

**CALIFORNIA COASTAL COMMISSION**

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Click here to go to the  
beginning of the staff  
report following the  
addendum.

**W 19.5a****ADDENDUM**

November 8, 2007

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W 19.5a, DISPUTE RESOLUTION No. 5-04-466-EDD-(Camden, LLC) FOR THE COMMISSION MEETING OF November 14, 2007.**

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The following items have been included as part of this addendum:

- 1) December 14, 2005 Coastal Commission Hearing Transcript (Agenda Item No. 27a)
- 2) January 11, 2006 Coastal Commission Hearing Transcript (Agenda Item No. 8a)
- 3) Staff Report for CDP No. 5-04-466-(Camden, LLC)RF (Revised Findings)  
[June 2006 Coastal Commission Hearing]
- 4) Addendum to Staff Report for CDP No. 5-04-466-(Camden, LLC)RF (Revised Findings)  
[June 2006 Coastal Commission Hearing]
- 5) Staff Report for CDP No. 5-04-466-(Camden, LLC)-A1(Material Amendment)  
[December 2006 Coastal Commission Hearing]
- 6) Letter from the Law Offices of Gaines & Stacey LLP to Commission staff dated March 28, 2007

W 19.5a

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COASTAL COMMISSION

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4627 CAMDEN, L.L.C.

CITY OF CORONA DEL MAR

COUNTY OF ORANGE

Application No. 5-04-466

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Fragmented Portion Only  
Following the Public Hearing

Wednesday, December 14, 2005  
Agenda Item No. 27.a.

Hyatt Regency Embarcadero  
5 Embarcadero Plaza  
San Francisco, California

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A P P E A R A N C E S

COMMISSIONERS

Meg Caldwell, Chair  
Patrick Kruer, Vice Chair  
William A. Burke  
Larry Clark  
Ben Haddad, Alternate  
Bonnie Neely  
Steve Padilla  
Dave Potter  
Mike Reilly  
Dan B. Secord  
Mary Shallenberger  
Sara Wan  
  
Dwight Sanders, State Lands Commission

STAFF

Peter Douglas, Executive Director  
Ralph Faust, Chief Counsel  
Jamee Jordan Patterson, Deputy Attorney General  
Deborah Lee, Deputy Director  
Mark Johnsson, Senior Geologist

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1 California Coastal Commission

2 December 14, 2005

3 4627 Camden, L.L.C. -- Application No. 5-04-466

4 **Fragmented Portion**

5 \* \* \* \* \*

6 [ Following close of the public hearing ]

7 CHAIR CALDWELL: I have no other speaker slips, so  
8 I will bring it back to staff.

9 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

10 Staff believes that the site is a bluff, but even  
11 for argument sake, if one were to determine that you didn't,  
12 technically, believe it was a bluff, the question is still,  
13 do you want that seaward encroachment? do you want develop-  
14 ment extending down, even the face of a slope that is on the  
15 seaward side of the development?

16 And, if you look at Exhibit No. 8 in your staff  
17 report, I think you will see, from the cross-section that the  
18 deck, the lower portion of the basement, the stairways and  
19 then the pool all extend, substantially, seaward down the  
20 face of the bluff, or slope, as they might try to  
21 characterize it.

22 For the same reasons, encroachment seaward on the  
23 slope, or a bluff, we believe is inappropriate, because of  
24 the visual impacts, the extent of land form alterations, and  
25 because of the geologic constraints.

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1           We think it is appropriate to site development  
2 back when redevelopment occurs, that that is the opportune  
3 time to impose the more protective standards.

4           With regards to the question about the land use  
5 plan, it is not the land use plan that we are concerned  
6 about. The standard of review is Chapter 3, and we have  
7 taken exception with the city's bluff definition, and their  
8 delineation of the bluff edge over the last several years,  
9 when we felt it was too lenient.

10           The other setbacks, for those other homes, were  
11 again imposed in the '80s and '90s before the staff and the  
12 staff and the Commission began imposing more protective  
13 standards.

14           So, we do think that it is appropriate at this  
15 time to site the development in the most protective location  
16 on the site.

17           CHAIR CALDWELL: Director Douglas, did you wish to  
18 say anything else.

19           EXECUTIVE DIRECTOR DOUGLAS: No.

20           CHAIR CALDWELL: All right.

21           Commissioners.

22           Commissioner Wan.

23           COMMISSIONER WAN: Well, I think you hit on it. I  
24 was going to go into all of what is a bluff, and what is a  
25 slope, and I don't know that it makes much difference, even,

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1 because if you start going down that path, you pick and  
2 choose, one house is a slope, the other house is a bluff,  
3 because normally these kinds of faces, whatever you want to  
4 call them, they vary from one spot to another, and if you are  
5 going to make that the determination, then you are going to  
6 go on a house-by-house basis, if you look at the slope.

7 The issue is, these are all subject to wave action  
8 and coastal erosion, and therefore we need to be concerned  
9 about the setbacks from the beach, the setbacks from the edge  
10 of the bluff.

11 But, the big question I have for you, because the  
12 applicant has been talking, almost consistently, about where  
13 the house is going to be set back. What is proposed to go on  
14 the bluff face, because I looked at those photos, and I  
15 didn't see development on the face of the bluff in any of  
16 those other homes? It is hard to tell how far they are set  
17 back from the bluff, from the edge of the bluff, or whatever  
18 you want to call it, because it is an undulating line. It is  
19 not a simple matter of looking at it. You can't tell,  
20 exactly.

21 But, I didn't tend to see development actually on  
22 the face of whether you call it a bluff, or a slope, or  
23 anything else, so what are they proposing to go on the face  
24 of that bluff, or slope?

25 DEPUTY DIRECTOR LEE: Again, I think a good

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1 reference point would be Exhibit No. 8 of your staff report.

2 And, you can see that the deck, the lower portion  
3 of the basement, section of stairway, and then the pool occur  
4 on the face of what we are calling the bluff, or for argument  
5 sake, if you wanted to call that a slope.

6 And, then, also in looking at the site plan, which  
7 is Exhibit No. 5 of your staff report, you will see there  
8 where staff has delineated what we believe is the bluff edge,  
9 and you will see the extent of the deck, swimming pool, the  
10 walkways, that go down the face of the bluff, or slope.

11 COMMISSIONER WAN: And, I think that is the issue  
12 for this Commission, we have to look at this and see,  
13 regardless of where that house is set back from the edge,  
14 they are also proposing development on the bluff face,  
15 including basements, and pools, and all kinds of things, so  
16 this is more than just how far is this set back from the edge  
17 of this bluff, and so that is the critical issue here. I  
18 don't see that on any of the other developments, and if it  
19 is, it is minor. This does not look to be minor amount  
20 development on that face.

21 The other issue, and we will have to discuss it,  
22 although I think it is sort of a smoke screen, is whether  
23 this is a bluff, or not, because they have raised it. But,  
24 the LUP is not the standard of review here, it is the Coastal  
25 Act, so I would like Mark Johnsson to tell me, under our

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1 policies, and under the Coastal Act, what constitutes a  
2 coastal bluff?

3 SENIOR GEOLOGIST JOHNSON: Actually, our  
4 revision, or suggested mods on the LUP, is, I believe what we  
5 would be recommending as the definition of bluffs in most  
6 cases.

7 The Coastal Act and the regulations of the Coastal  
8 Act are silent on the question of what is a bluff. What I  
9 have proposed in the past is a definition based on the  
10 American Geological Institute's glossary of geology, which  
11 says a bluff is a high bank, or bold headland, with a broad  
12 precipitous, sometimes rounded, cliff face overlooking a  
13 plain, or a body of water.

14 Nothing to describe the steepness of the headland,  
15 nothing to describe the height of it. And, these are not,  
16 technically, defined terms.

17 COMMISSIONER WAN: Yes, and I appreciate that,  
18 because that gets back to my original comment, if you start  
19 determining it very strictly on the basis of the slope, you  
20 can go from one house to another, in the same area, and you  
21 will get one to be a slope, the other will be a bluff face,  
22 and you are going to get, really, an unfair situation.

23 But, the big issue here is consistency about what  
24 the face of this land form is, and in this case, what the  
25 applicant is proposing is development on the face of that

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1 land form.

2 CHAIR CALDWELL: Commissioner Burke.

3 COMMISSIONER BURKE: Secord's hand was up first.

4 CHAIR CALDWELL: All right, very good.

5 Commissioner Secord.

6 I thought you had your hand up, Commissioner  
7 Burke.

8 COMMISSIONER SECORD: My problem with this  
9 project, frankly, is the development on the bluff, or non-  
10 bluff, or whatever that is.

11 I can relate to the stringline, or the row of  
12 houses marching down the bluff, but the addition of part of  
13 the basement, and that pool, and some of that development,  
14 clearly on the bluff, in my view -- my view is that a bluff  
15 that is something between that is acted on at one end by the  
16 marine erosion, and in this case, has a flat building pad.

17 Maybe this isn't a bluff by some definition, but  
18 most people would, I think, agree that it is acted on by  
19 marine erosion on one place, and has a house on the other.

20 So, my problem is the development down this slope  
21 thing -- whatever you all decide it really is. I could go  
22 for the house, but I am having trouble with the appurtenances  
23 that drift down the bluff, or cliff.

24 CHAIR CALDWELL: Back to Commissioner Burke.

25 COMMISSIONER BURKE: Yes, I was following along

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1 with both Dr. Secord's and Ms. Wan's comments, until  
2 Commissioner Reilly showed me the development of the house  
3 next door, where there is significant development on --  
4 whether you call it the slope, or the bluff face.

5 And, quite honestly, I am, you know, I am not sure  
6 that I don't think that this Commission should evaluate it on  
7 a case-by-case basis, because to take a dictionary definition  
8 of what a bluff is, is, I think, not in the best interest of  
9 the public, and sometimes not the coast, it just depends on  
10 the case.

11 So, I would ask both of them, or anyone who is  
12 concerned about that, to relook at the development next door.

13 CHAIR CALDWELL: Commissioner Kruer.

14 CHAIR KRUER: I think the issue for me is -- and I  
15 understand where staff is coming from, and I understand that,  
16 and I understand that this discussion, I mean, I am not  
17 really too concerned, as far as the issue of whether it is a  
18 bluff, or whether it is a slope. To me, it is a slope. I  
19 wouldn't say, "Let's walk up to that lot. Let's walk up that  
20 bluff." To me there is no bluff there. There might be to  
21 some people, but it is less than a 2:1 slope, and that is not  
22 a bluff to me, that is a slope.

23 And, I think, to me, it -- I understand what you  
24 are trying to achieve, and I agree with, you know, what you  
25 are talking about, but to me, it is really -- what I am

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1 considering is a fairness issue here.

2 Clearly, from the exhibits that have been handed  
3 to me, the house next door has got tremendous amounts of  
4 pools, patios, and everything else, at 173 Shore Cliff, and  
5 it is just an issue.

6 And, I think, sometimes, you have to look on it on  
7 a case-by-case basis. It is the last house, there is some  
8 fairness issues here, and I don't know what else I could add  
9 to it, but I am concerned that we treat this applicant  
10 fairly, as we did the others.

11 CHAIR CALDWELL: Commissioner Shallenberger, then  
12 Commissioner Clark.

13 COMMISSIONER SHALLENBERGER: I also am concerned  
14 about fairness, but not if fairness means that we permit  
15 things that are of equally high risk, but that do not  
16 minimize risk to life and property.

17 And, so I hear the fairness issue, but the  
18 proposal that is being by staff is about coastal hazards, and  
19 meeting the requirements of the Coastal Act, which says that  
20 new development shall minimize risk to life and property, in  
21 areas of high geologic floods and fire hazard, to assure  
22 stability and structural integrity, and neither create, nor  
23 contribute, et cetera.

24 So, the fact that a previous Commission, or even  
25 had it been this Commission, approved a house next door, that

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1 is not relevant to the project that is before us today. What  
2 is before us today is whether or not this project is  
3 consistent with the Coastal Act, and from everything that I  
4 have seen, from what staff has laid out in the staff report,  
5 and what our staff geologist is telling us, is that this, as  
6 proposed by the project proponent, does not meet the Coastal  
7 Act standards, and so I hear the fairness issue, but if we  
8 allow the fairness to supersede the requirements in the  
9 Coastal Act, it would mean, in fact, that not very sound  
10 decisions that previous Coastal Commissions had made 10 and  
11 20 years ago would dictate and constrain our ability to make  
12 the best decisions we can today.

13 So, I urge my fellow Commissioners, while keeping  
14 fairness in mind, to actually make their decision based on  
15 what the Coastal Act requires, not what the house next door  
16 looks like.

17 So, for that reason, I find, given the evidence  
18 that our staff has proposed to us that we have very little  
19 option but to go with the staff recommendation on this.

20 CHAIR CALDWELL: Commissioner Clark.

21 COMMISSIONER CLARK: Yes, thank you.

22 Hearing two perspectives on the Commission, with  
23 respect to the way ahead, I happen to believe, in this  
24 particular case, and notwithstanding Commissioner  
25 Shallenberger's articulation and articulate summary for

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1 staff's recommendation, I believe there is a case here for  
2 equity and fairness, and I believe that we do have to look at  
3 these cases as the merits weigh in.

4 And, I don't believe that it is inconsistent with  
5 the Coastal Act to approve this project as proposed before us  
6 today.

7 Thank you.

8 CHAIR CALDWELL: Commissioner Wan.

9 COMMISSIONER WAN: Question of staff, because much  
10 is being made of the project next door, and I am looking at  
11 Exhibit 4.

12 Tell me whether the project next door, because if  
13 you look at a cross-section -- which is what everybody is  
14 looking at up here -- I think it, probably, gives you a  
15 misleading interpretation of this. The question I have for  
16 you is, because the project next door's bluff juts out,  
17 relative to where the edge of the bluff is for this  
18 particular property, on that project next door, the one -- I  
19 don't know if it is east, or west, or north, I can't tell,  
20 okay. You have been to the site, does the project next door  
21 have development down the face of the land form there, and I  
22 would like to see a picture, front on, if we can.

23 DEPUTY DIRECTOR LEE: Through the Chair.

24 Commissioner Wan, we attempted to do a review of  
25 all of the precedential permits on the surrounding

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1 properties, and those are included in Appendix A of your  
2 staff report, and on page 18, this site is the Bratia site,  
3 173 Shore Cliff, and in December of 1978, the South Coast  
4 Regional Commission did approve the construction of the  
5 swimming pool and Jacuzzi on the bluff face, and that was  
6 without any special conditions, but that was 1978.

7 Then, in December 1996, the previous Commission  
8 also approved a waiver for remodeling an addition to the  
9 single-family residence located on the parcel, and  
10 alterations to the existing swimming pool and spa were  
11 proposed, but the findings, and what we had in the file,  
12 indicated that the proposed project did not result in any  
13 further development oceanward of what was already existing.  
14 So, those two actions are what occurred on the up-coast  
15 property.

16 And, again, in terms of when you would look at the  
17 appropriate time to reassess the siting of development on  
18 lots, staff believes the appropriate time is when you see  
19 recycling of development.

20 COMMISSIONER WAN: Yes, and I am glad that you did  
21 bring that up, because, basically, that development that they  
22 are talking about, and using as precedent, or fairness, was  
23 from 1978, and if we can't apply -- as Commissioner  
24 Shallenberger said -- things that we have learned since 1978,  
25 because it was approved then, then there are serious

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1 problems, frankly.

2 Because we are not talking about development that  
3 just happened relatively recently, or even within the last 10  
4 years. We are talking about development that was approved in  
5 '78, and then the Commission didn't do anything to undo it,  
6 that is true, but that is a 1978 approval.

7 CHAIR CALDWELL: Commissioner Burke.

8 COMMISSIONER BURKE: I am confused by what you  
9 said.

10 You said it was a 1978 approval, but was the  
11 remodeling that you discussed on the same property? was it on  
12 the lot face, development was of the pool and spa and that  
13 stuff?

14 DEPUTY DIRECTOR LEE: Again, through the Chair.

15 Commissioner Burke, the original action that was  
16 for the construction of the swimming pool and Jacuzzi on the  
17 bluff face occurred in 1978.

18 COMMISSIONER BURKE: Yes.

19 DEPUTY DIRECTOR LEE: Then, in December of 1996,  
20 another previous Commission approved a waiver for remodeling  
21 an addition to the home, as well as alterations to the  
22 existing swimming pool and spa.

23 But, what the record indicates is that the  
24 proposed project, in 1996, did not result in any further  
25 development oceanward of what was already existing on the

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1 site.

2 COMMISSIONER BURKE: But, it confirms the  
3 development of that which was there, which is what they are  
4 using as a precedent now.

5 So, it didn't say you could take it further, but  
6 that you could use what you got. It didn't say you have got  
7 to move it back, or take it away because you are no longer in  
8 conformance with the Coastal Act, so we allowed that develop-  
9 ment to be there.

10 [ General Discussion ]

11 CHAIR CALDWELL: Would the Commissioners like to  
12 use their microphones up here, in their repartee, please, so  
13 that we can all benefit.

14 Commissioner Shallenberger.

15 COMMISSIONER SHALLENBERGER: I remain very  
16 concerned about the direction that this conversation is  
17 going.

18 The Coastal Act, as much as we, as individuals,  
19 care about fairness, there is no Coastal Act policy that  
20 requires that fairness supersede other Coastal Act policies.

