN CLEMENTE, CA

Assessor's Parcel Number 692-272-07

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation LOW DENSITY RESIDENTIAL (RL) 7 du/ac

General or Community Plan Designation RL 7 du/ac

Local Discretionary Approvals

[X] Proposed development meets all zoning requirements and needs no local permits other than building permits.

[ ] Proposed development needs local discretionary approvals noted below.

Needed Received

- Design/Architectural review
Variance for
Rezone from
Tentative Subdivision/Parcel Map No.
Grading/Land Development Permit No.
Planned Residential/Commercial Development Approval
Site Plan Review
Condominium Conversion Permit
Conditional, Special, or Major Use Permit No.
Other

CEQA Status

[X] Categorically Exempt Class 15301 Item a

[ ] Negative Declaration Granted (Date)

[ ] Environmental Impact Report Required, Final Report Certified (Date)

[ ] Other

Prepared for the City/County of SAN CLEMENTE by LARRY LABENECKER

Date 3-2-06 Title SENIOR PLANNER

CITY OF SAN CLEMENTE  
MARINE SAFETY DIVISION

January 25, 1991

**TO:** Mayor and City Council  
**FROM:** Lynn Hughes, Marine Safety Captain *LH*  
**SUBJECT:** Proposed La Rambla Park  
**COPIES:** Jim Holloway, Community Development Director

---

The purpose of this memorandum is to brief the Council on the background and current status of the proposed La Rambla Park

Background

On October 5, 1988, Mr. Lee Strother requested that the Council look into preserving as a view park, a 3/4 acre vacant piece of ocean bluff property at the cul-de-sac end of La Rambla.

The site (attachment #1) is currently owned by three parties, but utilized by the public as a view point, dumping ground for trash and dog run. It has a tremendous ocean view and potential beach access down the steep slopes. On the negative side, access is somewhat limited with little street parking. There is the real potential that extensive, very costly soil stabilization would be necessary before the site could be developed for a park or any other purpose.

According to the Parks and Recreation Manager, Bruce Wegner, the site would rank high on the list when related to preservation. The Parks and Recreation Master Plan does show a deficiency in park land in the southwest part of town. The Master Plan recommends a five acre park in the vicinity of Concordia School. This park site is listed as number seven on the Master Plan priority list. On the other hand, the community is growing and the need for park space in the developing inland areas is definitely increasing. The residents of Forester Ranch, Marblehead and Rancho San Clemente are all requesting that their undeveloped parks be built. Unfortunately, there is not enough money to develop all three of these inland parks. If we were to add the purchase (approximately \$750,000) and development of the parcel in question, it would really put the Parks Acquisition and Development fund in the red. Additionally, with all the other park development in process, any actual development of this parcel would probably not become a reality for at least four to five years.

In response to Mr. Strother's request, the Council directed staff to investigate the ownership of the property and the feasibility of Mr. Strother's suggestion. Staff reported back to the

Council that the most logical approach to preserving the site for a park appeared to be through the use of the Trust For Public Lands by the surrounding property owners. The trust helps public and private organizations develop fund raising strategies to purchase and develop property for purposes such as a park. In this instance the Trust For Public Land representative suggested that the property owners spearhead the plan. Reportedly, the cost of the property would be kept down if government was left out of the picture.

The Council concurred with staff's recommendation and directed staff to facilitate the nearby homeowners purchase of the land through a trust. The involved homeowners were similarly in agreement.

### Status Report

As of March, 1990, the interested homeowners have been working with The Trust For Public Land western regional office. The involved local homeowners are now considering forming a corporation so that they can take advantage of various options to procure the land.

On July 20, 1990, the Parks and Recreation Manager Bruce Wegner, City Planner Jim Barnes and former Councilman Brian Rice met with the homeowners to discuss options on how to best purchase the property. Based upon this meeting, the Planning Division has prepared an outline of the basic requirements for developing the property along the San Clemente bluffs. These documents has been forwarded to Mr. Strother. Additionally, one of the La Rambla property owners has been inquiring about developing the property. Mr. Strother has been advised of this in order to keep the homeowners abreast of any potential development plans for the site.

On January 14, 1991, I spoke with Mr. Kris Kroll of the California Coastal Conservancy to check on the status of grant funds for the proposed park. The likelihood of getting funds now do not appear any more hopeful than when we checked approximately six months ago due to the defeat of Proposition 149, the California Park Bond measure in November.

In summary, staff has done what it can to assist the interested homeowners. At this point it is up to the homeowners to find the financial resources and make arrangements to purchase the land from the property owners.