21 And, I just want to bring to your attention that  
22 staff's proposal here is based on conformance of the proposed  
23 development with the visual resources. I have not heard  
24 anybody argue that staff's proposal on that is wrong;  
25 geologic hazard, I have not heard anybody argue that the

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1 geologist here is wrong; or public access policies.

2 If, for those of you who are inclined to vote in  
3 favor of the project proponent, I urge you to do it based on  
4 the Coastal Act, and that isn't the discussion that I am  
5 hearing up here.

6 So, I, for one, have not heard anything to make me  
7 believe or that counters what staff is proposing, and  
8 consequently, I find, as a Commissioner, I have been given no  
9 argument not to vote in favor of the staff recommendation.

10 CHAIR CALDWELL: Commissioner Haddad.

11 COMMISSIONER HADDAD: Thank you, Madam Chair.

12 Actually, I was going to ask a question on a  
13 couple of these subject areas of the staff report that we  
14 haven't covered yet, because I think most of the discussion  
15 was on the hazards issue, which I think Commissioner Shallen-  
16 berger has done a very good job of evaluating.

17 I just wanted to ask the staff, on the scenic  
18 resource issue, and the public access issue, based on the  
19 pictures that were up there earlier, I was having a hard time  
20 understanding how the view issue is impacted at that Little  
21 Corona Beach, if you can't see it? Unless there is some  
22 beach that was not in those pictures, I didn't get to see.

23 And, also on the access issue, and how the  
24 development would effect access, if, in fact, there is no  
25 access around that corner? But, maybe I am wrong about that,

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1 because all that I am going on is those pictures that were up  
2 there earlier.

3 DEPUTY DIRECTOR LEE: Thank you, through the  
4 Chair, again.

5 Commissioner Haddad, Little Corona Beach, in our  
6 understanding, does extend down to this area. It is called  
7 that by some of the people, and we did have an aerial that  
8 shows a little bit more of a pocket beach below the subject  
9 site. It is difficult, I will grant, to get around to this  
10 location, but it is possible. People do traverse the area.

11 So, the concern about impacts to public access is  
12 just, again, encroaching the line of development further sea-  
13 ward, removes the natural bluff, and can discourage people  
14 from going to an area, if they feel it is adjacent to private  
15 development.

16 In terms of visual impacts, similarly, the area is  
17 viewed at sometimes by the public. It would be visible from  
18 the ocean, so trying to maintain the more natural character  
19 of the bluffs is the goal.

20 COMMISSIONER HADDAD: So, when you talk about  
21 discouraging use of the beach, as you do in that access  
22 paragraph, that is because the development that is proposed  
23 is coming down that slope, as opposed to if it were just  
24 staying up above where all of the other houses are?

25 DEPUTY DIRECTOR LEE: Correct.

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1 COMMISSIONER HADDAD: Thank you.

2 CHAIR CALDWELL: Next is Commissioner Reilly.

3 COMMISSIONER REILLY: Yes, just a question for Dr.  
4 Johnsson.

5 What is the nature, in this particular location,  
6 what is the nature of the geological hazard that we are  
7 looking at with the applicant's proposal?

8 SENIOR GEOLOGIST JOHNSON: Thank you,  
9 Commissioner, through the Chair.

10 This site is relatively stable. The global  
11 overall stability of the entire bluff failing is low -- there  
12 is low probability of that. The bluff face is surficially  
13 unstable. It is continually moving down. There is slope  
14 wash deposits there. There is going to be bluff retreat  
15 there, not particularly fast, as compared to some areas, but  
16 there is bluff retreat.

17 In addition, with sea level rise, you are going to  
18 have to expect those processes to increase in the future.

19 And, so for those reasons, that fact that it is  
20 relatively stable, but that there are, still, bluff retreats  
21 to be expected, I would recommend that a minimal setback be  
22 applied. And, in this case, a minimal setback I would  
23 recommend is about 25 feet.

24 COMMISSIONER REILLY: And, when you do your kind  
25 of formula analysis of risk, 1:5 or however, how does this

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1 project play out relative to that analysis, as it is  
2 proposed?

3 SENIOR GEOLOGIST JOHNSON: Thank you, there would  
4 be no setback necessary for global slope stability.

5 The applicant's geologist was not able to  
6 determine a very useful, defensible, long term average bluff  
7 rate. The quality of the photographs was not good enough.  
8 And, so, we would normally, as you know, apply 75 years of  
9 erosion, and in the absence of the necessity of a factor of  
10 safety setback, add some kind of a buffer for uncertainty.

11 In this case, since we don't have a good estimate  
12 of what 75 years of erosion will mean, we are just defaulting  
13 to a minimal setback.

14 COMMISSIONER REILLY: And, would you apply that to  
15 the structure, or to the other kind of amenities, pool,  
16 things, or would it be, primarily, the structure where you  
17 would apply that?

18 SENIOR GEOLOGIST JOHNSON: We would typically  
19 apply that to any type of structure that requires a  
20 foundation, that cannot simply be easily removed, and that  
21 would include the pool.

22 CHAIR CALDWELL: Commissioner Padilla.

23 COMMISSIONER PADILLA: Madam Chair, thank you.

24 I am prepared to make a motion, and speak to it,  
25 when appropriate.

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1 CHAIR CALDWELL: Please go forward.

2 [ MOTION ]

3 COMMISSIONER PADILLA: I would move that the  
4 Commission approve Coastal Development Permit No. 5-04-466,  
5 for the development proposed by the applicant, and recommend  
6 a "No" vote.

7 COMMISSIONER SHALLENBERGER: Second.

8 CHAIR CALDWELL: It has been moved by Commissioner  
9 Padilla, seconded by Commissioner Shallenberger, that the  
10 Commission approve this CDP, but they are recommending a "No"  
11 vote, which would result in denial.

12 Would you like to speak to your motion?

13 COMMISSIONER PADILLA: Yes, for purposes of a  
14 couple of the applicable standards in the Coastal Act.

15 First, with regards to visual resources, and the  
16 setback requirements, I think that however the site is  
17 characterized, slope or bluff, based on the facts of the  
18 proposed development, it is pretty clear that the standard is  
19 appropriate. It is clear from the language of the Act, and  
20 it addresses itself, not just to the visual issues, but I  
21 think, also, to some stability issues.

22 I think it is pretty clear from the record that we  
23 just heard, testimony, that there is some level of  
24 anticipated instability, which may represent a hazard, with  
25 respect to development that is proposed for the slope face,

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1 or the bluff face, or whatever appropriate definition we  
2 conclude.

3 So, there is reason, I think it is reasonable to  
4 conclude from the evidence in the record that that is the  
5 appropriate standard, and there is some concern, with respect  
6 to hazard.

7 So, I think that, in addition, the staff report  
8 indicates that the applicant's own geologist didn't even  
9 analyze, or wasn't able to analyze stability with respect to  
10 the pool, the spa, the retaining walls, the steps, and the  
11 pathways to the beach. And, there is testimony from our own  
12 that indicated that there are some stability issues there.

13 So, I think the appropriate standards have been  
14 applied, both with respect to stability and hazard, as well  
15 as visual, access, appropriately by the staff's analysis.  
16 They are clear, both from the standards of the Coastal Act,  
17 as well as from the LUP, as well as amendments to the LUP,  
18 which we can look to as a guide line, but not the primary  
19 guide line.

20 So taken together, I do understand the fairness  
21 issue, as well, but I think that the staff has adequately  
22 analyzed the precedential value of the adjoining properties  
23 and developments that have occurred there, and it is clear  
24 that while some value can be given a precedential value, I  
25 think that the staff has adequately distinguished those cases

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1 from the current case.

2 So, taken as a whole, I think it is pretty clear  
3 what the standards that need to be applied are. It is pretty  
4 clear what the facts in the record are, and it is pretty  
5 clear what the conclusion should be, so that is the reason  
6 for the motion.

7 CHAIR CALDWELL: Commissioner Kruer, then  
8 Commissioner Potter.

9 CHAIR KRUER: I think the facts in the record are  
10 not clear.

11 I mean, I look at that, and again, you can call it  
12 a bluff, you can call it a slope, you can call it whatever  
13 you want, this is one of the easiest ones I have ever looked  
14 at. I mean, I don't know where the geological problem here  
15 is. And, I heard Dr. Johnsson just talk about that, too.

16 This is not one that you, you know, you apply this  
17 precedential rule, and say this is so important, so forth.  
18 To me, even if I am the lone vote, there is a fairness issue  
19 here, and there always is a fairness issue with me. And, you  
20 can cover all of the stuff over and say there is no fairness  
21 issue.

22 I will tell you, this is the one, we are trying to  
23 protect something that -- there isn't a geological problem on  
24 this site with the slope. The slope is less than a 2:1. We  
25 look at these cliffs falling off. We do everything, with the

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1 25 feet, and I, for one person, I don't buy it, and I just  
2 cannot support the "No" vote.

3 CHAIR CALDWELL: Commissioner Potter.

4 COMMISSIONER POTTER: Actually, my ears heard the  
5 same thing Commissioner Kruer did.

6 My fairness is fairness, but I am more hung up on  
7 the word subjectivity, and I don't see a firm definition, as  
8 defined. We had to go to some other resource to get an  
9 actual firm definition.

10 So, I am not going to support the motion. I might  
11 consider having the baby a little bit, and moving the project  
12 back 10 feet, per se, but that would be up to the applicant,  
13 if they would be willing to accept something like that.

14 If we could have the applicant come forward, I  
15 think that might buy is a little bit of comfort, but I don't  
16 hear a whole lot of concern about the geologic stability  
17 here.

18 Could the applicant come forward, through the  
19 Chair?

20 CHAIR CALDWELL: Sure, and if you would state your  
21 name for the record, sir.

22 MR. GENNETT: Yes, Madam Chair, my name is Brian  
23 Gennett. I am the architect.

24 And, I think, to answer Commissioner Potter's  
25 query, we would certainly look at respecting the need to move

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1 it back approximately 10 feet, which is the line of the  
2 existing buildings.

3 COMMISSIONER POTTER: So, you are willing to  
4 accept that?

5 MR. GENNETT: Yes.

6 COMMISSIONER POTTER: So, am I.

7 CHAIR CALDWELL: All right.

8 Commissioner Wan --

9 COMMISSIONER POTTER: As amended to it.

10 CHAIR CALDWELL: -- did you have a question to  
11 ask?

12 COMMISSIONER WAN: No, not a question.

13 Here is my concern, because the big issue for me  
14 is the development on the bluff face, and we have two ways to  
15 go. I mean, if we deny it, then they can come back, you can  
16 give them directions to come back and move it -- either move  
17 the house back, which isn't as important to me as that  
18 development on the bluff face.

19 And, so I am very concerned about allowing that,  
20 and saying that they can do that. And, there is superficial  
21 creep, as our geologist said, and there is all kinds of other  
22 Coastal Act issues, including public access and visual  
23 impacts.

24 We are very reluctant, generally speaking, to  
25 approve development on a coastal land form face, whether you

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1 want to call it a bluff or a slope, so I use the word land  
2 form. And, that is what is going to happen here, because it  
3 is more than just the location of the house.

4 CHAIR CALDWELL: Commissioner Reilly.

5 COMMISSIONER REILLY: Thank you, Madam Chair.

6 It appears as though we are moving towards a vote  
7 on this, and I would just request that in the event that it  
8 appears that the Commission, on balance, is inclined toward  
9 approval of this, rather than denial, that we withhold the  
10 final tally of the vote, in order to give staff an  
11 opportunity to propose conditions that aren't currently in  
12 the staff report.

13 CHAIR CALDWELL: Yes, that was my next thought.

14 Staff, did you wish to weigh in, should the  
15 Commission move towards approval of this item?

16 EXECUTIVE DIRECTOR DOUGLAS: No, I think  
17 Commissioner Reilly's proposal makes a lot of sense, so if  
18 that is the case, then before we announce the vote, we can  
19 indicate what conditions --

20 CHAIR CALDWELL: Very good.

21 EXECUTIVE DIRECTOR DOUGLAS: -- would -- except in  
22 looking at our soon to be erstwhile chief counsel is looking  
23 like right now, I think he wants to say something to you.

24 COMMISSIONER SECORD: Ah, yes, erst-swami.

25 CHAIR CALDWELL: Mr. Faust.

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1 CHIEF COUNSEL FAUST: Yes, Madam Chair.

2 Not wanting to be a fly in the ointment, my one  
3 concern is that Commissioners should decide their vote, if  
4 they are looking at the project that they deciding upon,  
5 based upon the project as it is going to be approved, which  
6 would include whatever conditions the supporters of the  
7 motion would think appropriate, or whatever modifications the  
8 applicant would make in their project description.

9 Holding the conditions until after the vote, would  
10 create a situation where one wonders what the Commissioners  
11 are voting for. If the Commissioners want to support a  
12 project without conditions, that is certainly their  
13 prerogative, but I think that you need to have the project,  
14 as it is going to be approved, before the Commission when it  
15 decides whether to vote up or down on it.

16 CHAIR CALDWELL: Well, not to emulate the City of  
17 San Diego too much, I think we have a legal opinion here, and  
18 can I just clarify.

19 Is the application and the project before us  
20 including moving the structure 10 feet back? yes, or no?

21 Your name, for the record.

22 MR. GENNETT: Yes, my name is Brian Gennett, and  
23 the answer is "Yes".

24 CHAIR CALDWELL: Okay.

25 MR. GENNETT: And, I can help you with the pool

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1 issue, too, if you could give me a second.

2 CHAIR CALDWELL: Pardon, I didn't catch that?

3 MR. GENNETT: I might be able to get Commissioner  
4 Wan a little more comfortable with an idea that I just came  
5 up with, on the location of the pool.

6 CHAIR CALDWELL: Would you please state your idea  
7 regarding the pool, sir.

8 MR. GENNETT: Yes.

9 What I am suggesting is that we move the  
10 improvements, to not go any further than what they are  
11 existing today, so that the pool would be following, roughly,  
12 the same location as the pool is today, which is at the top  
13 of the bluff.

14 CHAIR CALDWELL: Okay, thank you.

15 And, Commissioner Secord had a --

16 MR. GENNETT: So, is that considered --

17 CHAIR CALDWELL: That is also folded in as part of  
18 your application at this point?

19 MR. GENNETT: Yes, I would.

20 CHAIR CALDWELL: Okay, thank you.

21 Commissioner Secord.

22 COMMISSIONER SECORD: I think maybe my deal is  
23 done, because what I wanted to do was to support a project  
24 that had no more development on the cliff than is there  
25 today.

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1 Do you now agree to that?

2 CHAIR CALDWELL: I am so sorry.

3 MR. GENNETT: Yes, Commissioner Secord, we do.

4 COMMISSIONER SECORD: Okay.

5 COMMISSIONER CLARK: Madam Chair.

6 COMMISSIONER CALDWELL: And, your name for the  
7 record?

8 MR. GENNETT: I just need to let my client know of  
9 this. Yes, my name is Brian Gennett.

10 CHAIR CALDWELL: Looking more like San Diego every  
11 moment.

12 COMMISSIONER CLARK: Madam Chair.

13 CHAIR CALDWELL: Commissioner Wan, then  
14 Commissioner Clark.

15 [ MOTION ]

16 COMMISSIONER WAN: Yes, I am going to make a  
17 motion here, because I think you are approaching what I would  
18 be comfortable with -- I guess I am not allowed to preface my  
19 motion.

20 I'll make my motion, and then I will explain it.  
21 I am going to move for a continuance.

22 COMMISSIONER SHALLENBERGER: Second.

23 COMMISSIONER WAN: And, here is why.

24 I think you, basically, have come, or started to  
25 come very close to what I could approve, but I am very

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1 uncomfortable just saying we move the house back 10 feet. We  
2 are not going to go any further. These are major changes  
3 that we need to take a look at and understand more fully.

4 CHAIR CALDWELL: Commissioner Clark.

5 COMMISSIONER CLARK: Yes, in fact, Commissioner  
6 Wan was thinking exactly the way I am thinking on this.

7 I think there is the potential of a win --

8 COMMISSIONER WAN: Right.

9 COMMISSIONER CLARK: -- with a majority of the  
10 Commission supporting a revised project.

11 And, I would like to support the motion to  
12 continue, and encourage the applicant to work with our staff,  
13 in the direction that we have started today.

14 CHIEF COUNSEL FAUST: Madam Chair.

15 CHAIR CALDWELL: Yes, Mr. Faust.

16 CHIEF COUNSEL FAUST: Yes, thank you, Madam Chair.

17 The one thing for the Commission's consideration,  
18 and the staff's consideration, I want to point out, is that  
19 your final deadline under the *Permit Streamlining Act* is at  
20 the end of January, so you do need to act by the January  
21 meeting.

22 CHAIR CALDWELL: All right.

23 COMMISSIONER WAN: I have no problem with  
24 continuing this to January.

25 This is -- the applicant has already moved quite a

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1 ways. I think they are going to be very close to something  
2 that all of us could, probably, support, and I can't imagine  
3 that, giving us one month wouldn't do it.

4 EXECUTIVE DIRECTOR DOUGLAS: Well, Madam Chair.

5 CHAIR CALDWELL: Staff.

6 EXECUTIVE DIRECTOR DOUGLAS: If I may, it is not a  
7 matter of a month. The January meeting, and with the  
8 holidays, the mailing is next week.

9 But, what I am suggesting -- and Deborah can  
10 correct me if I am off base here -- but, what I hear you  
11 saying is that the motion to continue is really to specify  
12 the seaward encroachment of development, and given what the  
13 applicant's representative just said, I think that we could  
14 craft that language that would indicate how far seaward any  
15 improvements would go.

16 That doesn't necessarily mean we would change our  
17 recommendation, but we could certainly have that specified,  
18 so that if you were inclined to approve it, which is much  
19 better than what is being proposed, that you would be clear  
20 on what we are talking about, in terms of seaward  
21 encroachment, and that in time for the January meeting.

22 Deborah, does that sound feasible.

23 DEPUTY DIRECTOR LEE: After further review, for a  
24 change to our report, it would be staff's opinion to say  
25 "No." However, we could, possibly, issue the same report,

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1 but with an addendum that would clarify what the applicant's  
2 proposal is, because I am still unclear about exactly what  
3 they are proposing.

4 We have not received any written proposal on this  
5 alternative, so I think that would be certainly doable by  
6 next week.

7 EXECUTIVE DIRECTOR DOUGLAS: And, we heard what  
8 the representative said on the microphone here, in response  
9 to Commissioners' concerns, so I think that is pretty clear.  
10 And, he indicated that they would be able to live with no  
11 further encroachment than what is there now.

12 And, then, if we can pin that down, and we can  
13 present that to you, and in any event, then you can decide  
14 what you want to do with that at the January meeting.

15 CHAIR CALDWELL: Mr. Gennett, can you come to the  
16 mike.

17 Staff, when do you need the written information  
18 from the applicant?

19 DEPUTY DIRECTOR LEE: By the end of the week, no  
20 later.

21 CHAIR CALDWELL: Mr. Gennett.

22 MR. GENNETT: Would my testimony work that we  
23 won't go any further than the existing building, or do you  
24 need that written?

25 EXECUTIVE DIRECTOR DOUGLAS: I think, just showing

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1 us drawings of what that means, so that we can specify it.

2 I think that is the concern, because you look at  
3 some of the other development here, and it is not clear what  
4 was further seaward than what was there before. So, if you  
5 could show us a site plan that would indicate how far the  
6 development would go, that would give us the information.

7 MR. GENNETT: I believe I could probably do that  
8 right now, if that works.

9 CHAIR CALDWELL: Well, how about to the end of the  
10 week, if you need it. You have until the end of the week.

11 MR. GENNETT: You've got it.

12 CHAIR CALDWELL: All right.

13 EXECUTIVE DIRECTOR DOUGLAS: Okay.

14 COMMISSIONER BURKE: Well, Madam Chair, if he  
15 could do it right now, and I am not saying he should do it  
16 right now, but why can't we trail this until tomorrow --

17 EXECUTIVE DIRECTOR DOUGLAS: Please use your  
18 microphone.

19 CHAIR CALDWELL: Yes, Commissioner Burke.

20 COMMISSIONER BURKE: If he can do that -- and I am  
21 sure it is just a computer generation -- why can't we trail  
22 this issue until tomorrow, and let the staff look at it.

23 CHAIR CALDWELL: Well, I am not sure that that is  
24 really giving staff the time that they need to evaluate it.

25 EXECUTIVE DIRECTOR DOUGLAS: No, and we would need

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1 to see it, and then sit down and verify it, and if it is,  
2 merely, an addendum to this report, we can bring it back --

3 COMMISSIONER REILLY: Madam Chair, I'll support  
4 it.

5 EXECUTIVE DIRECTOR DOUGLAS: -- at the January  
6 meeting.

7 COMMISSIONER REILLY: I'll support a 30-day  
8 continuance.

9 CHAIR CALDWELL: All right.

10 We do have a motion on the table for a  
11 continuance, which takes precedence over the main motion, to  
12 continue this for a month, in order to provide the applicant  
13 an opportunity to provide revised drawings, site plan,  
14 pursuant to the instructions that we have given staff and the  
15 applicant today, and to which the applicant's representative  
16 has agreed, regarding moving the proposed development.

17 And, we appreciate your patience with us, and your  
18 willingness to work with us.

19 Is there any objection to a unanimous roll call on  
20 this motion?

21 [ No Response ]

22 Seeing none, the continuance is granted, and thank  
23 you, very much.

24 \\\

25 [ Whereupon the hearing concluded at 5:35 p.m. ]

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Meg Caldwell, Chair  
Patrick Kruer, Vice Chair  
David Allgood, Alternate  
William A. Burke  
Steven Kram  
Bonnie Neely  
Trent Orr, Alternate  
Dave Potter  
Mike Reilly  
Dan B. Secord  
Mary Shallenberger  
Sara Wan

STAFF

Peter Douglas, Executive Director  
Ralph Faust, Chief Counsel  
Jamee Jordan Patterson, Deputy Attorney General  
Deborah Lee, Deputy Director  
Mark Johnsson, Senior Geologist

-000-

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1 California Coastal Commission

2 January 11, 2006

3 Camden L.L.C. -- Application No. 5-04-466

4 \* \* \* \* \*

5 10:30 a.m.

6 CHAIR CALDWELL: We are ready for 8.a. now.

7 DEPUTY DIRECTOR LEE: That brings is to Item 8.a.  
8 This is Application No. 5-04-466. This is a request for the  
9 demolition of an existing residence and construction of a new  
10 almost 9,000-square foot two story with a subterranean  
11 basement, single family residence on Shorecliff Road in  
12 Corona Del Mar.

13 This item came up at the December hearing, and the  
14 Commission continued it to this hearing. We do need to act  
15 on the item today, or it has to be withdrawn. We are at the  
16 270th day with this meeting.

17 The project, just briefly to review, again, is the  
18 demolition and construction of a single family home. It is  
19 on property that faces and abuts the ocean in the Corona del  
20 Mar area.

21 The issue at the time in December was a concern  
22 about the seaward encroachment of the proposed residence, and  
23 accessory improvements, down what staff continues to  
24 characterize as a coastal bluff. The applicant has raised  
25 questions about whether or not it is a slope. In any case,

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1 as staff indicated at the December hearing, even for the sake  
2 of argument, whether you call it a slope or a coastal bluff,  
3 we are concerned about the seaward encroachment of develop-  
4 ment on the face of the bluff, or the slope, in this area for  
5 a variety of reasons.

6 One, in terms of visual impacts, both from the  
7 abutting beach, or the ocean, additional concerns about  
8 encroaching development and what that can do to the stability  
9 of the site, in terms of encouraging coastal bluff erosion,  
10 as well as the safety of development.

11 At the time of the hearing, there was considerable  
12 discussion on the part of the Commissioners present, with the  
13 applicant's representative, about possible compromise, in  
14 which the applicant was proposing to resite the home and  
15 their accessory improvements back up onto the main pad, no  
16 further than the line of the existing improvements.

17 After the hearing, within the first week, we  
18 received revised plans -- or at least a site plan, from the  
19 applicant's agent. Those are reflected in your exhibits that  
20 you have, distributed with the staff report today, that does  
21 indeed show that they have pulled back up the residence and  
22 the proposed pool, basically, to the area where the existing  
23 home is presently sited.

24 Staff still is recommending denial of the proposal  
25 because the revised design still does not incorporate either

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1 a 25-foot setback from the bluff edge, as delineated by  
2 staff, for the main home, or a 10-foot setback for the  
3 accessory improvements.

4 Given that this is a full demolition and proposed  
5 new construction of a residence on an ocean fronting bluff,  
6 we believe that this is the appropriate time, with the  
7 recycling of development, to establish the appropriate  
8 setbacks for the future use of the property.

9 I do want to acknowledge, though, and compliment  
10 the applicant for making the change. I think that both staff  
11 and the Commission appreciates the revision that they made.  
12 It certainly is a better proposal than what it was before,  
13 where the stairway, pool improvements, and other amenities  
14 were clearly on the face of the slope.

15 But, nonetheless, staff believes that the  
16 appropriate staff recommendation to you is to provide for the  
17 necessary setbacks from the bluff edge as delineated by  
18 staff. That was an additional point that was clarified  
19 subsequent to the December hearing, was the delineation of  
20 the bluff edge.

21 The applicant had shown on a set of plans, a bluff  
22 edge that they felt conformed with Commission regulations;  
23 however, after reviewing that, the Commission's geologist,  
24 Dr. Mark Johnsson -- who is here and will be making some  
25 comments shortly -- did not concur with that delineation.

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1 So, we have also provided to you, in the staff report in the  
2 addendum, what Dr. Johnsson believes is the appropriate  
3 delineation of the bluff edge.

4 Although, as I said, they did move the structure  
5 and the improvements back up to the main pad, the structure,  
6 as even proposed by the applicant, still includes a deck, a  
7 second level deck that extends out beyond -- if you look at  
8 Exhibit No. 3 in your staff report -- that extends beyond  
9 even where they are delineating the bluff edge. And, as I  
10 indicated earlier, we still believe that the 25-foot setback  
11 is appropriate for the main living areas, and a 10-foot  
12 setback for accessory improvements.

13 So, for those reasons, we are continuing to  
14 recommend denial of the proposal, and at this point, I will  
15 turn it over to Dr. Johnsson.

16 SENIOR GEOLOGIST JOHNSON: Thank you, Deborah.

17 Madam Chair, Commissioners, good morning, I would  
18 just like to take this opportunity to make some further  
19 clarifications of your addendum.

20 As Ms. Lee indicated, staff continues to feel that  
21 a setback from a bluff edge is the appropriate way to site  
22 this development, and so a great deal of effort goes into  
23 defining where, exactly, the bluff edge is.

24 I would, first, like to point out that I have not  
25 had the opportunity to visit the site. I have been to the

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1 street side, to the front yard, but I have not been able to  
2 actually step on the site. I hadn't made arrangements, when  
3 I made a quick pass through.

4 My bluff edge determination, which is on your  
5 addendum, is based on mostly three things: the geology report  
6 prepared by the applicant, particularly the cross section  
7 that is taken through the center of the site; oblique aerial  
8 photographs, and a topographic survey provided by the  
9 applicant.

10 In conversations with the applicant and their  
11 geologist this morning, several points were brought to my  
12 attention. First of all, it appears that the topo map that I  
13 was using for the bluff edge determination doesn't  
14 everywhere, actually, depict the ground surface. In the  
15 southern part of the site, the topographic map is, evidently,  
16 contouring the top of a deck, which the applicant  
17 demonstrated to me as actually elevated above the ground  
18 surface.

19 In addition, the applicant's geologist pointed out  
20 that there is fill in some areas that was not depicted in  
21 their cross section, or geologic map, and that, in fact, the  
22 area that I indicated in the addendum was a pad cut into the  
23 slope, actually, is not a cut. There is a reduction in the  
24 angle of the slope there, however, that, apparently, is  
25 largely natural.

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1           The applicant feels that -- first of all, I  
2 acknowledge that there is a definite break in slope at the  
3 point that the applicant drew their top-of-slope line in the  
4 addendum. I acknowledge that there is a break of slope. I  
5 do not feel, however, that that break in slope should be  
6 taken as the bluff, or slope edge, pursuant to your  
7 Regulation 14377, which indicates -- and I am paraphrasing --  
8 that in cases where the top of the bluff has been rounded by  
9 erosional processes, the most landward edge of where it  
10 starts to be rounded shall be taken as the bluff edge.

11           Clearly, in my opinion, the intent of Section  
12 14377 of your regulations was to be as conservative as  
13 possible, that bluff edges should be taken as landward-most  
14 as possible.

15           I feel strongly, based on the evidence that I  
16 presented above, that the line I have drawn as a solid line  
17 for top of bluff in the northern part of the site is, indeed,  
18 accurate.

19           I do, however, acknowledge that there, apparently,  
20 has not been extensive cut in the southern part of the site.  
21 The actual bluff edge -- I continue to be at a loss as to  
22 exactly where to place it, largely because there has been  
23 some grading, there is decks, there is construction, so again  
24 I say, in the southern part of the site, it is difficult to  
25 determine, but it may, in fact, be seaward of the existing

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1 structure, not landward of the existing structure, as I  
2 indicated.

3 I hope that clarifies, and I would be happy to  
4 answer any questions.

5 COMMISSIONER SECORD: Question, Madam Chair.

6 CHAIR CALDWELL: Yes, we will hold off on  
7 questions, until after the public hearing.

8 COMMISSIONER SECORD: Okay.

9 CHAIR CALDWELL: Staff, do you have any further  
10 comments?

11 DEPUTY DIRECTOR LEE: No.

12 CHAIR CALDWELL: All right.

13 Are there any ex parte communications to disclose  
14 on this item?

15 Commissioner Wan.

16 COMMISSIONER WAN: Yes, I had a very quick one  
17 with Donna Andrews this morning, as I walked into the hearing  
18 room, and I stated to her my concern, and my statement that I  
19 have to go with the Commission's geologist. He is very  
20 straightforward, and he is very good, and it would be  
21 difficult for me to go against what he says is the bluff  
22 edge.

23 She indicated that their problem was that he  
24 hadn't been to visit the site, and I said I understood that,  
25 but if I am going to choose between our geologist and the

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1 applicant's paid geologist, I am, obviously, going to go with  
2 our geologist, and that I would wait to see what was said in  
3 the hearing.

4 CHAIR CALDWELL: Commissioner Reilly.

5 COMMISSIONER REILLY: Thank you, Madam Chair.

6 I had a phone conversation, I think it was Friday,  
7 with Brion Jeannette and Donna Andrews, where they indicated  
8 that even though they had come in and tried to respond to  
9 Commission concerns by moving their development back to the  
10 kind of existing development line of the previous house,  
11 staff was still recommending denial.

12 There were, again, some discussion of whether this  
13 was a slope or a bluff, and I guess, particularly, on the end  
14 where the deck is.

15 And, also, some concern that it was their  
16 impression that the Commission had asked staff to prepare  
17 some potential conditions, in the event the Commission found  
18 for applicant on this, and that they hadn't seen any proposed  
19 conditions as they might appear if the Commission voted for  
20 the applicant.

21 CHAIR CALDWELL: Any other Commissioners?

22 Oh, yes, Commissioner Burke.

23 COMMISSIONER BURKE: I have a previous ex parte on  
24 file, but last night I got a call from Donna Andrews, who,  
25 basically, informed me the same thing that Commissioner Wan

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1 discussed.

2 CHAIR CALDWELL: Commissioner Secord.

3 COMMISSIONER SECORD: Thank you, Madam Chair.

4 I had, substantially, the same conversation with  
5 Donna Andrews and Brion Jeannette with respect to the top of  
6 the bluff, and the question of pulling the house back to the  
7 top of the bluff, and some predetermination of how the --  
8 where the top of the bluff really is.

9 There was a previous ex parte which I believe is  
10 on file that had to do with the City of Newport Beach City  
11 Council, and their failure to adopt a modified Land Use Plan.

12 Thank you, Madam Chair.

13 CHAIR CALDWELL: Thank you.

14 Any others?

15 [ No Response ]

16 All right, we will go to the public hearing then.  
17 I have two speaker slips for the applicants, and that is all,  
18 Brion Jeannette and Kevin Trigg. I assume you have an  
19 organized presentation, so if you can state your name for the  
20 record and let me know how much time each of you need?

21 MR. JEANNETTE: Madam Chair, my name is Brion  
22 Jeannette. I am the architect for Bruce Elieff, and with me  
23 is Kevin Triggs, and I believe that I will need about 10  
24 minutes, and maybe 5 minutes for Kevin, and then questions as  
25 you so desire.

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1 CHAIR CALDWELL: Very good, so you will have 10  
2 and 5.

3 MR. JEANNETTE: Thank you.

4 I would like to put the slide up that I believe  
5 you saw in December, showing the site in its relativity to  
6 Little Corona Beach.

7 Last night, at 5:00 o'clock, I received an  
8 addendum from the staff. That addendum sort of sent me into  
9 a tailspin that really was, in a sense, frightening, that  
10 information was now coming out, at the 11th hour, that I did  
11 not have an opportunity to respond to.

12 I have to apologize if I run over on the concept  
13 of the degradation, I believe, of the work we do, and staff's  
14 comment, at least to the Commission, but I was really upset  
15 with, now, a new definition of where the slope was. I was  
16 disturbed by staff's aggressiveness to combat the truth.

17 Staff is dictating a 25-foot top-of-bluff setback,  
18 because of the scenic resources of this site relative to  
19 Little Corona Beach. It is over 1,000 linear feet north of  
20 the project site to Little Corona Beach. There is no nexus  
21 between these two sites. You cannot see Little Corona from  
22 the site, nor the opposite. There is no nexus.

23 Staff geologist is pushing for a 25-foot top-of-  
24 bluff setback, even though, when asked by Commissioner Reilly  
25 last month, if it would be required, due to slope stability,

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1 Senior Geologist -- and I am reading from the minutes that we  
2 had recorded from the hearing -- Senior Geologist Johnsson  
3 stated: thank you, there would be no setback necessary for  
4 global slope stability -- these are out of the minutes.