LH:hmc

Attachment #1 - Site Plan

ARCHITECTURAL REVIEW COMMITTEE (ARC)

APPLICATION FOR APPROVAL

LA LADERA COMMUNITY ASSOCIATION

Please submit your application well in advance of your anticipated construction date. The committee has 30 days to review your plans and take action. If no action is taken and you wish to pursue the project, you must send a letter to the Board of Directors La Ladera Association c/o AMMCOR Management Company at 30320 Rancho Viejo Road, Suite # 1000, San Juan Capistrano, CA 92675. If the committee fails to act after another 30 days then the committee's approval is waived. If the committee conditionally approves the project then those conditions must be agreed to prior to approval and prior to construction.

NAME(S) BOCA DEL CANYON LLC, DAVID SCHNEIDER  
ADDRESS 1801 AVENIDA SALVADOR, SAN CLEMENTE CA 92670  
TELEPHONE 949 429 3864 cell 350 1045  
ADDRESS OF PROJECT 317 LA RAMBLA AP # 692 277 07  
LOT 5

PROJECT:  New Home     Remodel     Landscape     Hardscape  
 Other \_\_\_\_\_

Submit the attached drawings and specifications for the proposed improvements and/or alterations for the following: \_\_\_\_\_

Describe proposed improvements and attach 2 sets of plans or drawings (to scale) showing type of construction, dimensions, type of materials, colors and the site plan or location of lot. Show Landscape plans and Hardscape plans for decks, porches, patios, walks, fences and walls. Consideration should be given to mature tree height and compatibility with existing homes.

DESCRIPTION OF PROJECT:  
NEW HOME AND LOT DEVELOPMENT  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARCHITECTURAL REVIEW COMMITTEE (ARC)

A3.2

APPLICATION FOR APPROVAL

We agree to pay for and/or reimburse the Association for costs incurred by the Association due to damages caused by us or by our contractors or by our employees.

We have read and understand the Association's Architectural Approval Procedures and acknowledge receipt thereof and agree that all provisions therein are made a part of the application, including all owner obligations and liabilities as specified.

[Signature]  
Signature of Applicant

9/20/05  
Date

Signature of Applicant

Date

We have discussed the proposed improvements and/or alterations and the attached drawings and specifications with homeowner/owners most affected whose signatures appear below. I/We have secured their comment except as noted. (Affected homeowner is defined as side, back of, or in front of, if applicable).

Neighbor's Name Kenneth Bonar  
Address 311 La Rambla  
Date \_\_\_\_\_

Objection (if any) OK  
K. Bonar by R. Kabe

Neighbor's Name Raoul & Peg Jivra  
Address 303 Boca del Canon  
Date 9-21-2006

Objection (if any) OK  
[Signature]

Neighbor's Name Karch & Janna Kiraly  
Address 307 Boca del Canon  
Date \_\_\_\_\_

Objection (if any) OK  
Karch Kiraly

Neighbor's Name Betsy McGee  
Address 305 Boca del Canon  
Date \_\_\_\_\_

Objection (if any) \_\_\_\_\_

ARCHITECTURAL COMMITTEE APPROVAL:

Signature [Signature]

Approval:  Yes  No Date 10/2/06 Kabe

Signature [Signature]

Approval:  Yes  No Date Oct 2 06 Loum

Signature [Signature]

Approval:  Yes  No Date 9-27-06 Cooper

Signature K. Bonar by R. Kabe

Approval:  Yes  No Date 10/2/06 Turnb

Signature N/A

Approval:  Yes  No Date \_\_\_\_\_ Glasbre

APPROVED BY BOARD OF DIRECTORS:

Resolution Number \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_, President

Exhibit 10

LAW OFFICES  
**NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP**

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JOHN P. ERSKINE  
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EMAIL [JERSKINE@NOSSAMAN.COM](mailto:JERSKINE@NOSSAMAN.COM)

February 22, 2007

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1100 DEXTER AVENUE N.  
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REFER TO FILE NUMBER  
290813-0001

5-07-070

**RECEIVED**  
South Coast Region

FEB 23 2007

CALIFORNIA  
COASTAL COMMISSION

**VIA OVERNIGHT DELIVERY**

Mr. Karl Schwing  
California Coastal Commission  
South Coast Area Office  
200 OceanGate, Suite 1000  
Long Beach, CA 90802-4302

Re: Resubmittal of Application No. 5-06-112 (Lot No. 5, Tract 4947, San Clemente, California) for Ernest F. Alvarez, Jr., and Paulette M. Alvarez; Response to Issues Raised in November 2, 2006 Staff Report and Meeting of February 1, 2007

Dear Mr. Schwing:

On behalf of Ernest F. Alvarez, Jr. and Paulette Alvarez, the owners of Lot No. 5, Tract 4947, we are resubmitting to the California Coastal Commission ("Commission") application No. 5-06-112 for a Coastal Development Permit for the described single-family dwelling (Attachment No. 1). The project location and description are the same as previously submitted to the Commission on March 21, 2006, as follows:

<u>Project Location:</u>	317 La Rambla, San Clemente, Orange County (Lot No. 5, Tract No. 4947 ("Lot No. 5"))
<u>Project Description:</u>	Construction of a 4,468 square foot (with a 750 square foot garage), 26 foot high (14 feet above average grade), single-family residence including 1,040 cubic yards of excavation on an existing vacant parcel of land.