5 Then, last night, came the situation as to where  
6 the bluff top is, and I would like to have my geologist,  
7 Kevin Trigg -- Kevin Trigg is a geologist for Geo Firm who  
8 was doing the repair work for the City of Laguna Beach, and  
9 they have been involved with slides, definitions of bluffs,  
10 et cetera, along the California coast for many years, and  
11 they have been the consultant we go to when we have these  
12 types of issues. He has pictures and things that will show  
13 where we believe the top of the bluff is, and it is really  
14 not debatable, if you go out there and stand, and see, then  
15 you will know where it is. You just have to look for it.  
16 Not having had a site visit by Mark Johnsson to the site, I  
17 can see where there would be some confusion.

18 The issue of defining the bluffs, I am really not  
19 looking for you to create a new definition. What I am  
20 suggesting, though, is in the future, the state geologist,  
21 the LUP that was approved by this Commission for the City of  
22 Newport Beach, talks about bluffs. Those definitions have  
23 been accepted by the city, they have been accepted by the  
24 Commission, talk in terms of precipitous steep cliff faces  
25 --that does not happen on a 2:1 slope site.

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1           So, what you need to do is, say, don't call it a  
2 bluff. Call it an ocean-facing slope, and yes, we are going  
3 to treat it the same way, instead of using some terminology  
4 that really doesn't apply. I think that is fair in under-  
5 standing what the Commission, and what staff really would  
6 like us to respond to.

7           The staff and the Commission has accepted projects  
8 on this bluff top, which is this section right here, from 165  
9 to 183, over the last 20 years, and in everyone of those  
10 cases, staff had no issues with the scenic resources. They  
11 had no issues with landform alteration. They had no issues  
12 with public access.

13           And, if I could just sort of bore you for a  
14 second, and read from the staff report, page 19, and page 20.  
15 Item H on their list talks about the Berteau site, which is  
16 the site that you see at 173 Shorecliffs, up here, the house  
17 that was remodeled and improvements done on the property,  
18 right here.

19           This is the summation of staff's comments: at the  
20 December 1978 South Coast Regional Commission hearing, the  
21 Commission approved CDP Application for Berteau for the  
22 construction of a swimming pool and Jacuzzi on the bluff  
23 parcel, no special conditions were imposed. The project  
24 permit was issued, that is it.

25           Now, if we move to the site, to the opposite side

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1 over here, which the main building was built in 1985, and an  
2 improvement done is 1995 over here, on that site -- Item No.  
3 J. in the Commission's report, page 20 -- it is the  
4 administrative permit AP Application 5-84-534 at the January  
5 1985 Coastal Commission hearing the Commission approved  
6 Application 5-84-834 for the demolition and construction of a  
7 new single family residence located on the bluff parcel, no  
8 special conditions were imposed.

9 Why, then, all of a sudden now, at this point,  
10 that this site right here has a different set of  
11 circumstances than all of the rest of these? It seems to me  
12 there is a fairness situation that is being overlooked. We  
13 are only asking that we be treated the same way that the  
14 neighbors have been treated, and in fact, we are being set  
15 back further back than these buildings are set back currently  
16 today.

17 I have offered, and met many times with staff over  
18 the last year that it has taken us to get to this point, to  
19 try to look at alternatives to moving things back, and they  
20 have, basically, fallen on deaf ears. I find it extremely  
21 exasperating, and quite frankly what is happening is that  
22 through staff they are extracting millions of dollars of  
23 value from my client, not only in the placement of the house,  
24 but also in the time delays that it has taken us to get to  
25 this point. And, in some points I felt like I have had my

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1 integrity impugned by some of the staff comments.

2 At the December hearing, I listened to the  
3 Commission. I understood your concerns. I moved the house  
4 landward to align with existing building, and moved the pool  
5 landward to align with existing pool. The Commission seemed  
6 to be very comfortable with those decisions. We removed,  
7 completely, the improvements we had on the slope, and when I  
8 left that Commission hearing, I felt that what we needed to  
9 do was to adjust some conditions and go forward.

10 The Commission accepted that revised concept. Mr.  
11 Douglas was encouraged, but needed time to tailor the  
12 conditions. Chairman Caldwell asked me to state for the  
13 record what I was proposing, to move the building and the  
14 pool and the improvements back, so it is on the record that  
15 is what we did. The next day I got to staff those lines to  
16 prove that, specifically.

17 Commissioner Wan, at the end of the hearing,  
18 stated that I think they are going to be very close to  
19 something that all of us should, probably, support, and move  
20 for a continuance to today.

21 At this point, I respectfully am asking the  
22 Commission to accept the revised location that we have come  
23 up with, and the five standard conditions that typically go  
24 with a project of this nature.

25 What I would like to do, with your indulgence, is

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1 to have Kevin Trigg come up and talk just a little bit about  
2 the bluff, and his thoughts on it.

3 Thank you.

4 MR. TRIGG: Good morning, Commissioners, my name  
5 is Kevin Trigg, with Geo Firm.

6 When we were presented with the project, and we  
7 reviewed the topo and went out to the site, we, generally,  
8 very carefully, tried to determine where we believe the bluff  
9 top is.

10 What we have given -- or what we have shown for  
11 this project, is what we believe to be the uppermost natural  
12 break in the slope. If you, simply, look at the topography  
13 -- and I went over this with Mark this morning -- there is  
14 some misleading topography shown on the map, on the southern  
15 side of the property, and we were able to demonstrate to Mark  
16 that that is really not accurately reflected on the map, and  
17 that there is a more gentle area over there than is shown by  
18 the deck. Someone had tried to contour a raised platform,  
19 rather than a ground surface in that area, and we were able  
20 to demonstrate that, I think to Mark's satisfaction, in that  
21 area, so there is some rethinking of that southern cut area,  
22 that it is not, indeed, that case.

23 But, on the other flank to the north, there is an  
24 artifact there of fill, which is not a natural artifact. It  
25 is not a rounded erosional feature, and that the uppermost

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1 natural break in the slope appears to be where we have tried  
2 to locate it, and where we have tried to locate it on this  
3 project and on other projects.

4 It appears that there is some difference in inter-  
5 pretation between Mark and I, but as in all cases, we are  
6 trying to accurately do this, so that our architects can move  
7 forward with a plan that will meet with success. So, we are  
8 not trying to do anything that would not be considered  
9 applicable to the plans, and to the code.

10 And, if you have any questions on how we came up  
11 with that, I would be happy to answer them.

12 CHAIR CALDWELL: Thank you, sir.

13 Staff.

14 DEPUTY DIRECTOR LEE: Just briefly.

15 As we have discussed before, and as still is  
16 included in your staff report in the appendix, many of the  
17 precedents that I think Mr. Jeannette is referencing back,  
18 date back several years. We have had experience, more  
19 recently, with sites that have sustained problems, even where  
20 they had geologic reports that cited no problems. We have  
21 since obtain the benefit of Dr. Johnsson as an independent  
22 technical expert to give direction to staff.

23 And, we have also begun to develop policies to,  
24 you know, more carefully site new development on properties,  
25 not only to insure the safety of future residents, and users

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1 of the area, but also to maintain the integrity of the bluff  
2 and minimize visual impacts.

3 And, so for all of those reasons, while, again we  
4 are extremely appreciative of the applicant's efforts to at  
5 least pull the structure and the amenities back, we still  
6 believe that when recycling new development, there should be  
7 a minimum setback provided on these properties, so that,  
8 again, is why our recommendation did not change.

9 That would conclude staff's comments.

10 CHAIR CALDWELL: Thank you.

11 DEPUTY DIRECTOR LEE: I'm sorry, Dr. Johnsson  
12 wanted to make a couple of comments.

13 CHAIR CALDWELL: Very good.

14 SENIOR GEOLOGIST JOHNSON: Thank you.

15 Just for the record, I want to make clear that I  
16 quoted and misspoke on the particular regulation. It is  
17 13577, not 13477.

18 I also wanted to indicate, again, that most of my  
19 interpretation in the northern part of the site was based on  
20 the applicant's geologic report. Mr. Trigg indicated that  
21 they identified the natural break in slope, and implied that  
22 there was fill that misleadingly would tend to make one  
23 believe, following the regulation, that it was actually  
24 further landward. I can't confirm or deny that. I just was  
25 basing it on his geologic report, which shows no fill in that

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1 area.

2 And, on the basis of that geologic report, and the  
3 topographic map, I continue to think, until proven otherwise  
4 -- which will probably require going out there, maybe even  
5 digging some holes -- that the break in slope in the northern  
6 part of the property, is as indicated on your addendum.

7 Thank you.

8 CHAIR CALDWELL: Commissioner Secord.

9 COMMISSIONER SECORD: I wanted to ask a question  
10 of Mark Johnsson, relative to the way the top-of-bluff is  
11 measured, or that is to say, when you have a sloping bluff,  
12 it was my impression that the top-of-bluff was when the bluff  
13 started down? is that incorrect? would you correct me, if I  
14 am wrong, please?

15 SENIOR GEOLOGIST JOHNSON: I apologize for not  
16 having the exact language in front of me, here -- maybe  
17 somebody can try to find it for me -- but, it is when the  
18 gradient starts to increase in a more or less continuous  
19 direction, until it reaches the slope of the cliff face  
20 below.

21 And, I interpret that section, and I have  
22 consistently interpreted that section of the regulations to  
23 mean that it is the landward most point where it starts to  
24 continuously turn over towards the steeper bluff slope --  
25 that is a conservative interpretation.

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1 CHAIR CALDWELL: Commissioner Wan.

2 COMMISSIONER WAN: Yeah, there are, to me, a  
3 couple of, sort of separate issues here, and I will, sort of,  
4 try to deal with them separately.

5 One that is particularly important has to do with,  
6 you know, where this bluff edge is, and so I will sort of go  
7 there. And, I might say, the difference between a bluff and  
8 a slope here, is sort of arguing with semantics, because the  
9 protections and the regulations should apply the same. So, I  
10 don't care whether you call it a slope or a bluff.

11 For me -- and I was quoted -- and for last month,  
12 I really did look at the fairness issue, but I think that the  
13 applicant continues to make reference to 173, for example, a  
14 house there, and apparently that is in violation of what was  
15 approved, so we don't look at what is actually out there, if  
16 it is a violation, as setting a precedent.

17 I have a question for staff, because in the  
18 northern part of the site, Dr. Johnsson is pretty strong  
19 about where he thinks the bluff, or slope edge is, and is  
20 there any part of the building that has been revised that  
21 would now be extending beyond what the bluff edge is?  
22 because, there are two issue here. One is what is actually  
23 extending beyond the actual bluff edge, and whether or not it  
24 is necessary, in this case, to pull it back from the bluff  
25 edge for the 25 feet, as per the new guidelines in the newly

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1 certified Newport LCP? So, I want to, sort of, distinguish  
2 that.

3 Can you tell me if there is any part of this  
4 structure that actually now extends beyond the bluff edge, as  
5 you would define the bluff edge, in the northern section of  
6 this project? because I don't read plans quite as well as  
7 Commissioner Kruer does.

8 DEPUTY DIRECTOR LEE: If you look at Exhibit 4,  
9 that was distributed to you in your addendum, you will see  
10 the bluff delineation as recommended by Dr. Johnsson. There  
11 are a few elements that do extend beyond that.

12 In terms of the applicant's revision, it appears  
13 that the subterranean level extends beyond it -- that is the  
14 solid line, and it is shown on their plans. There is a  
15 solid line that comes down from -- if you will look up at the  
16 -- there are stairs shown on the upper portion, and there is  
17 a solid line that comes straight down, that is the line of  
18 their subterranean basement.

19 And, then, there is also, you will see, 4 posts  
20 that are beyond that line, to the left, 4 posts or pillars,  
21 that appear to support what they are identifying as a deck  
22 above. That, also, would be supporting a deck that was  
23 beyond the line as shown by Dr. Johnsson.

24 In terms of the new residence -- no, for the first  
25 floor area, that appears behind it, but the subterranean, the

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1 basement and the deck would extend beyond the --

2 COMMISSIONER WAN: Would extend beyond the bluff  
3 edge.

4 And, the reason I am asking this is because I  
5 think the Commission may need to look at this in two ways:  
6 what is, actually, beyond the bluff edge? and then the  
7 decision is whether the Commission wants, in this case, to in  
8 addition to dealing with that -- which is a much more serious  
9 issue, actually, is extending beyond the actual edge of the  
10 bluff -- as to whether or not it wants to pull it back under  
11 the new conditions?

12 So, let's take what is extending beyond the bluff.  
13 Is it possible to build this structure without extending  
14 beyond the bluff? are those modifications major?

15 DEPUTY DIRECTOR LEE: Through the Chair.

16 From staff's perspective, it would not be  
17 insurmountable. It simply means that instead of a 9,000-  
18 square foot home, with the subterranean basement, you have a  
19 smaller structure, but the applicant's perspective on that  
20 is, I suspect, significantly --

21 COMMISSIONER WAN: Okay --

22 DEPUTY DIRECTOR LEE: -- more serious.

23 COMMISSIONER WAN: -- I'll let our more  
24 experienced Commissioners in this area discuss that.

25 For me, therefore, as I said, there are two

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1 issues: one, is whether or not you can build this without at  
2 least going beyond the bluff edge? and the other is whether  
3 you pull this back?

4 I think the Commission just certified the Newport  
5 Beach LCP, it has learned things over the years since the  
6 last residences in the area have been built, and as staff has  
7 said, this is the time, if you are going to start pulling  
8 development back, this is the time to start doing it.

9 And, so, I don't know what we went through the  
10 exercise for, relative to the Newport Beach LCP, if we don't  
11 start enforcing it. So, for me, that is an easy call, but I  
12 did want to sort of separate it out for other Commissioners  
13 in their discussion.

14 CHAIR CALDWELL: Commissioner Reilly.

15 [ MOTION ]

16 COMMISSIONER REILLY: Thank you, Madam Chair.

17 I'll offer a motion. I move the Commission  
18 approve Coastal Development Permit No. 5-04-466 for the  
19 development proposed by the applicants, and I am going to ask  
20 for a "Yes" vote.

21 COMMISSIONER SECORD: Second.

22 CHAIR CALDWELL: It has been moved by Commissioner  
23 Reilly, seconded by Commissioner Secord that the Commission  
24 approve the CDP for this project as proposed by the  
25 applicant. They are seeking a "Yes" vote.

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1 Would you like to speak to your motion?

2 COMMISSIONER REILLY: Yes, just briefly.

3 I think the applicant has been responsive to the  
4 Commission's concerns by pulling back their development to  
5 the current development limits.

6 We are hearing that the bluff issues here, if  
7 there is a bluff, do not relate to public safety, or seismic  
8 issues. Apparently, it is really view shed issues. This  
9 property is pretty much removed from the public beach,  
10 relative to the permit history that we have in the  
11 neighborhood, and the fact that this was processed under an  
12 LCP for the last, I don't know, two or three years, that only  
13 got changed this last week, leaves me to, on an equity basis,  
14 think the applicants have probably done as much as they can.

15 CHAIR CALDWELL: I have a couple of questions for  
16 staff, at this point.

17 Dr. Johnsson, you indicated that you were  
18 comfortable with your determination on the bluff edge for the  
19 northern part of the site, but you have less certainty, given  
20 the new information that you learned this morning, about the  
21 southern portion of the site, regarding the bluff edge. And,  
22 my question about that is, well, what is the practical  
23 significance of that? does that have any significance with  
24 respect to the project the applicant is proposing?

25 SENIOR GEOLOGIST JOHNSON: Madam Chair, if I may.

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1           Yes, I think it certainly does, given the data  
2           that I have been privy to so far, I am confident of the  
3           northern through the central portion of the bluff edge  
4           determination, and that is the area that Ms. Lee indicated  
5           where the basement is extending out beyond that line, where I  
6           would indicate the bluff edge.

7           CHAIR CALDWELL: Okay.

8           And, then, the second question I have is the  
9           applicant indicated that staff was relying on visual impact  
10          from Little Corona Beach as part of its justification for  
11          denial, and can you clarify staff's position on that?

12          DEPUTY DIRECTOR LEE: Yes, Madam Chair.

13          This came up at the December hearing, as well,  
14          where I believe the applicant, you know, doesn't think there  
15          is as much use, or visibility of this small beach in front of  
16          their property. It is not easily accessible, but you can  
17          access it from the main, or larger Little Corona Beach, which  
18          is up coast. Our staff has seen people there. It is a  
19          surfing area, as well, and it is also visible from the ocean.

20          So, we do think that, again, any time you are  
21          looking at seaward encroachment of new development, there is  
22          a visual impact.

23          CHAIR CALDWELL: Okay, and then I have a third  
24          question.

25          Commissioner Wan indicated that the project

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1 located at No. 173 on this same road is actually in violation  
2 of the approved project plans. Can you explain to us what is  
3 going on with that site?

4 DEPUTY DIRECTOR LEE: Yes, again, as a result of  
5 the questions raised by the applicant's agent, we did go  
6 further into that file to make sure that the plans conformed  
7 with the language of the waiver, in that nothing seaward of  
8 the existing pool improvements was authorized.

9 The plans that we had with the waiver, did  
10 demonstrate that, but in looking further, apparently, the  
11 plans that are on file at the city showed different  
12 improvements. So, we have referred that matter to our  
13 enforcement division.