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However, as agreed during our meeting with Sherilyn Sarb and you at the Commission's Long Beach office on February 1, 2007, we are providing a comprehensive response to the issues raised in the November 2, 2006 Commission staff report so that the owners of Lot No. 5 may proceed with some assurance that they will not be delayed due to issues that do not pertain to their application.

**Response to Issues Raised in November 2, 2006 Commission Staff Report and Meeting of February 1, 2007.**

A summary of our substantive responses to the issues raised in the November 2, 2006 Commission staff report and meeting of February 1, 2007 is as follows:

- **PRESCRIPTIVE RIGHTS/PUBLIC BEACH AND OCEAN VISUAL ACCESS.**

The Commission staff has focused the majority of its attention with respect to the Lot No. 5 application, on the Coastal Act mandate (Coastal Act § 30210-30212) requiring new development to maintain public access to the beach and view access to the ocean. Almost one-half of the 17-page staff report is devoted to this issue, even though the Commission's own "ongoing prescriptive rights survey" summarized in the report provides no substantial evidence of such public use and, to the contrary, serves to make the applicant's case that evidence of various footpaths on Lot No. 5 do not give rise to implied dedication. Moreover, rather than substantial, diverse, and continuous use by the general public, Lot No. 5 and, indeed, the entire Boca del Canon area has been a location for intermittent and scattered use by neighborhood walkers and joggers.

We are providing, under separate cover, a formal legal rebuttal to the Commission staff's assertion that *Gion v. City of Santa Cruz*, 2 Cal 3d 29 (1970) is applicable to the present set of factual circumstances and would provide a basis for judicial determination that a prescriptive easement through implied dedication exists on Lot No. 5 (Attachment 2). We strongly disagree with this contention, but believe that the matter nevertheless should be rendered moot for the reasons outlined below.

**Equivalent Public Beach and Visual Access to be Provided on Adjoining Lot Nos. 11 and 9.**

The November 2, 2006 Commission staff report states, on page 9 (third paragraph):

*"If the applicant were to propose public access, the Commission could evaluate the extent to which the proposed public access elements are equivalent in time, place and manner to any public*

*rights that **may exist**. To the extent any proposed dedication of access is equivalent, proposed development is considered not to interfere with any existing public access rights. Thus, an exhaustive analysis of the existence of an implied dedication would not be necessary.” (Emphasis added.)*

The applicant understands the Commission staff’s direction and, we believe, has provided an appropriate response.

Mr. and Mrs. Alvarez, Boca del Canon, LLC, (the owners of the remaining lots in Tract 4947), David York (project architect), and legal counsel have worked together to identify beach and public ocean view access which are not only feasible and secure, but will enhance the current circuitous and unsafe beach and view access across the site. This is set forth in the attached David York “Coastal Packet – Alvarez Residence: (Attachment 3).

Additionally, in response to Commission staff’s concern that the proposed public beach access across Lot No. 11 and the proposed public ocean “View Point” on Lot No. 9 are not legally secure without dedication to the public in conjunction with the subject Lot No. 5 CDP application, this will confirm that David Schneider (owner of Lot No. 9) and Carl Grewe (owner of Lot No. 11) will be present at the Commission hearing on the subject application, and will testify and/or provide an affidavit that the proposed public access easements across Lot Nos. 9 and 11 will be offered in conjunction with the approval of the CDP applications for Lot Nos. 9 and No. 11. As we indicated in our February 1, 2007 meeting, Mr. and Mrs. Alvarez have little or no control over the Commission’s future actions with respect to conditions of approval on Lot Nos. 9 and 11, but we would respectfully suggest that the Commission does.

**Boca del Canon Public Beach Access Already  
Provided through Paved 20-Foot City Easement**

If the Commission remains concerned that it may not grant approval of CDP applications on Lot Nos. 9 and 11, we would point out that in such unlikely circumstance, the parcels will remain in their current unimproved state, and local users of these lots will continue to have the “informal” but less than safe footpath across Lot 11 and down to the beach below. More importantly, however, the existing public beach access over the 20-foot paved City of San Clemente easement at the southerly end of Boca del Canon, between Lots 17 and 18 provides a superior coastal access point approximately 100 yards to the south. This **existing public beach access** is referenced in the November 2, 2006 Commission staff report in Table 2-2 “*Summary of Existing Shoreline Access Points in San Clemente*,” as “Access Point 11 La Boca del Canon.” (certified San Clemente LUP-Coastal Element.) Figure 2-16, also from the certified San Clemente LUP, shows a photograph of this 20-foot wide, at-grade crossing and access to the

beach. We urge the Commission to take cognizance of the fact that this existing public beach access is only six lots, or 100 yards from the informal access currently used at Lot No. 11, and only 200 yards from Lot No. 5.

It is clear that in this case, the Commission can and should find that *adequate access exists nearby*, within the meaning of Public Resources Code section 30212(a)(2).

**Additional Alternative and Equivalent Public  
Beach and View Access**

By the Commission staff's own account (staff report, page 7), the mode of existing public beach access is "*to utilize the existing paved gated street (Boca del Canon) and narrow sidewalks that descend from La Rambla down a steep incline to an informal footpath that crosses Lot No. 11 to the beach.*" Therefore, even though we contend that adequate access exists nearby – within 100 yards of the subject development - the Commission's "equivalency" analysis of the additional proposed access should, in our opinion, be as follows:

**Public Beach Access.**

➤ Current:

Time: Now.

Place: Down Boca del Canon to City easement at Lot No. 17 or across Lot 11.

Manner: Descend from La Rambla down a steep incline to a paved, at-grade crossing, or an informal dirt footpath across Lot No. 11

➤ Proposed:

Time: Upon approval of CDP for Lot No. 11, but in the interim, maintain existing condition.

Place: Substantially same as the current location of beach access except on the south side of Lot No. 11.

Manner: Via a fully improved, widened (48 foot) sidewalk down Boca del Canon and over the paved 20-foot City easement at Lot 17 or across a 5-foot paved vertical beach access across Lot No. 11 (adjacent to existing 10 foot easement).

**Public Ocean View Point.**

➤ Current:

Time: Now.

Place: On unimproved, debris-strewn areas of Lot No. 9 and adjacent unimproved, bluff-top parcels.

Manner: Access bluff-top from steep bluff areas or end of La Rambla cul-de-sac.

➤ Proposed:

Time: At approval of CDP for Lot No. 9.

Place: Fully improved, paved portion of Lot No. 9, as depicted in attached David York Coastal Packet.

Manner: Access from new sidewalk on perimeter of Lot Nos. 5 and 6 or at end of La Rambla cul-de-sac.

• **NO POTENTIAL FOR LA LADERA HOMEOWNERS ASSOCIATION (“LA LADERA HOA”) TO IMPEDE OF BOCA DEL CANON BEACH ACCESS.**

Coastal Commission staff, at our meeting of February 1, 2007, suggested that the La Ladera HOA had previously asserted its right to prevent public access down Boca del Canon and to the beach at either of the two existing access points. We cannot find any evidence of such claim, nor is such an impediment to public access by this HOA even possible.

To the contrary, the Commission’s own staff report (July 20, 2006) for the La Ladera HOA’s gate replacement application (Application No. 5-05-412) states in Section IV: Findings and Declarations (page 6):

*“Pedestrian access to the beach is currently available along the sidewalks leading through the neighborhood down to the two beach access points.”*

*“There is no evidence that the sidewalks have ever been closed to public access.”*

Furthermore, on page 8 of the above-referenced July 20, 2006 Commission staff report, it is stated:

*“The La Ladera HOA has stated in its application, ‘the public access will be maintained. There is no existing signage for public access, but it can be provided if necessary. The current and anticipated access will remain the same through the open sidewalks on either side of the gated entrance and a walkway with no time restriction.’”* (Emphasis added.)

The very design of the vehicular gate at the entrance to Boca del Canon – which has, for decades, facilitated public passage around the gate’s pilasters and down the sidewalks adjacent to or directly down Boca del Canon – demonstrates the private community’s commitment to public beach access. Staff’s contention that this will somehow be impeded by action of the HOA is specious.

- **NO FUNDING FOR PURPORTED “LA RAMBLA” PARK.**

Page 4 of the November 2, 2006 Lot No. 5 staff report contained a brief, two-paragraph discussion of some local citizens’ efforts in the 1980’s to create a public park on the subject parcels. As staff has noted, these efforts were unsuccessful.

However, the Commission staff left the subject hanging with the statement, “It is unknown whether subsequent efforts have been made to identify funding.”

We have obtained a memorandum from Jim Holloway, City of San Clemente Community Development Director to the City Council dated January 25, 1991 (Attachment 4) which should lay the subject to rest. After outlining the absence of any public funds to acquire the subject parcels, Mr. Holloway summarized that *“it is up to the homeowners to find the financial resources and make arrangement to purchase land from the property owners.”* No such arrangement has ever been proposed, let alone accomplished.