14 CHAIR CALDWELL: All right.

15 Commissioner Kram.

16 COMMISSIONER KRAM: Maybe staff could explain to  
17 me, the building plot has a slope, has a seaward-facing  
18 slope, right? is that what I understand? and what is the  
19 difference, what is that slope angle, compared to the slope  
20 angle between the Commission's bluff edge, and the  
21 applicant's bluff edge?

22 SENIOR GEOLOGIST JOHNSON: If I understand your  
23 question correctly, I think that -- I haven't measured it,  
24 but it looks like there is about a 10-foot difference in the  
25 northern part of the property, there, between the applicant's

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1 and Commission's staff.

2 COMMISSIONER KRAM: A 10-foot drop?

3 SENIOR GEOLOGIST JOHNSON: No, a 10-foot  
4 horizontal.

5 COMMISSIONER KRAM: Yes, and what is the drop?  
6 what is the slope?

7 SENIOR GEOLOGIST JOHNSON: I am reading from the  
8 topographic map here. I put the top of slope at about the  
9 67-foot contour, and the applicant puts, in this area -- and  
10 the applicant puts it at about 62, so about 5 feet.

11 COMMISSIONER KRAM: So, 5-foot slope over 10 feet?

12 SENIOR GEOLOGIST JOHNSON: Yes.

13 COMMISSIONER KRAM: And, the slope of the lot, the  
14 building lot? I am just trying to get an idea of what the  
15 contour is, in the northern side.

16 SENIOR GEOLOGIST JOHNSON: Well, the slope varies  
17 from its toe to its top, but it averages, as the applicant  
18 indicated, just about 2:1, or about a 23-degree angle.

19 COMMISSIONER KRAM: So, then, you are saying the  
20 slope of the lot is the same as the slope between where you  
21 concluded is the bluff edge, and the applicant's bluff edge?

22 SENIOR GEOLOGIST JOHNSON: To a first approx-  
23 imation, but there clearly is -- the difference between my  
24 bluff edge, and the applicant's bluff edge, clearly is a less  
25 steep area than the average slope, but when we are just

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1 making these approximations here, it does come out to about  
2 the same.

3 COMMISSIONER KRAM: Okay, thank you.

4 CHAIR CALDWELL: Commissioner Kruer.

5 CHAIR KRUER: Yes, I would like to ask the  
6 architect -- I know that we discussed this a lot last month  
7 -- to come up, as I would just like to ask a couple of  
8 questions, because I am concerned here.

9 We are sort of -- this is a very difficult  
10 situation for all of us up here, because we all want to be  
11 fair. We all want to be -- there has been a great discussion  
12 as to whether it is a slope or a bluff, and I might think it  
13 is a slope because it is only a 2:1 slope, and there is a  
14 break in it up there, but what Dr. Johnsson, on the other  
15 hand says -- and it is pretty compelling, too -- in his  
16 testimony this morning, and we have the Newport LCP with the  
17 25-foot setbacks, and I would like to see you be able to  
18 build this house.

19 I was wondering, in light of the discussion this  
20 morning, et cetera, and the staff's addendum, et cetera, did  
21 you consider where the basement line is, that line, and the  
22 line outlined in Exhibit 4? could you develop the house and  
23 pull that back just the basement outline? what would that do  
24 to the design? I don't remember the plans to your house, what  
25 you had proposed on top of that.

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1 I am trying to see if there is a way -- and I know  
2 you have been very cooperative, and I felt it last month, and  
3 when you were -- but again, I am not so sure you have the  
4 support here today, because staff is, you know, sometimes,  
5 like this morning, and I hear them, it is a very important  
6 issue, and it is because of the Newport LCP and the 25 foot  
7 is a big issue for all of us.

8 So, I was wondering if there is some way you could  
9 help me, because with -- is there anything else you can do,  
10 here this morning, to help us on this?

11 MR. JEANNETTE: Commissioner Kruer, my name is  
12 Brion Jeannette, again, I am the architect on the project.

13 If you were to look at the vertical line drawn  
14 there, which is at the base of the existing building --

15 CHAIR KRUEER: Yes.

16 MR. JEANNETTE: -- and how it goes to the  
17 southerly part of the site, even your geologist, Mark  
18 Johnsson, is indicating the bluff, the top of the edge of the  
19 bluff is actually moving seaward.

20 So, as we get to the northerly -- excuse me, the  
21 southerly portion, where the pools are, the top of the bluff  
22 now is moving to the ocean, and picking up where that dotted  
23 line is, so that part of the building is 20 feet away from  
24 the top edge of the slope.

25 In answering your question, specifically --

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1 CHAIR KRUER: Well.

2 MR. JEANNETTE: -- that is the child's bedroom  
3 down there.

4 CHAIR KRUER: This is an important issue, because  
5 I think it is important to the Commission, and again, out of  
6 fairness --

7 CHAIR CALDWELL: Is your mike on?

8 CHAIR KRUER: Yes.

9 I am trying to see if there is something from a  
10 design perspective, because I am not so sure you have the  
11 support here today, and I find myself, also, in a very  
12 difficult situation here today, on this issue, because of the  
13 Newport LCP, and the staff's addendum, and what the staff,  
14 Dr. Johnsson, who a lot of us rely on very much so, and you  
15 know, I do agree with him on the south, and his line now on  
16 the north is a very important point, and I am trying to find  
17 out, before I vote on this matter, if there is some way that  
18 you can, at least, cut back that subterranean part,  
19 subterranean basement, somewhat, and still have, you know, I  
20 don't know how that affects the house design.

21 MR. JEANNETTE: Really, simplistically, yes, I can  
22 try to accommodate whatever the Commission asks for.

23 I just want to make sure that if it is a setback  
24 from the top of the edge of the slope that we are looking  
25 for, that that line, then, curve or follow that line at the

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1 top of the bluff.

2 CHAIR KRUER: Yes.

3 MR. JEANNETTE: As opposed to being one way or the  
4 other, because I think what Mark is talking about, in  
5 reality, he needs to see -- you can see that the lines are  
6 all curving, they are all going differently, either going  
7 concave or convex, and one of us is going to be easily  
8 deceived in going out there and saying this is where it is,  
9 it is going this way, or that way.

10 And, for us to follow the line of the top of the  
11 slope, we will manipulate the building to meet that concept,  
12 once we determine on the northerly part of the site -- the  
13 building is 4 feet behind the top of the slope. The building  
14 does not encroach into the slope at all.

15 On the southerly side, that line moves to the  
16 ocean, and I am saying we will still be no further than that.

17 So, what I am proposing, really, is on the  
18 northerly side, I am 4 feet behind the top of the slope, and  
19 on the southerly side, I am probably closer to 15 feet from  
20 the top of the slope.

21 CHAIR KRUER: Right, because the issue I am  
22 getting to is, for us up here, for a lot of us, we haven't  
23 been to the site. If I had been to the site, and had the  
24 time out there to look at this, but we rely a great deal on  
25 Dr. Johnsson, you know, his expertise, so it is difficult for

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1 us, and so that is why I am trying to find out from you, if  
2 there are other designs, ways, that you could still deal with  
3 where he shows it in Exhibit 4, if it is possible, because I  
4 want to see you be able to develop your house here, and you,  
5 you know, do something.

6 MR. JEANNETTE: I really appreciate that, and I  
7 think, even today, Mark said that there were some concerns  
8 with his statement as to where the top of the slope was, even  
9 today.

10 Seeing these photographs helped him to see that it  
11 was really in a different location than what he was  
12 addressing with this Exhibit No. 4.

13 CHAIR CALDWELL: Commissioner Wan, then  
14 Commissioner Secord after Commissioner Wan.

15 COMMISSIONER WAN: I think what -- and that is why  
16 I tried to sort of separate out the two issues. I think what  
17 Commissioner Kruer is saying is that on the issue of the pull  
18 back, at least from the bluff edge, the question I have --  
19 and may require an amending motion -- is using Mark  
20 Johnsson's bluff edge, which is at 67 feet in the north  
21 section where he is very firm about it, can you pull back the  
22 development so that it doesn't go over Dr. Johnsson's bluff  
23 edge determination? I think that --

24 CHAIR KRUER: That is exactly what I --

25 COMMISSIONER WAN: -- is the issue here.

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1 MR. JEANNETTE: Commissioner Wan, on the north  
2 portion, I do not go to that same point. I am behind it --

3 COMMISSIONER WAN: Not according to --

4 MR. JEANNETTE: -- I am landward.

5 COMMISSIONER WAN: -- in the north section?

6 MR. JEANNETTE: Yes.

7 SENIOR GEOLOGIST JOHNSON: If I may, through the  
8 Chair.

9 Along the northern property line, the basement is  
10 about 4 feet back from the line, yes. It is in the, kind of  
11 the central portion where --

12 COMMISSIONER WAN: But, that is still --

13 SENIOR GEOLOGIST JOHNSON: -- it crosses.

14 COMMISSIONER WAN: -- is within where you are --

15 SENIOR GEOLOGIST JOHNSON: Yes, and I am still  
16 confident, because --

17 COMMISSIONER WAN: You still feel confident.

18 SENIOR GEOLOGIST JOHNSON: -- based -- and I do  
19 want to add the caveat, based entirely on the applicant's  
20 geologic report --

21 COMMISSIONER WAN: And, so, I think that is what  
22 the issue is, where he is confident. It is not just in the  
23 north. It is until he gets to that one southerly section  
24 where I think the pool is, okay, that he is very definitive  
25 about the bluff edge, and so me, it has to be pulled back,

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1 that is the least, even if we don't deal with the 25-foot  
2 pull back, that we, at least, pull back from the edge of the  
3 bluff, as determined by our geologist.

4 MR. JEANNETTE: I am very comfortable with walking  
5 out there with Mark, and plotting it out, and saying this is  
6 what we think is really the truth, or what is comfortable.  
7 That, I am very comfortable with, if the Commission would  
8 like to advance something like that.

9 COMMISSIONER WAN: No, that is not what I am  
10 saying.

11 I am saying that I am willing to accept Dr.  
12 Johnsson's bluff edge determination. If he wants to change  
13 it, that is another matter. But, as long as that is his  
14 bluff edge determination, then the building needs to be set  
15 back in those areas where it isn't behind his bluff edge  
16 determination.

17 CHAIR CALDWELL: Mr. Jeannette, she is referring  
18 to that central portion.

19 COMMISSIONER WAN: Right, and the deck above,  
20 okay. You have got posts out there in the area that he has  
21 determined is where the bluff edge is.

22 MR. JEANNETTE: I can address a deck stringline  
23 and deal with those very easily, yes.

24 CHAIR CALDWELL: So, your answer to her question  
25 is, yes, you could actually modify the building to situate it

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1 so that it doesn't extend beyond Dr. Johnsson's bluff edge  
2 determination?

3 MR. JEANNETTE: I can as long as he is comfortable  
4 with stating where it is today, or if we need to advance this  
5 to another point in time for him to be comfortable with where  
6 that position is.

7 COMMISSIONER REILLY: Madam Chair, could we get a  
8 clarification of Dr. Johnsson's statement, because I thought  
9 I heard --

10 CHAIR CALDWELL: Do we have a transparency machine  
11 that could project this map up?

12 COMMISSIONER REILLY: I thought I heard Dr.  
13 Johnsson say that the applicant's proposed basement on the  
14 north end was 4 feet behind his 67-foot line for top of  
15 bluff? is that correct?

16 SENIOR GEOLOGIST JOHNSON: I can't vouch to the 4  
17 feet, but that is, approximately, correct, at the northern  
18 property line.

19 COMMISSIONER REILLY: All right, thank you.

20 CHAIR CALDWELL: So, Commissioner Wan is referring  
21 to the central portion of the structure, Commissioner Reilly.

22 COMMISSIONER WAN: Right, I am looking at Exhibit  
23 4, and if you go down, and you see that dotted line, and  
24 thanks to my good neighbor here who understands these plans  
25 better than I do, it is that central section which is behind

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1 -- it is the central section, if you will look at the solid  
2 line, and then the dotted line to its left, it is that  
3 central section -- and I can pass you this -- it is that  
4 central section of the basement that extends beyond what Dr.  
5 Johnsson is saying is the bluff edge, and it is that little  
6 stairs, and those posts for the deck above that actually  
7 extend beyond the bluff edge, as Dr. Johnsson has determined  
8 it to be.

9 And, if I am wrong, then Dr. Johnsson should  
10 correct me.

11 SENIOR GEOLOGIST JOHNSON: Through the Chair,  
12 thank you. No, Commissioner Wan, what you have said there is  
13 correct.

14 I would just like to take the opportunity to,  
15 perhaps, address Commissioner Reilly's question, too. I am  
16 prepared to stand by his line in Exhibit 4 for the northern  
17 portion, and at least through the line of the cross section  
18 in the applicant's geo report, which is, approximately,  
19 through the exact center of the property.

20 South of that cross section, my conversations with  
21 the applicant and their geologist this morning have convinced  
22 me that there are some errors in Exhibit 4.

23 CHAIR CALDWELL: Dr. Johnsson, where is that cross  
24 section?

25 SENIOR GEOLOGIST JOHNSON: Unfortunately, it is

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1 not indicated on this Exhibit 4, but referring to the geo  
2 report, it is, approximately, at the line of text where the  
3 applicant says "existing top of slope," with an arrow to the  
4 dotted line. It is, approximately, through that word  
5 "existing".

6 CHAIR CALDWELL: Okay.

7 CHAIR KRUEER: Right here.

8 CHAIR CALDWELL: Got it, so it is actually a  
9 relatively small portion of the structure that would not  
10 conform to at least the bluff edge delineation?

11 SENIOR GEOLOGIST JOHNSON: That is correct.

12 If I may, though, there is still the deck, the  
13 deck above, and those stairs.

14 CHAIR CALDWELL: It would be helpful to have a  
15 transparency machine, where we could all be looking at the  
16 same map at the same time.

17 EXECUTIVE DIRECTOR DOUGLAS: It would be, but we  
18 don't have a transparency machine.

19 CHAIR CALDWELL: Okay, Commissioner Secord, and  
20 then Commissioner Burke.

21 COMMISSIONER SECORD: Thank you, Madam Chair.

22 There have been suggestions on the part of certain  
23 of the Commissioners that the fact that the Newport Beach LUP  
24 was changed, has some bearing on this project, and I wondered  
25 if staff could help me understand how it is that after this

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1 project was approved by Newport Beach, because this LUP came  
2 along, that the rules have changed in the middle of the game?

3 It is my assertion that the project that was  
4 approved, was approved by the entity having a Local Coastal  
5 Plan, and that a modification to that Local Coastal Plan,  
6 after the approval, should not apply to it. Does staff agree  
7 with that? or does staff disagree with that?

8 DEPUTY DIRECTOR LEE: Through the Chair.

9 Commissioner Secord, it is not a fully certified  
10 LCP at this point. What the Commission acted on was the  
11 certified Land Use Plan. The Land Use Plan was adopted with  
12 the 10- and 25-foot setbacks recommended. The city has  
13 accepted those suggested modifications --

14 COMMISSIONER SECORD: And, that was after this was  
15 approved by the city? is that not correct?

16 DEPUTY DIRECTOR LEE: Yes, it would --

17 COMMISSIONER SECORD: Thank you.

18 DEPUTY DIRECTOR LEE: -- be afterwards. The city  
19 had already completed it discretionary review, under their  
20 existing ordinances.

21 CHAIR CALDWELL: Commissioner Burke.

22 COMMISSIONER BURKE: There are a number of things  
23 that bother me about what I have heard this morning, not the  
24 least of which is that I have a clear respect for Dr.  
25 Johnsson's opinion, myself, but what some people are quoting

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1 as absolute this morning, I hear it as not absolute, and  
2 because, probably, because of the staff requirements not  
3 based on either a visit to, or exposure to the area in which  
4 we are talking about.

5 So, whether it is exactly where he is saying, or 4  
6 feet, or 10 feet, you know, I don't have a great deal of  
7 confidence in that one way or another.

8 But, another thing that bothered me this morning  
9 is -- and I know this has relatively little to do with this  
10 -- but, it troubles me, and I think it should trouble the  
11 Commission, that somebody comes here, gets a permit, and then  
12 go builds a house, and builds a house in violation, and the  
13 only way we find out is a guy comes in and wants to build a  
14 house, and meet all of the regulations, and so he turns his  
15 neighbor in by accident, and so then we go file an  
16 enforcement suit.

17 Now, I understand that that doesn't contribute to  
18 neighborly camaraderie, and I wouldn't live in this damn  
19 house if you paid me. But, I mean, that is no way to run a  
20 railroad.

21 So, I am going to be supporting Commissioner  
22 Reilly's motion, and I am not going to go into this about it  
23 is not a fully adopted LUP, and all of the rest of that,  
24 because I think the Commission is smart enough to figure that  
25 out on its own.

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1 But, this is not our most shining hour.

2 CHAIR CALDWELL: Commissioner Wan.

3 [ MOTION ]

4 COMMISSIONER WAN: I'll make some comments about  
5 it, after I make an amending motion.

6 I would like to make an amending motion that would  
7 require that the applicant make the changes to the design in  
8 the area where Dr. Johnsson has -- it is unfortunate that we  
9 don't have it in front of us so we can point to it -- but, to  
10 where Dr. Johnsson is confident that the edge of bluff is at  
11 67 feet, that no portion of the house, or the deck, or the  
12 stairs, be extended beyond the edge of the bluff.