- **GEOTECHNICAL REPORTS FOR LOT NOS. 7 THROUGH 11 OF TRACT 4947 TRANSMITTED HEREWITH.**

During our February 1, 2007 meeting at the Commission’s office, staff reiterated its request for geotechnical reports on Lot Nos. 7-11 (such information for Lot Nos. 5 and 6 were previously provided to the Commission), so that “geologic hazards” could be addressed with respect to all seven undeveloped lots. “Geotechnical Grading Plan Review, Lot Nos. 7 through 11 of Tract 4947 and Lots 28 and 29 of Tract 882, Boca del Canon, City of San Clemente,

California” by Lawson & Associates (“LGC”) is transmitted herewith (Attachment 5), and we welcome the Commission staff geologist’s review of same.

We would, however, remind the Commission that the Commission’s staff geologist has already reviewed the Lot No. 5 Geotechnical Grading Plan by LGC, visited the site and the Commission geologist:

*“concurs that the proposed development would 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 as required by Section 30253 of the Coastal Act.”*

- **PUBLIC OCEAN VIEWS ACROSS LOT NO. 5 FROM PUBLIC ROADWAY ARE VIRTUALLY NONEXISTENT.**

Commission staff, in its November 2, 2006 report, points out that Section 30251 of the Coastal Act requires that “impacts that the proposed project may have on existing public views must be considered.”

Staff contends that the viewshed to be considered with respect to Lot No. 5 is from the public roadway (La Rambla), and that the “blue-water views presently available would be entirely blocked with construction of the proposed residence.”

A clearer viewshed analysis is provided on pages 3-9 of David York’s “Coastal Packet” (Attachment 3) and, in our opinion, refutes staff’s contention of “blue-water views” across Lot No. 5 from the public roadway. Tree and shrub growth on the site have historically completely blocked any views across Lot No. 5 from the roadway, and at the current time (due to removal of vegetation), only a narrow sliver of ocean can be seen from a person standing at the mouth of the La Rambla cul-de-sac.

As David York’s submittal also demonstrates on page 10, the primary ocean view - over the vehicular gates and down Boca del Canon - will remain open and be enhanced due to widening of the sidewalk and slope retention.

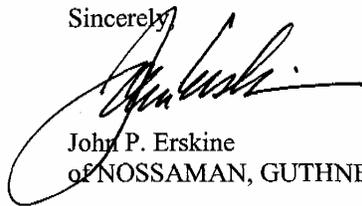
In addition, the applicants have proposed signage at Lot No. 5 at the intersection of La Rambla and Boca del Canon, that will notify/direct any vehicular or pedestrian traffic approaching the site that public beach and ocean view access points are available immediately north and south of the Lot No. 5 and No. 6 peninsular parcels. As can also be seen in the Lot No.

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP  
Mr. Karl Schwing  
February 22, 2007  
Page 8

5 residence depiction on page 10 of Mr. York's packet, reducing the already minimal height or reducing the square footage of the Alvarez residence will create an unacceptable design alternative, while creating no new ocean views from the public roadway across Lot No. 5.

We trust that the resubmitted application, supplemented by the materials and information attached and incorporated therein, respond adequately to the Commission staff's issues raised in the prior staff report and during our February 1, 2007 meeting and we urge Commission approval of the CDP application for Lot No. 5. Please do not hesitate to contact me if we can provide additional information or address any remaining questions.

Sincerely,



John P. Erskine  
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

JPE/rst

Attachments

271209\_1.DOC



LAW OFFICES  
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SCOTT N. YAMAGUCHI  
DIRECT DIAL NUMBER  
(213) 612-7807  
EMAIL [syamaguchi@nossaman.com](mailto:syamaguchi@nossaman.com)

February 21, 2007

RECEIVED  
South Coast Region

FEB 23 2007

CALIFORNIA  
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REFER TO FILE NUMBER  
290813 - 0001

VIA HAND DELIVERY; U. S. MAIL

California Coastal Commission  
c/o South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

Re: Rebuttal to Claim of Implied Dedication of Public Access in November 2, 2006 Staff Report and Meeting of February 1, 2007 Re: Application No. 5-06-112 (Lot No. 5, Tract 4947, San Clemente, California) for Philip and Paulette Alvarez, Jr.

Dear Mr. Schwing:

On behalf of Philip and Paulette Alvarez, Jr., the owners of Lot No. 5, Tract 4947, we explain below why the November 2, 2006 staff report is mistaken in asserting that there has been an implied dedication of public access at the subject property. The staff report relies on a distinguishable case, *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29. At the same time, it ignores the analogous case of *County of Orange v. Chandler-Sherman Corporation* (1976) 54 Cal.App.3d 561, as well as other pertinent cases and principles.

As a preliminary observation, the footpath on Lot No. 5 is, at most, a shortcut between two nearby points on a sidewalk. Under these circumstances, the development of Lot No. 5 and the consequent loss of this footpath would have no impact on public access whatsoever. Applying *Gion* to this footpath would both trivialize and abuse the principles of *Gion*.

Several elements must be established to prove an implied dedication of public access, including the following: (1) public use of the land as if it was public land; (2) use by the public at large; (3) substantial, diverse, and sufficient public use; (4) open, continuous, regular, uninterrupted public use for more than five years; (5) adverse public use without asking for or receiving owner permission; (6) public use without objection or interference by the owner; and (7) public use with the actual or constructive knowledge of the owner. As shown below, none of

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ATTACHMENT 2  
Nossaman Letter Rebutting Claim of Implied Dedication

EXHIBIT#11

Page 9 of 14

Application Number:

5 - 07 - 070



California Coastal  
Commission

these elements can be established here. Indeed, if any one of these elements is missing, no implied dedication can exist.

**1. There has been no public use of the land as public land.**

“Litigants, therefore, seeking to show that land has been dedicated to the public need only produce evidence that *persons have used the land as they would have used public land*. If the land involved is a beach or shoreline area, they should show that the land was used as if it were a public recreation area. If a road is involved, the litigants must show that it was used as if it were a public road.”

(*Gion, supra*, 2 Cal.3d at p. 39, emphasis added.)

The “public use” that was found in *Gion* does not exist at Lot No. 5. The staff report does not claim that there has been any public maintenance of Lot No. 5, which was a critical fact in *Gion*. “Evidence that the users looked to a governmental agency for maintenance of the land is significant in establishing an implied dedication to the public.” (*Gion, supra*, 2 Cal.3d at p. 39, citations omitted.)

The staff report offers insubstantial evidence of public use of Lot No. 5, even if the “evidence” of “prescriptive rights surveys” is taken at face value. Of 134 survey respondents who claimed to have used the area for more than five years (Staff Report, Exh. 8a), only 44 persons alleged that they have used Lot No. 5. Of the 30 respondents who claimed to have used the area for less than five years (Exh. 8b), only two persons alleged that they have used Lot No. 5.

**2. There has been no use by the public at large.**

“Litigants seeking to establish dedication to the public must also show that *various groups of persons* have used the land. If only a *limited and definable number of persons* have used the land, those persons may be able to claim a personal easement but not dedication to the public. An owner may well tolerate use by some persons but object vigorously to use by others.”

(*Gion, supra*, 2 Cal.3d at pp. 39-40, citation omitted, emphasis added.)

“If a *constantly changing group of persons* use land in a public way without knowing or caring whether the owner permits their presence, it makes no difference that the owner has informed a few persons that their use of the land is permissive only.”

(*Gion, supra*, 2 Cal.3d at p. 44, emphasis added.)

“Substantial evidence supports the court's finding that the use of the beach and its access were not sufficient to establish implied dedication. While the beach was used for surfing, fishing, swimming, picnicking, and sun bathing, *the use was by small numbers rarely exceeding 12 to 15 people on the beach at any one time.* (As indicated, the beach is 2,000 feet in length.) A prime incentive for the use of this beach was its isolation and seclusion. Some said it was attractive because it was ‘deserted.’ Others said that there were so few people using the beach that it was almost ‘like having the beach to ourselves.’ Others used the beach because ‘no one else was on the beach.’ Another said it was ‘like being practically alone.’”

(*County of Orange, supra*, 54 Cal.App.3d at p. 566, emphasis added.)

The “prescriptive rights surveys” (Exhs. 8a, 8b, 8c) fail to show how many people have been on Lot No. 5 specifically, together, at any one given time. But the summary results of the survey appear consistent with the “small numbers” of “12 to 15 people on the beach at any one time” that was insufficient to establish an implied dedication in *County of Orange* or, even fewer people (e.g., occasional neighborhood walkers and joggers).

To reiterate, the staff report offers insubstantial evidence of public use of Lot No. 5. Of 134 survey respondents who claimed to have used the area for more than five years (Exh. 8a), only 44 persons alleged that they have used Lot No. 5. Of the 44 persons who alleged that they have used Lot No. 5 for more than five years (Exh. 8a), most of them (29 persons) were simply from the neighborhood as opposed to the “public.” This reflects a “limited and definable number of persons,” as opposed to “various groups of persons” or a “constantly changing group of persons.”

**3. Public use was not substantial, diverse, and sufficient.**

“We caution that the [*Gion*] court's comment concerning an occasional hiker on isolated property should not be construed as suggesting that any instance of recurrent ‘public’ passage over private property could qualify as adverse use for purposes of implied dedication. The use must be *substantial, diverse, and sufficient*, considering all the circumstances, *to convey to the owner notice* that the public is using the passage as if it had a right so to do. Thus, e.g., a long history of continued passage by a

*diverse* group of occasional hikers across a well defined privately owned trail segment leading to a network of trails, say on a public wilderness area, might suffice.”

(*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 825, fn. 7, emphasis added.)