13 CHAIR CALDWELL: Commissioner Kruer, did you want  
14 to "second" that motion?

15 CHAIR KRUEER: No, I am trying to make a comment,  
16 maybe to --

17 CHAIR CALDWELL: Well, we need a "second" in order  
18 to discuss it.

19 COMMISSIONER ORR: Second.

20 CHAIR CALDWELL: Okay, it has been moved by  
21 Commissioner Wan, seconded by Commissioner Orr, that the  
22 applicant, actually, modify the structure so that no part of  
23 the structure is extending beyond the bluff edge, as  
24 determined by Dr. Johnsson today.

25 CHAIR KRUEER: Okay, I --

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1 COMMISSIONER WAN: Let me finish speaking to my  
2 motion.

3 CHAIR KRUEER: Sure.

4 COMMISSIONER WAN: At least this would take of,  
5 from my perspective, the most important aspect of this.

6 I happen to agree with what Dr. Burke said about,  
7 you know, turning your neighbor in as the result of the  
8 process. What is unfortunate is that we don't have -- and I  
9 don't think any government jurisdiction has the ability to go  
10 out and see whether the conditions that are imposed on  
11 development are actually complied with. I mean, we would  
12 have to have somebody go out for condition compliance on  
13 every approval that we make, and that is unfortunate, but  
14 there is no way we would have the funds to be able to that.  
15 So, this is not an exception.

16 It is unfortunate, and it happens frequently in  
17 this hearing room, by the way, where we discover things that  
18 we don't know about. So, I agree with you that that is not a  
19 good way to do business, but we can't help it.

20 But, as far as the amending motion is concerned,  
21 at least if this aspect of the building is pulled back so  
22 that it, at least, is not over the bluff edge, and where Dr.  
23 Johnsson says he is confident about the bluff edge, then I  
24 have to agree with him. That, at least, takes care of the  
25 major issue.

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1 CHAIR CALDWELL: All right.

2 Commissioner Kruer.

3 CHAIR KRUER: Yes, in light of reviewing this, and  
4 in light of Dr. Johnsson's further clarifications, et cetera,  
5 I, for me, I think it is going to be so minor, the change,  
6 that at this issue of the game, where they have agreed last  
7 month to fall back, after a lot of Commission discussion, et  
8 cetera.

9 I mean you are talking about almost nothing now,  
10 because where he is drawing the cross section through, and  
11 where that line comes through that he is confident of, it is  
12 not nearly the totality of looking at it, what this area,  
13 before where the basement was drawn, et cetera. Where he is  
14 uncomfortable with it, makes me more uncomfortable that maybe  
15 even that little piece, that is so minor in comparison now, I  
16 am going to support Commissioner Reilly's motion.

17 CHAIR CALDWELL: All right.

18 Commissioner Burke, then Commissioner  
19 Shallenberger.

20 [ No Response ]

21 Commissioner Burke, did you want to say something?

22 COMMISSIONER BURKE: I have decided to not speak.

23 CHAIR CALDWELL: Withdraw your comment? okay.

24 Commissioner Shallenberger.

25 COMMISSIONER SHALLENBERGER: Yes, I support the

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1 amending motion, and because I think it is consistent with  
2 the direction that the Coastal Commission gave the applicant  
3 at our last hearing.

4 And, I am troubled by, that we are not dealing  
5 with the 25-foot setback. I want it on the record, and  
6 hopefully when we finish with this item, I would like to put  
7 it on the record, again, that this precedent concept is  
8 something that we need to help applicants understand that  
9 every time an application comes to us, staff makes recommend-  
10 ations, and the Commission should make their decision based  
11 on current knowledge.

12 And, as knowledge changes, and as LCPs change, the  
13 standards for approval change, but the reason for this one,  
14 it doesn't bother me, is that we did give direction at the  
15 last meeting, and the direction we gave was that we wanted  
16 all of the development pulled back behind the bluff.

17 And, so the amending motion that is before us,  
18 where Commissioner Kruer thinks is minor, it may be. I still  
19 think it is consistent with the direction that we gave at the  
20 last Commission meeting, and I think we should approve it,  
21 and then I think we should approve the project as amended.

22 CHAIR CALDWELL: Commissioner Reilly.

23 COMMISSIONER REILLY: Thank you, Madam Chair.

24 If we are going to ask the applicant to go back  
25 and do another redesign, I would feel more comfortable

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1 supporting the amendment if it also included a request for  
2 Dr. Johnsson to make a final determination on the site.

3 CHAIR KRUER: That is fine.

4 COMMISSIONER WAN: That's fine. I have no problem  
5 with that.

6 CHAIR CALDWELL: He is going to have to, under any  
7 circumstances, isn't he, for the applicant to clearly  
8 understand? no, all right.

9 Dr. Johnsson, do you have any objection to that?

10 SENIOR GEOLOGIST JOHNSON: Not at all.

11 CHAIR CALDWELL: Okay.

12 Commissioner Burke, I know that you have been  
13 dying to offer a comment here.

14 COMMISSIONER BURKE: Yeah, I changed my mind. I  
15 am taking the woman's prerogative on this thing, to change my  
16 mind.

17 CHAIR CALDWELL: We are going to call it the Burke  
18 prerogative from here on out.

19 COMMISSIONER BURKE: Thank you, thank you, thank  
20 you, I finally have something named after me.

21 Here is, you know, what Commissioner Wan is saying  
22 is absolutely true, there is no question about that. But,  
23 what she is saying is, also, that they can go ahead and agree  
24 to this today. We don't need to carry it forward. And, then  
25 they can build what they want to build because we aren't

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1 going to find out about it anyway, that is what she said.

2 CHAIR CALDWELL: So, Commissioner Burke, as you  
3 were saying --

4 COMMISSIONER BURKE: No, no, that is what she  
5 said, on the record. So, you know, I just wanted to make  
6 sure that everybody -- you know, that is --

7 CHAIR CALDWELL: That was a helpful comment.

8 COMMISSIONER BURKE: But, I just wanted to make  
9 sure that everybody understands.

10 CHAIR CALDWELL: Commissioner Secord, before you  
11 speak, I just want to be clear about the whole issue about  
12 the neighbors' property, and the property at 173, came up  
13 because the applicant raised the issue of fairness, and that  
14 is how this whole enquiry came about, and why we were looking  
15 at the neighboring properties, to see where they were  
16 relative to the bluff edge, and that is why we ended up in  
17 this situation realizing that the neighbor's property wasn't  
18 built to plan. So, if we could just be clear about that.

19 Dr. Secord.

20 COMMISSIONER SECORD: I would like to recommend a  
21 "No" vote on the amendment, and an affirmative vote on the  
22 main motion, which was Commissioner Reilly's motion that I  
23 seconded.

24 I think this applicant has come, and listened to  
25 the Commission, has redrawn their project, has done exactly

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1 what we are supposed to do, it just seems unconscionable to  
2 me to put him off another month, or even another day, because  
3 I think this is an approvable project, and the amount of  
4 difference of where the house is, and where the house might  
5 be, is very small and the LUP for Newport Beach, I think, is  
6 a red herring. So, I would recommend a "No" vote on the  
7 amendment, and a "Yes" vote on the main motion.

8 CHAIR CALDWELL: Thank you, Dr. Secord.

9 I have a question for our legal counsel. Is the  
10 Newport LUP a red herring, or not, in this case? does it  
11 apply, or does it not?

12 DEPUTY ATTORNEY GENERAL PATTERSON: Yes,  
13 Chairwoman Caldwell, the city does not have a fully certified  
14 Local Coastal Program.

15 The standard of review for the Commission is the  
16 Coastal Act, as I understand it, and the city's recently  
17 certified Land Use Plan is considered guidance for the  
18 Commission.

19 CHAIR CALDWELL: Okay, thank you.

20 Commissioner Orr.

21 COMMISSIONER ORR: Yes, I would like to make a  
22 very brief comment, because I think we are about ready to  
23 vote on this.

24 But, in response to what Commissioner Secord just  
25 said, I think that it seemed to me, what I heard from the

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1 applicant's architect was that it wouldn't be a major matter.  
2 We are not just dealing with this little basement part, but  
3 there is also the deck posts that are outside, and the  
4 stairway that are outside the bluff, or beyond the bluff  
5 delineation that Dr. Johnsson is comfortable with, and so for  
6 that reason I would recommend a "Yes" vote on the amending  
7 motion, and then I will support the main motion.

8 COMMISSIONER WAN: Call the question.

9 CHAIR CALDWELL: Dr. Burke, do you have a question  
10 for the applicant?

11 COMMISSIONER BURKE: Oh, I didn't hear the  
12 architect say that, so if you said that, then you know, it  
13 might give me second thoughts here.

14 MR. JEANNETTE: I really appreciate Commissioner  
15 Reilly's motion, and if I might add just one more piece of  
16 information.

17 This is the permit granted to lot 173, the  
18 adjacent neighbor that everybody keeps saying did his work  
19 illegally. I met with his architect --

20 CHAIR CALDWELL: Okay.

21 MR. JEANNETTE: -- and I am sorry that I am  
22 bringing this up late, but I --

23 CHAIR CALDWELL: That is not responsive to the  
24 question.

25 MR. JEANNETTE: Yes.

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1 CHAIR CALDWELL: Thank you, sir.

2 So, let's go to the amending motion, then, and  
3 have a vote on that.

4 Just to clarify, the amending motion --  
5 Commissioner Wan, do you want to restate it, because I think  
6 Commissioner Reilly offered a friendly --

7 COMMISSIONER WAN: Which I accepted.

8 CHAIR CALDWELL: -- suggestion, so can you restate  
9 your motion.

10 COMMISSIONER WAN: Let's see, how to restate this,  
11 that the applicant be required to pull back that part of the  
12 development beyond the edge of the bluff, as not has been  
13 determined by Dr. Johnsson, but will be determined by Dr.  
14 Johnsson when he goes out and looks at it.

15 So, if he is going to determine the bluff edge,  
16 and the applicant will be required to pull the development  
17 back, just past the edge of the bluff.

18 CHAIR CALDWELL: "Seconder" agree to that?

19 COMMISSIONER ORR: Yes.

20 CHAIR CALDWELL: All right.

21 Let's have a roll call vote on this. They are  
22 seeking a "Yes" vote.

23 SECRETARY GOEHLER: Commissioner Burke?

24 COMMISSIONER BURKE: No.

25 SECRETARY GOEHLER: Commissioner Orr?

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1 COMMISSIONER ORR: Yes.  
2 SECRETARY GOEHLER: Commissioner Kram?  
3 COMMISSIONER KRAM: No.  
4 SECRETARY GOEHLER: Commissioner Kruer?  
5 CHAIR KRUER: Yes.  
6 SECRETARY GOEHLER: Commissioner Neely?  
7 COMMISSIONER NEELY: Yes.  
8 SECRETARY GOEHLER: Commissioner Potter?  
9 [ No Response ]  
10 Commissioner Reilly?  
11 COMMISSIONER REILLY: Yes.  
12 SECRETARY GOEHLER: Commissioner Secord?  
13 COMMISSIONER SECORD: No.  
14 SECRETARY GOEHLER: Commissioner Shallenberger?  
15 COMMISSIONER SHALLENBERGER: Yes.  
16 SECRETARY GOEHLER: Commissioner Wan?  
17 COMMISSIONER WAN: Yes.  
18 SECRETARY GOEHLER: Chairman Caldwell?  
19 CHAIR CALDWELL: Yes.  
20 SECRETARY GOEHLER: Seven, three.  
21 CHAIR CALDWELL: Okay, the amending motion passes.  
22 Let's go to the main motion.  
23 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.  
24 CHAIR CALDWELL: Yes.  
25 EXECUTIVE DIRECTOR DOUGLAS: It does appear that

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1 the Commission may approve this motion, as now amended, there  
2 are, as you know, staff is recommending denial --

3 CHAIR CALDWELL: Yes.

4 EXECUTIVE DIRECTOR DOUGLAS: -- but, if the  
5 Commission is to approve it, we did prepare some suggested  
6 conditions that you asked us to work on last time --

7 COMMISSIONER REILLY: Is there a reason we didn't  
8 get a copy of those?

9 EXECUTIVE DIRECTOR DOUGLAS: Pardon me?

10 COMMISSIONER REILLY: Is there a reason we didn't  
11 get a copy of those?

12 EXECUTIVE DIRECTOR DOUGLAS: We have them here. I  
13 don't know if we got them distributed.

14 COMMISSIONER REILLY: Well, we asked for them.

15 EXECUTIVE DIRECTOR DOUGLAS: We did give a copy to  
16 the applicant's representative.

17 But, if you would like, we can give you those. We  
18 can --

19 CHAIR CALDWELL: I think now would be an  
20 appropriate time for you to review your --

21 COMMISSIONER WAN: Can you read them to us?

22 DEPUTY DIRECTOR LEE: I am sorry, Madam Chair and  
23 Commissioner Reilly, we did prepare them, and we have them  
24 here. We have copies to distribute to you, but because we  
25 did not change our recommendation, we didn't feel it was

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1 appropriate to include them in the staff report.

2 I did provide a copy of them to the applicant's  
3 representative before the meeting today, this morning.

4 It would include an assumption of risk; a Special  
5 Condition 2 would be a revised project plans to conform with  
6 the amending motion, and to have the bluff edge delineation  
7 completed on the site by Dr. Johnsson; Special Condition 3  
8 would be a waiver of future shoreline or bluff protection;  
9 Special Condition 4 would be the Commission's future  
10 development provision that requires any improvements come  
11 back for Commission review or amendment; Special Condition  
12 No. 5 requires conformance with the geotechnical  
13 recommendations, such that prior to issuance the applicant  
14 would submit evidence that an appropriate licensed  
15 professional has reviewed the plans and signed off on them;  
16 Special Condition No. 6, would be submittal of a drainage and  
17 runoff control plan.

18 Because they are proposing the pool and the spa,  
19 Special Condition No. 7 provides for pool and spa protection  
20 plans for leak detection; Special Condition No. 8 is for  
21 submittal of a landscaping plan, including provisions against  
22 invasive species; and then recordation of those provisions  
23 through a deed restriction.

24 Those would be all of the recommended special  
25 conditions.

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1 CHIEF COUNSEL FAUST: Madam Chair.

2 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

3 CHIEF COUNSEL FAUST: Madam Chair.

4 COMMISSIONER REILLY: Madam Chair.

5 CHAIR CALDWELL: We have three people speaking at  
6 once here, so Commissioner Reilly, first.

7 COMMISSIONER REILLY: Well, if you want to go to  
8 counsel, Madam Chair, that is fine with me.

9 CHAIR CALDWELL: All right.

10 CHIEF COUNSEL FAUST: I was just going to suggest  
11 that at some time prior to having the roll call vote on this,  
12 it would be useful to have the applicant comment on the  
13 conditions that staff is proposing.

14 EXECUTIVE DIRECTOR DOUGLAS: And, Madam Chair, I  
15 apologize for not having distributed these sooner. We'll  
16 have to get our act together, in terms of how we deal with  
17 suggested conditions, where the staff is recommending denial.

18 But, if you do feel that you need some additional  
19 time, my suggestion would be to trail this --

20 COMMISSIONER WAN: No, I don't want to do that.

21 COMMISSIONER REILLY: Well, let's ask the  
22 applicant's representative to come forward, Madam Chair.

23 And, I don't know if you followed the present-  
24 ation, but my understanding is that the conditions they gave  
25 you earlier, with the exception of No. 2, which has been

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1 amended through the amendment that we just adopted, are the  
2 conditions that are being suggested by staff, and we would  
3 like to have your response to that.

4 MR. JEANNETTE: Yes, Commissioner Reilly, just for  
5 your knowledge, we do agree with the amendment. I am  
6 comfortable with the motion, Commissioner Wan's motion.

7 The second issue is, anything to do with the 25-  
8 foot bluff top setback, or anything like that, which is the  
9 middle paragraph of Item No. 2 --

10 COMMISSIONER REILLY: What I am saying is the  
11 amendment that we adopted replaced Item No. 2, so Item No. 2,  
12 as you have it on the paper there is eliminated. The  
13 amendment that we adopted is in its place. But, what about  
14 all of the other conditions?

15 MR. JEANNETTE: Item No. 3.c. talks about a 10-  
16 foot setback, which I would assume would also be amended?

17 COMMISSIONER REILLY: Staff?

18 DEPUTY DIRECTOR LEE: No, that has to do with  
19 just, in terms of if the bluff ever receded within 10 feet of  
20 the principle residence, then you have to take measures to  
21 address that immediate hazard.

22 COMMISSIONER REILLY: But, if we are approving a  
23 residence that is already within 10 feet --

24 DEPUTY DIRECTOR LEE: Okay.

25 COMMISSIONER REILLY: -- then, you know, then

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1 there --

2 EXECUTIVE DIRECTOR DOUGLAS: I think that  
3 condition needs to be modified to harmonize it with the  
4 amending motion --

5 COMMISSIONER WAN: Okay.

6 EXECUTIVE DIRECTOR DOUGLAS: -- that you approved.

7 COMMISSIONER REILLY: All right, anything else?

8 MR. JEANNETTE: No, I am satisfied with the rest.

9 COMMISSIONER REILLY: All right.

10 And, Madam Chair, I would, if the "seconder"  
11 consents, I would certainly incorporate these conditions into  
12 my motion.

13 CHAIR CALDWELL: Commissioner Secord.

14 COMMISSIONER SECORD: That would be fine.

15 CHAIR CALDWELL: Okay, very good.

16 Commissioner Shallenberger.

17 COMMISSIONER SHALLENBERGER: My only question is a  
18 comfort level that I would like to ask our legal counsel,  
19 sometimes when we do all of this verbally, and we have made  
20 some major changes in these findings, is it better to trail  
21 it for a few hours in order to let staff, actually, put  
22 before us the findings? and is that possible? I am not sure  
23 of process, but there is a lot that has been changed here,  
24 and I think it is really important that people are very clear  
25 on what the actual action was, and the findings to back it

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1 up.

2 CHIEF COUNSEL FAUST: Through the Chair.

3 Commissioner Shallenberger, I am, for the most  
4 part at least, not concerned with the findings, and I think  
5 that with regards to the conditions, pursuant to Commissioner  
6 Reilly's clarifying questions, I think that you have resolved  
7 those.

8 I do have one concern, and I think it is probably  
9 one that Dr. Johnsson might want to reassure the Commission  
10 about, if you were approving a project without knowing where  
11 the bluff line was, and you were saying staff can go out and  
12 determine the bluff line, and were approving that, I don't  
13 know that there would be a meeting of the minds between -- or  
14 that we could say there would be a meeting of the minds  
15 between Dr. Johnsson and the geologist for the applicant,  
16 until they were actually out there, and it might be uncertain  
17 whether they could. There is, in other words, a concern  
18 about how much the geologists actually know.

19 If Dr. Johnsson is not confident that he knows  
20 where the bluff line is, approximately -- of course, it can  
21 vary by inches, or perhaps even a foot, that is one thing.  
22 And, this is now a comfort level with Dr. Johnsson, and the  
23 geologist for the applicant.

24 And, if they don't know where it is, and they are  
25 going to go out and determine it, then it would be better to

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1 have that determination made before this Commission actually  
2 approves the project, so that you knew you were having  
3 agreement on what was being said.

4 So, I think it is a question of Dr. Johnsson's  
5 comfort level with what he has been saying to the Commission  
6 about where that bluff line is, and how much that is in  
7 accord with what the geologist for the applicant is saying,  
8 as well.

9 COMMISSIONER REILLY: And, Madam Chair.

10 CHAIR CALDWELL: Yes.

11 COMMISSIONER REILLY: It was my intention to,  
12 simply, assume that in approving this that we are going with  
13 Dr. Johnsson's current determination, unless on a site visit  
14 he decides to modify that.

15 COMMISSIONER WAN: And, I would agree with that.  
16 That was my interpretation, as well, as the maker of the  
17 motion.

18 CHAIR CALDWELL: Okay, we've gotten that  
19 clarification.

20 Are we now ready to go to the vote?

21 [ No Response ]

22 Is there any objection to a unanimous roll call on  
23 this motion, on the main motion, which is to approve, subject  
24 to the amending motion, and incorporating the various  
25 additional conditions that have been set forth by staff, with

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1 the exception of revised project plans, Section 2, and  
2 including harmonization between the language of the suggested  
3 Condition 3.c. and --

4 COMMISSIONER WAN: It is 2.a.

5 CHAIR KRUEER: It is 2.a.

6 COMMISSIONER WAN: Not 2.b.

7 EXECUTIVE DIRECTOR DOUGLAS: We are, basically,  
8 deleting the 10-foot provision, that sub-section.

9 CHAIR CALDWELL: Yes.

10 So, 2.b. stays, but 2.a. goes out? is that  
11 correct?

12 COMMISSIONER WAN: Right.

13 EXECUTIVE DIRECTOR DOUGLAS: It is 2.a. and b --

14 CHAIR CALDWELL: 2.a. and b. go?

15 EXECUTIVE DIRECTOR DOUGLAS: -- are deleted.

16 CHAIR CALDWELL: Okay, very good.

17 So, just to restate what we are voting on, we are  
18 voting on approval of this, subject to the amending motion,  
19 removal of additional Condition 2, and harmonization of  
20 Condition 3.c. as suggested by staff in this additional  
21 document that we were handed just a few moments ago.

22 Any objection to a unanimous roll call on this  
23 vote? The mover and seconder are seeking a "Yes" vote.

24 [ No Response ]

25 Seeing none --

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1 MS. ANDREWS: Excuse me --

2 CHAIR CALDWELL: -- the motion --

3 MS. ANDREWS: -- I am sorry, I am sorry, I am  
4 sorry, I am really sorry.

5 The only thing that we are --

6 CHAIR CALDWELL: Can you, please, state your name  
7 for the record.

8 MS. ANDREWS: Donna Andrews, and I am here  
9 representing the applicant.

10 The only question we have is we need Mark to  
11 clearly articulate what the setback is, because the  
12 discussion was talking about a very small area where he had a  
13 question. So, we want to make sure that we are talking about  
14 just that small area.

15 EXECUTIVE DIRECTOR DOUGLAS: Well, the question is  
16 --

17 COMMISSIONER REILLY: The amendment was that no  
18 portion of the development could come seaward of Dr.  
19 Johnsson's determination of bluff top, bluff edge, and we are  
20 going with the bluff edge that he is showing on the map,  
21 unless on a site visit he decides to modify where that line  
22 is.

23 CHAIR CALDWELL: Is that clear?

24 MR. JEANNETTE: Yes, thank you.

25 CHAIR CALDWELL: Very good.

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1                   Is there any objection to a unanimous roll call on  
2 the motion? They are seeking a "Yes" vote.

3     [ No Response ]

4                   Seeing none, the motion carries, and the project  
5 is approved subject to the modifications and conditions that  
6 we have just agreed to today.

7                   Commissioner --

8                   EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

9                   CHAIR CALDWELL: Yes, go ahead.

10                  EXECUTIVE DIRECTOR DOUGLAS: ( Housekeeping Item  
11 taken up ).

12                  COMMISSIONER WAN: Can I just make one question,  
13 this was not, really -- I did not need to do this before the  
14 motion, but, I want to make sure that the findings don't, in  
15 some way, reflect -- or, I don't know what the issue would be  
16 -- but, that we are not ignoring the Newport Beach LUP, and  
17 that in this case, the applicant was completely finished with  
18 his approvals prior to that certification.

19                  And, I don't know that there are very many  
20 individuals in that situation, but somehow that needs to be  
21 reflected, because that was the basis.

22                  EXECUTIVE DIRECTOR DOUGLAS: I think that is what  
23 we heard --

24                  COMMISSIONER WAN: Right.

25                  EXECUTIVE DIRECTOR DOUGLAS: -- that, basically,

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1 because he had that local approval --

2 COMMISSIONER WAN: Prior to.

3 EXECUTIVE DIRECTOR DOUGLAS: Right, and you are  
4 going to lose a quorum here.

5 \*

6 \*

7 [ Whereupon the hearing concluded at 11:50 a.m. ]  
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**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**T 18a**

Staff:  
Staff Report:  
Hearing Date:  
Commission Action:

Fernie Sy-LBFSy  
May 25, 2006  
June 13-16, 2006



**FILE COPY**

**STAFF REPORT: REVISED FINDINGS**

**APPLICATION NO.:** 5-04-466

**FILE COPY**

**APPLICANTS:** Camden L.L.C., Attn: Bruce & Kathy Elieff

**AGENT:** Brion Jeannette & Associates

**PROJECT LOCATION:** 177 Shorecliff, Corona Del Mar (Orange County)

**PROJECT DESCRIPTION:** Demolition and construction of a new 8,990 square foot, two-story plus basement single-family residence with a 293 square foot 1<sup>st</sup> floor one-car garage and a 2,444 square foot subterranean six-car garage on a coastal bluff top lot, on deepened footing foundation. Also approved new hardscape, landscape and retaining walls. Grading consists of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone).

**DATE OF COMMISSION ACTION:** January 11, 2006

**COMMISSIONERS ON PREVAILING SIDE:** Commissioners Kram, Kruer, Neely, Reilly, Shallenberger, Wan and Caldwell.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of January 11, 2006 approving the applicant's proposal to demolish and construct a new single-family residence on a coastal bluff top lot. The major issue raised at the public hearing related to the appropriateness of approving the project regarding scenic resources and hazard policies of the Coastal Act.

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 Newport Beach only has a certified Land Use Plan (LUP) 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 applied was Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

**LOCAL APPROVALS RECEIVED:** Approval-in-Concept (#2659-2004) from the City of Newport Beach Planning Department dated December 3, 2004.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*, prepared by Geo Firm dated August

17, 2004; Letter to Brion Jeannette Architecture from Commission staff dated January 7, 2005; Letter from Brion Jeannette Architecture to Commission staff dated March 31, 2005; *Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r*, Permit Application 5-04-466, prepared by Geo Firm dated March 14, 2005; Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005; Letter from Commission staff to Brion Jeannette Architecture dated April 29, 2005; Letter from Brion Jeannette Architecture to Commission staff dated May 5, 2005, Letter from Brion Jeannette Architecture to Commission staff received September 13, 2005; Letter from Brion Jeannette Architecture to Commission staff received October 11, 2005; Letter from Brion Jeannette Architecture to Commission staff received October 21, 2005; Letter from Brion Jeannette Architecture to Commission staff received November 20, 2005; Letter from Brion Jeannette Architecture to Commission staff received November 30, 2005; Packet from Brion Jeannette Architecture to Commission staff received December 8, 2005; Letter from Brion Jeannette Architecture to Commission staff received December 13, 2005; Letter from Brion Jeannette Architecture to Commission staff received December 16, 2005; and . Letters from Brion Jeannette Architecture to Commission staff received December 20, 2005.

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## **EXHIBITS**

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Plan Commission staff Bluff Edge Plan (Exhibit B-1)
4. ~~Commission staff Bluff Edge Plan Stringline Plan~~
5. ~~Coastal Development Permit (CDP) No. A-78-4367 (Bortea) for 173 Shorecliff Road~~
6. ~~Coastal Development Permit (CDP) No. 5-96-234-DW (Bortea) for 173 Shorecliff Road~~
7. ~~Ex Parte Form From Commissioner Kruer~~

## **I. STAFF RECOMMENDATION**

### **MOTION:**

I move that the Commission adopt the revised findings in support of the Commission's action on January 11, 2006 concerning Coastal Development Permit Application No. 5-04-466.

### **STAFF RECOMMENDATION OF APPROVAL:**

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

Commissioners eligible to Vote on Revised Findings for Coastal Development Permit No. 5-04-466 are: Kram, Kruer, Neely, Reilly, Shallenberger, Wan and Caldwell

## **RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for its approval of Coastal Development Permit Application No. 5-04-466 on the ground that the findings support the Commission's decision made on January 11, 2006 and accurately reflect the reasons for it.

## **II. STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **III. SPECIAL CONDITIONS**

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

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

**2. Revised Project Plans**

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

That no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist and shown on Exhibit B-1, which is attached with this Notice of Intent To Issue Permit.

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

**3. No Future Bluff or Shoreline Protective Device**

- A.** By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-04-466 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- B.** By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence and hardscape, if any government agency has ordered that the structure(s) is/are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

**4. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-04-466. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-04-466. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, change in

use from a permanent residential unit and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-04-466 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**5. Conformance with Geotechnical Recommendations**

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*, prepared by Geo Firm dated August 17, 2004, *Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r*, Permit Application 5-04-466, prepared by Geo Firm dated March 14, 2005, Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; and Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005.
- B.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants 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 permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

**6. Drainage and Runoff Control Plan**

- A.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of final drainage and run-off control plans. The drainage and runoff control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be collected on site for discharge to the street through piping without allowing water to percolate into the ground.
- B.** The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- C. The applicants shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

**7. Pool and Spa Protection Plan**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of final pool and spa protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool and spa. The final pool and spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool and spa which are separate from the water meter for the house to allow for the monitoring of water usage for the pool and spa, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool and spa that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool plan approved by the Executive Director.

**8. Landscaping Plan**

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

(1) The plan shall demonstrate that:

- (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (c) Landscaped areas not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of

California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping that doesn't meet the above requirements shall be removed.

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

(2) The plan shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
- (b) a schedule for installation of plants.

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

## **9. Deed Restriction**

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



#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

##### **A. PROJECT LOCATION, DESCRIPTION AND PRIOR COMMISSION ACTION**

###### **1. Project Location**

The proposed single-family residence at 177 Shorecliff Road is located on a coastal bluff top lot situated on the seaward side of Shorecliff Road in the community of Shorecliffs in Corona Del Mar (Newport Beach) (Exhibits #1-2). The lot size is approximately 21,459 square feet and the City of Newport Beach Land Use Plan (LUP) assigns two different land use designations for different portions of the subject site. The base of the bluff and the adjacent beach area is designated Recreational and Environmental Open Space and the area from the base up to the street is designated Single-Family Detached Residential. The project is located within an existing developed urban residential area and the existing house is located at the bluff edge, which is approximately at the 67-foot contour, and the existing pool is located on the ~~bluff top bench cut into the bluff face, seaward of the bluff edge~~. To the North of the project site is Shorecliff Road. To the East and West of the project site exist single-family residential developments. To the South of the project site is an undeveloped vegetated bluff, Little Corona Beach and the Pacific Ocean. The project site consists of a quarter-acre level building pad supported above a generally natural coastal bluff face. The overall height of the slope is approximately 50-feet. The slope ratio is variable, with the lower slope near 3.5:1 (horizontal: vertical) and the upper slope near 1.5:1, but overall; the slope is near a 2:1 ratio. In the project area, the lower slope is mantled with an apron of slopewash. At the base of the bluff is a narrow beach area that transitions from sandy beach to rocky beach.

###### **2. Project Description**

The proposed project consists of demolition of an existing single-family residence with an attached garage and construction of a new 8,990 square foot, two-story single-family residence plus basement, a 860 square foot 2<sup>nd</sup> floor deck, a 441 square foot roof deck, a 293 square foot 1<sup>st</sup> floor one-car garage, and a 2,444 square foot subterranean six-car garage, which is part of the basement level on a coastal bluff top lot (~~Exhibit #3~~). This proposed development would ~~still~~ encroach to and in some instances beyond the bluff edge. In addition, the applicants are proposing hardscape ~~beyond the bluff edge~~ and a new pool located on the ~~bluff face (Exhibit #3)~~. ~~The proposed pool would be on the bluff top no further seaward than the existing pool bench cut into the bluff face, seaward of the bluff edge.~~ Grading will consist of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The foundation of the residence will consist of a combination of deepened footings and retaining walls.

###### **3. Prior Commission Action in Subject Area**

See Appendix A

## B. SCENIC RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

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

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

~~Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.~~

~~On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.~~

Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be protected. The project is located on a coastal blufftop lot overlooking Little Corona Beach and the ocean below and is visible from these sites. Because the project will potentially affect views from public vantage points any adverse impacts must be minimized. Pursuant to Section 30251, it is necessary to ensure that the development will be sited to protect views to and along the bluffs and minimize the alteration of existing landforms.

~~Establishing a limit of development and setting development further back from the edge of the coastal bluff decreases a development's visibility from public vantage points, thus protecting views and the scenic quality of the area as well as preventing alteration of the natural landform. Concentrating the development on the bluff top and away from the bluff edge and bluff face also reduces alteration of the natural bluff landform by avoiding grading and construction of structures on the currently highly scenic bluff where there presently is no development. For these reasons, the Commission typically imposes some type of bluff edge set back. The proposed project is inconsistent with Section 30251 of the Coastal Act and the City's LUP policy regarding coastal bluff sites as discussed below.~~

### 1. ~~Scenic View Impacts (Stringline and Bluff Edge Setback Analysis)~~

~~Seaward encroachment of new development can often have adverse impacts on a variety of coastal resources. For example, the seaward encroachment of private development toward a beach can discourage public utilization of the beach adjacent to such~~

development. The seaward encroachment of structures can also have adverse visual impacts. In addition, the seaward encroachment of structures can increase the hazards to which the new development will be subjected (the hazard and access issues are discussed elsewhere in these findings). Therefore, in Newport Beach the Commission has often used either 1) a string line evaluation; or 2) a minimal 25-foot bluff edge setback in areas where geologic conditions are such that the site can be presumed stable for the useful economic life of the development. If a stringline is used, two types of string lines are applied to evaluate a proposed project—a structural string line and a deck/accessory structure string line. A structural string line refers to the line drawn between the nearest adjacent corners of the adjacent structures on either side of the subject site. Similarly, a deck/accessory structure string line refers to the line drawn between the nearest adjacent corners of adjacent decks/accessory structures on either side of the subject site. String line setbacks and bluff edge setbacks are applied to limit new development from being built any further seaward than existing adjacent development. If not properly regulated the continued seaward encroachment of development can have a significant cumulative adverse impact on coastal resources.