“However, common sense and reason would indicate, and we hold, that the use must be *substantial rather than casual* and even though the use need not be otherwise adverse to the interests of the owner, *the scope and continuity of the use must be great enough to clearly indicate to the owner that his property is in danger of being dedicated.*”

(*County of Orange, supra*, 54 Cal.App.3d at p. 565, emphasis added.)

“The same can be said of access to the beach. There is no question but that access was had across the defendant's land by people going to the beach. However, *this passage was casual, haphazard, diverse and the passageways ill-defined.* Again, the scope and continuity of passage was not great enough to clearly indicate to the owner that the use of his property was in danger of being dedicated to the public.”

(*County of Orange, supra*, 54 Cal.App.3d at p. 566, emphasis added.)

At most, the divergent pathways on and around the subject property are similar to the beach access routes in *County of Orange*, which were “casual, haphazard, diverse and ill-defined.” The staff report describes these pathways as “informal modes” of access (Staff Report, p. 7), and states, “There are several pathways across these lots that offer different modes of access. For example, the informal footpath that crosses the subject site leads to a bluff top view point of the beaches and ocean as well as to a network of other footpaths that eventually lead down the bluff to the beach and ocean.” (Staff Report, p. 7.) The staff report cannot legitimately focus on one isolated pathway on one specific lot - Lot No. 5 - in an effort to avoid the conclusion that the multitude of pathways are “casual, haphazard, diverse, and ill-defined.”

As noted above, the staff report offers insubstantial evidence of public use of Lot No. 5. Of 134 survey respondents who claimed to have used the area for more than five years (Exh. 8a), only 44 persons alleged that they have used Lot No. 5. Of the 44 persons who alleged that they have used Lot No. 5 for more than five years (Exh. 8a), most of them (29 persons) were from the neighborhood. This reflects “casual” use by a “non-diverse” group.

**4. There is no evidence of open, continuous, regular, uninterrupted public use for more than five years.**

“[A] common law dedication of property to the public can be proved . . . by establishing *open and continuous* use by the public for the prescriptive period.” (*Gion, supra*, 2 Cal.3d at p. 38, emphasis added.) *Gion* refers to an “intent to dedicate based on *uninterrupted* public use for more than five years.” (*Gion, supra*, 2 Cal.3d at p. 41.) “[S]uch use was far from rare . . . it was *continuous, regular and open use*.” (*Friends of the Trails, supra*, 78 Cal.App.4th at p. 825, emphasis added.)

Significantly, the staff report fails to identify any particular five year time period in which an implied dedication occurred, even though case law requires such an identification. (*See, e.g., County of Los Angeles v. Berk* (1980) 26 Cal.3d 201, 211, fn. 7; *Brumbaugh v. County of Imperial* (1982) 134 Cal.App.3d 556, 563-564.) As a result of this defect, the staff report improperly aggregates the survey data over a long period of time in order to try to create an impression of substantial public use, even though the use would be insubstantial in any given five year time period.

Without reviewing the evidence in detail, it is clear that throughout the years the beach was used by individuals and groups. However, there is substantial evidence that this beach was never used as a public recreational area or a public park. While there was long term use it cannot be said that this was major or substantial. Thus, the trial court could well conclude, as it did, that the use of the beach was the casual use of a desolate, isolated beach which was hardly substantial enough to constitute use as a public recreational area to the extent that the owner dedicated the use of his property to the public.

(*County of Orange, supra*, 54 Cal.App.3d at p. 566.)

**5. There has been neighborly accommodation, as opposed to adverse public use.**

“The problem of adversity in implied dedication is analogous to the question, in prescription cases, whether the use in issue should be characterized as prescriptive or attributed to *neighborly accommodation*.” (*Friends of the Trails, supra*, 78 Cal.App.4th at p. 825, citation omitted, emphasis added.)

The staff report evidences “neighborly accommodation.” Of the 44 persons who alleged that they have used Lot No. 5 for more than five years (Exh. 8a), most of these persons (29 people) were from the immediate neighborhood. The use by the great majority of people reflects “neighborly accommodation,” not “prescriptive” use. The fact that the private La Ladera

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HOA and owners of the undeveloped Lots No. 5 through 11 have continued to allow public access around the vehicular gates, is even further evidence of this "neighborhood accommodation."

**6. Significant owner interference was unnecessary.**

"Therefore, so long as the property was not being damaged and no public nuisance was being created, it was unnecessary for the owner to install chain link fences or hire armed guards to protect his beach from the onslaught of the public." (*County of Orange, supra*, 54 Cal.App.3d at p. 567.)

Likewise, there was no need for the current or any of the predecessor owners of Lot No. 5 to take any significant measures at Lot No. 5, because the property was not being damaged and no nuisance conditions were being created.

**7. No actual or constructive knowledge of public use by the owner.**

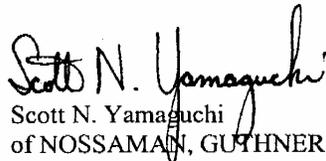
"The question then is whether the public has used the land for a period of more than five years with **full knowledge** of the owner, without asking or receiving permission to do so and without objection being made by anyone." (*Gion, supra*, 2 Cal.3d at p. 38, citations omitted, emphasis added.)

Here, for the reasons stated above, the evidence of public use is insubstantial, and the uses were insufficient to impart notice to an owner of any implied dedication of public access.

\* \* \* \* \*

As outlined above, the staff report fails to demonstrate an implied dedication of public access at the subject property. The Commission cannot, and should not, assume the existence of a prescriptive easement through implied dedication across Lot No. 5 or any of the other remaining undeveloped parcels, in its decisionmaking.

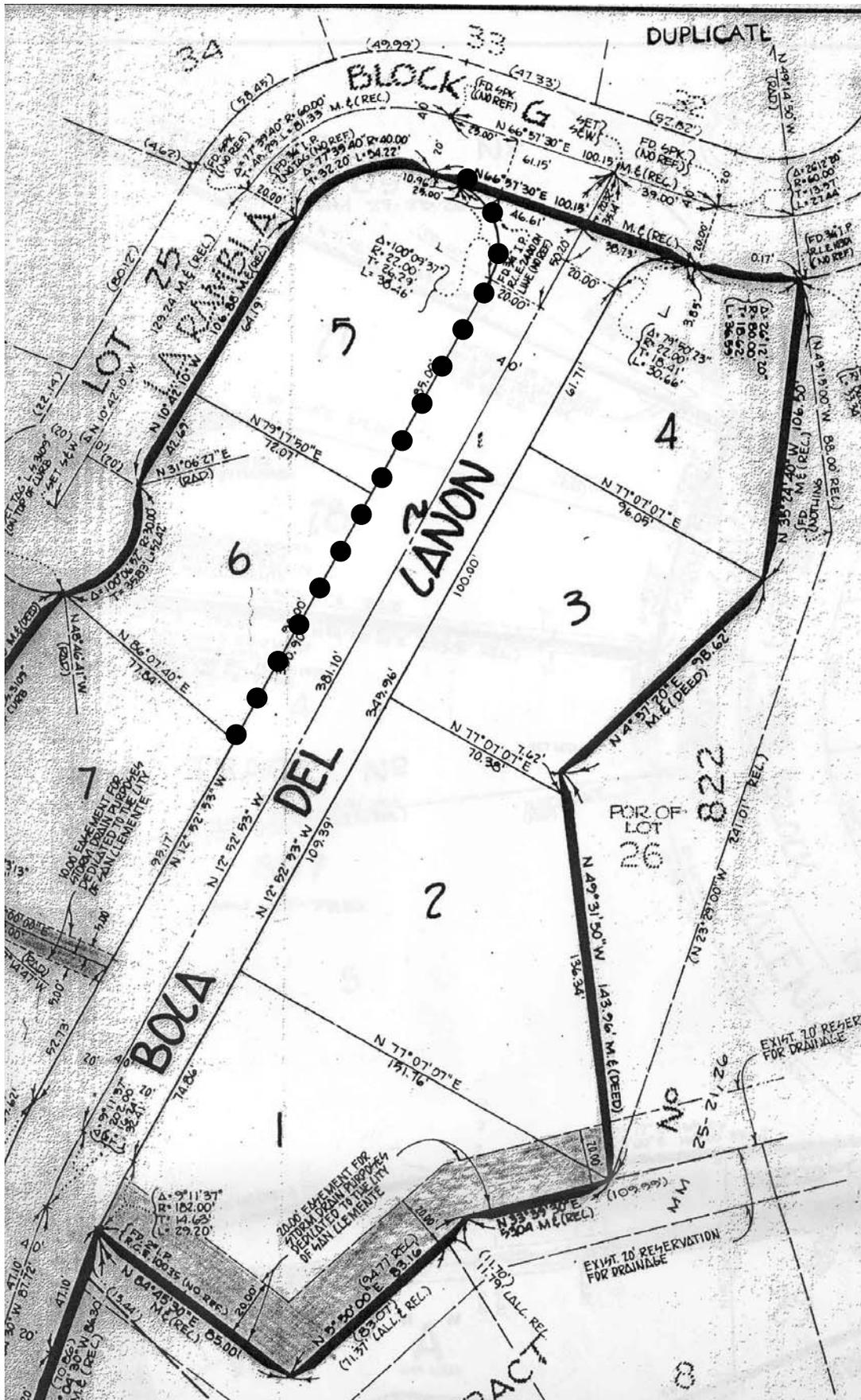
Sincerely,

  
Scott N. Yamaguchi  
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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Base Map is A Portion of Tract No. 4947

● ● ● ● ● = Five (5) Foot Wide Public Access Easement

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 California Coastal Commission