#### Stringline

Applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. The bluff edge of the adjacent sites and area undulate widely from lot to lot, so a setback based upon stringline would not adequately protect the bluff landform. The applicant did not provide a stringline analysis. Thus, Commission staff produced Exhibit #4, which depicts the structural stringline using the Commission's practiced methodology. If a structural stringline were to be implemented, a large portion of the proposed basement level area would be seaward of the structural stringline (i.e. the enclosed living space exceeds the stringline by approximately 12 feet). Commission staff was unable to depict a deck/accessory structure stringline since adequate reference points were not shown on the applicants' site plan. It is possible that the proposed hardscape and pool may be located within the deck/accessory structure stringline; nonetheless, the proposed hardscape and pool are being placed on the bluff face. Thus, the development is not minimizing the potential that the development will contribute to visual impacts and be subject to hazards. Even so, applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. Thus, using the stringline would not adequately control the seaward encroachment of development and would result in development that is inconsistent with Section 30251 of the Coastal Act.

#### Bluff Edge Setback

In cases where use of a stringline to limit seaward encroachment of development is not appropriate, the Commission will use a bluff edge setback for primary structures and accessory improvements. Such a setback is derived for site-specific conditions and is designed to assure stability of the development for its useful economic life. A minimal setback may be warranted where those slopes are stable and historic bluff retreat has been minimal. This setback is also useful to address visual impacts. In these cases in Newport Beach, the Commission typically requires that habitable structures be setback at least 25 feet from the bluff edge and hardscape features be setback at least 10 feet from

the bluff edge to minimize the potential that the development will contribute to visual impacts and be subject to hazards.

Applying the definition of bluff edge found in Section 13577 of the California Code of Regulations, the Commission's staff geologist has determined that the bluff edge in the northwestern portion of the site is located approximately at the 67-foot elevation contour depicted on the applicant's plans. At the southwestern portion of the site, a pad has been cut into the bluff top, resulting in a landward movement of the bluff edge. The new bluff edge that resulted from this grading is obscured beneath the existing residence. However, the Commission's staff geologist notes that, for the southwestern portion of the site, the bluff edge can be no further seaward than the seaward edge of the existing residence (Exhibit #4), which accordingly can be taken conservatively as the bluff edge. Note that the "Bluff Edge Per Section 13577..." depicted on the applicant's plans—and found on Exhibits #3-4—is not accurate. An estimation of the actual bluff edge location based on Section 13577 can be found on Exhibit #4 (see Commission Staff's Bluff Edge Determination on that exhibit).

The proposed project includes enclosed living space that encroaches to and in some instances beyond the bluff edge located approximately at the 67-foot contour (Exhibit #4). The applicants have also proposed hardscape and a new pool such that the hardscape and new pool are confined to the footprint of the existing pool and hardscape. However, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge. Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks (Exhibit #4). These setbacks have previously been imposed on other development in the project vicinity (see Appendix A). Adherence to the 25-foot setback and 10-foot setback for the proposed development would be consistent with the previous actions taken in the project area.

The existing bluff face is a natural landform visible from public vantage points such as Little Corona Beach. Any alteration of this landform would affect the scenic views of the coastline when viewed from the beach. The proposed project would significantly alter the appearance of the undeveloped vegetated bluff. This new development must be appropriately sited to minimize adverse effects to existing scenic resources. Accordingly, the residential structure and major accessory improvements should be sited at least 25-feet from the bluff edge and any hardscape, stairways, retaining walls or other appurtenances should be located at least 10-feet from the bluff edge. No development should be located within 10-feet of the bluff edge or upon the bluff face, as is proposed by the applicants. Thus, the proposed development does not minimize landform alteration and visual impacts as required by Section 30251 of the Coastal Act.

## 2. City of Newport Beach Land Use Plan (LUP)

The City of Newport Beach recently updated their Land Use Plan (LUP). Included in this update were policies directly relating to development taking places on bluffs. One relevant policy states the following: *Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to*

~~ensure safety and stability of the development [Emphasis added]. Another relevant policy states On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards [Emphasis added].~~ The proposed residential structure encroaches to and in some instances beyond the bluff edge, while hardscape and a new pool are confined to the footprint of the existing pool and hardscape; however, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge. Therefore, portions of the proposed residence and hardscape and appurtenant features do not adhere to the required 25-foot and 10-foot bluff edge setbacks. Thus, the proposed development is inconsistent with the recently updated LUP because the development does not adhere to the required 25-foot and 10-foot bluff edge setbacks.

### 3. Landform Alteration

The proposed project will consist of grading that will comprise of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The proposed grading would be accomplished in order to place the proposed structures on the bluff top and bluff face. Currently, the bluff face is highly scenic and undeveloped; however, the proposed project would result in significant alteration of the bluff face. As such, new development at the subject site must be appropriately sited to minimize adverse effects to natural landforms. The proposed development does not minimize such adverse effects and is inconsistent with Section 30251 of the Coastal Act.

### Conclusion

The Commission finds that the proposed project is not sited and designed to protect scenic and visual qualities of coastal areas as a resource of public importance. Denial of the proposed project would preserve existing scenic resources. The alteration of the bluff would result in an adverse visual effect when viewed from public vantage points such as Little Corona Beach. The Commission finds that the proposed project would result in the alteration of natural landforms. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites and therefore must be denied.

Establishing a limit of development and setting development further back from the edge of the coastal bluff decreases a development's visibility from public vantage points. For these reasons, the Commission typically imposes some type of bluff edge set back.

### City Setback

The plans submitted by the applicant show that the project conforms to the City zoning setback requirement of 6-feet from the rear property line, but conformance with the City required setback however does not address the potential visual and scenic resource impacts that the oceanward encroaching development will have on the project site. Adhering to the City setback of 6-feet

from the rear property line does not achieve the objectives of Coastal Act Section 30251 because the rear property line is located on the beach.

### Stringline

Since the City's rear property line setback cannot be used to avoid the potential impacts that the oceanward encroaching development will have on the project site, the applicability of the structural and deck stringlines will be evaluated. Two types of string lines are applied to evaluate a proposed project--a structural string line and a deck string line. A structural string line refers to the line drawn from the nearest adjacent corners of adjacent habitable structures. Similarly, a deck string line refers to the line drawn from the nearest adjacent corners of adjacent decks. Applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. The bluff edge of the adjacent sites and area undulate widely from lot to lot, so a setback based upon stringline would not adequately protect the bluff landform. Therefore, a stringline cannot be applied in this case. As to be seen in the following hazards section of the staff report, the Commission found that the bluff edge is a sufficient setback. In regards to Section 30251 of the Coastal Act, this setback is also consistent with community character as this minimal setback would prevent development seaward of the bluff edge and also would be protective of scenic resources. Therefore, the Commission imposed **Special Condition No. 2**, which requires the applicant to submit revised project plans showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist (Exhibit #3).

In addition, the future development restriction will ensure that improvements are not made at the blufftop that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. The landscaping condition requires that the applicant install native and/or non-native, drought tolerant, non-invasive plants throughout the site.

Therefore, the Commission finds that, as proposed and conditioned, the project will not obstruct significant coastal views from public vantage points and is consistent with the visual resource protection provisions of Section 30251 of the Coastal Act.

## **C. 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.*

The subject site is an oceanfront lot where the toe of the bluff is periodically subject to direct wave attack. There is no wide sandy beach or intervening development between the toe of the bluff and the ocean. Development on a bluff is inherently risky due to the potential for bluff



erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to humans that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, and breaks in water or sewage lines.

1. Site Specific Bluff Information

To address site-specific geotechnical issues with the proposed residence (the proposed pool was not reviewed by the applicants' geologist), the applicants have submitted several reports including *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004; *Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r*), *Permit Application 5-04-466*, prepared by Geo Firm dated March 14, 2005; Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; and Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005.

The geotechnical reports analyzed the stability of the project site and made the following statements: *"In the area of the site, the lower slope is mantled with an apron of slopewash suggesting predominantly subaerial erosional process and a significant history without active erosion along the base of the slope."* Furthermore, the geotechnical reports claim: *"Deep seated failure of the slope is considered unlikely due to its 2:1 overall slope ratio, moderate height, and underlying bedrock and terrace deposits. Upper slope terrace deposits and slopewash deposits which mantel the lower bluff slope face are considered surficially unstable and may be prone to failure under conditions of saturation or seismic acceleration. Such instability will not affect the proposed development in consideration of appropriate foundation design as recommended herein."* In addition, the geologic reports state that the foundation system for the residence will likely consist of a combination of conventional footings, deepened footings and retaining walls. In addition, a caisson and lagging shoring system is proposed to support the grade change with the lot to the north. The geotechnical reports conclude that: *"The bedrock materials backing the slope are anticipated to remain grossly stable. The terrace deposits and slopewash mantling the slope face is considered surficially unstable. The foundation system along the rear of the proposed residence should be designed to isolate proposed improvements from potential surficial instability of the slope."* In response to this geotechnical finding, the applicants have proposed that the foundation system along the rear yard will consist of deepened, continuous footing. Siting the proposed development at the bluff edge and upon the bluff face necessitates this enhanced foundation system. Furthermore, the applicants had originally proposed a row of approximately fourteen (14) 24" diameter caissons along the western property line, separate from the residential foundation system, to protect the project site. However, the applicants have now decided to use grading instead of caissons.

The Commission typically requires that even when coastal bluffs are relatively stable, habitable structures be setback at least 25-feet from the bluff edge and hardscape

features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts. The proposed residential structure and hardscape encroaches to and in some instances beyond the bluff edge, while hardscape and a the new pool are is on the bluff top no further seaward than the existing pool ~~confined to the footprint of the existing pool and hardscape; however, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge.~~ Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks. Rather than placing development landward of the 25-foot setback and 10-foot setback from bluff edge, and include an adequate safety buffer to address anticipated bluff retreat over the life of the development and minimize risks, the proposed project includes development seaward of the 25-foot and 10-foot setbacks. However at the hearing, the Commission determined that due to the site-specific information it received regarding the stability of the site that a minimal setback was acceptable. The bluff edge was determined to be the appropriate setback. Thus, no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development shall extend seaward of the bluff edge. In addition, the proposed deepened foundation and grading is being used to mitigate risks, not minimize or avoid them. New development, such as the proposed residence, should be sited and designed to minimize or avoid risks.

## 2. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design. In response, the applicants have provided a report entitled *New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004, which addresses the potential of hazard from flooding and wave attack at the subject site. The study states that review of aerial photographs from October 14, 1939 and July 30, 1970 reveals that little geomorphic changes appear to have occurred. In addition, it does state the beach at the base of the slope appears wider in 1939 than it was in 1970 and attributes that to: " *... late summer season sand return resulting from the tropical storm three weeks prior to the 1939 photographs and/or the early summer sand depletion common during the winter season in the July photographs.*" Furthermore, it states: "*The primary historic mode of erosion and retreat in the vicinity in the site is piecemeal rock toppling of the bedrock materials, as it is slowly but progressively undermined by erosion at the base of the sea cliff. However, the site is supported by a relatively gentle slope, not a seacliff, and is currently protected from westerly swells and windwaves by the adjacent promontory and rocky outcrop beach at the base. The mantle of slopewash present along the lower sea bluff is evidence that wave erosion has been absent in recent times, likely due to protection from the offshore harbor breakwater and locally by the adjacent promontory. Shoreline protection along the rear of the property is not anticipated during a 75-year life span of the development providing proper foundation as recommended herein.*"

Although the applicants' report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes.



Such changes may affect beach processes. For example, the study states erosion at the base of the sea cliff has historically occurred. However, the site is currently protected from westerly swells and windwaves by the adjacent promontory and rocky outcrop beach at the base. However, if something were to happen that would cause damage to the adjacent promontory and rocky outcrop beach at the base, then significant shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

### Conclusion

~~The proposed development is located in a hazard-prone environment. On the other hand, geotechnical investigations conclude that the proposed project is feasible from the engineering perspective, but only given an enhanced foundation system. The fact that a project could technically be built at this location is not sufficient to conclude that it *should* be undertaken. The project should be designed so that no enhanced engineering solutions are required for construction of the proposed project.~~

### 3. Conclusions and Special Conditions

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

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

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

The Commission has imposed many of these same recommendations, including requiring the consulting geologist to review foundation and drainage plans in order to confirm that the project conforms to the policies of the Coastal Act. The findings in the staff report

regarding the general causes of bluff erosion and the specific findings from the geotechnical report confirm that the coastal bluff at this location is slowly eroding and that measures to minimize bluff erosion are necessary. The following special conditions will mitigate the impacts of the proposed development on bluff erosion and instability, and prevent the necessity for bluff protective structures, as required by Section 30253 of the Coastal Act.

a. Assumption of Risk

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

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings in Sections 1-2 above, including site-specific geologic information, support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, the standard waiver of liability condition has been attached via **Special Condition No. 1.**

By this means, and through the deed restriction condition, the applicants and future buyers are notified that the proposed development is located in an area that is potentially subject to bluff erosion that can damage the applicants' property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the coastal development permit.

b. Revised Plans

Development on coastal bluffs is inherently risky due to the potential for slope failure. Bluff top development poses potential adverse impacts to the geologic stability of cliffs and the stability of residential structures. To meet the requirements of the Coastal Act, bluff top developments must be sited and designed to minimize risks and assure geologic stability and structural integrity for their expected economic lifespans while minimizing alteration of natural landforms.

The Commission typically requires that even when coastal bluffs are relatively stable, habitable structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts. The proposed residential structure and hardscape encroach to and in some instances beyond the bluff edge, while the new pool is on the bluff top no further seaward than the existing pool. Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks. However at the hearing, the Commission determined, due to the site-specific information regarding the stability of the site, that a minimal setback was acceptable. The bluff edge was determined to be the appropriate minimal setback. The Commission also found that this setback was protective of the scenic resources of the area. Therefore, the Commission is imposing **Special Condition No. 2**, which requires the applicant to submit revised project plans

showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist (Exhibit #3).

c. Bluff and Shoreline Protective Devices

Coastal bluff lots are inherently hazardous, especially those located adjacent to the ocean. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site has concluded that a proposed development is expected to be safe from bluff retreat or wave up-rush hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur. In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may become endangered.

Section 30253 of the Coastal Act states that new development shall not require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be approved as being consistent with Section 30253 of the Coastal Act if projected bluff retreat would affect the proposed development and necessitate construction of a protection device.

No bluff or shoreline protection device is proposed. However, because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a bluff and shoreline protective device is not expected to be needed in the future. Therefore, the Commission imposes **Special Condition No. 3**, which states that no future bluff or shoreline protective devices shall be permitted to protect the proposed development.

d. Future Development

The development is located within an existing developed area and, as conditioned, is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicants could construct future improvements to the single-family house, including but not limited to improvements to the residence and decks, that would have negative impacts on coastal resources, and could do so without first acquiring a coastal development permit, due to exemption for improvements to existing single-family residences in Coastal Act Section 30610 (a). In order to prevent the current authorization from allowing such future potential effects, it is necessary to ensure that any future development -- including development that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition No. 4**, a future improvements special condition. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

e. Conformance with Geologic Recommendations

The geotechnical consultant has found that the proposed development is feasible provided the recommendations contained in the geotechnical report prepared by the consultant are implemented as regards the design and construction of the project. The geotechnical recommendations address foundations, excavation, and footings. In order to insure that risks of development are minimized, as per Section 30253, the Commission imposes **Special Condition No. 5**, which states that the geotechnical consultant's recommendations should be incorporated into the design of the project. As a condition of approval the applicants shall submit for the review and approval of the Executive Director foundation plans reviewed and signed by a consulting geologist indicating that the recommendations have been incorporated.

f. Drainage and Runoff and Landscaping Special Conditions

In approving development on a coastal bluff the Commission must ensure that the development minimizes potential erosion or, as it is stated in Section 30253 "...to neither create nor contribute significantly to erosion..."

Along the urbanized bluffs of southern California, geologic instability has been increased through the addition of large volumes of irrigation water required to maintain lawns and non-native vegetation in the yards of cliff top homes. It is difficult to assess the long-term damage caused by the accumulation of water on bluff topsoils due to watering of lawns and other water intensive vegetation. Landscape irrigation alone is estimated to add the equivalent of 50 to 60 inches of additional rainfall each year to garden and lawn areas. This irrigation has led to a slow, steady rise in the water table that has progressively weakened cliff material and lubricated joint and fracture surfaces in the rock along which slides and block falls are initiated. Also, the weight of the saturated soils weakens the cliff. In addition to these effects, surface runoff discharged through culverts at the top or along the face of the bluffs leads to gullyng or failure of weakened surficial materials. In this respect the Commission fills an important role in minimizing landsliding and erosion.

The Commission has acted on many coastal development permits in which an applicant has applied for bluff protective measures following the failure of irrigation lines, water or sewer lines which then cause slope failure. It is extremely difficult to discover breaks in in-ground irrigation lines until after a certain period of time passes and plants start to die. By then the slope may have become saturated.

The applicants previously submitted a drainage and run-off control plan, however, no new drainage and run-off control plans have been submitted for the revised project. Therefore, the Commission is imposing **Special Condition No. 6**, which requires that the applicants shall prepare prior to issuance of this permit a final drainage and run-off control plan.

The proposed project consists of a new pool near the bluff edge. If water from the proposed pool is not properly controlled there is a potential for bluff failure due to

the infiltration of water into the bluff. For this reason, the potential for infiltration into the bluff should be minimized. This can be achieved by various methods, including having the pool double lined and installing a pool leak detection system to prevent the infiltration of water into the bluff due to any possible pool or spa problems. However, the applicants have not proposed any such measures. Therefore, the Commission imposes **Special Condition No. 7**, which requires the applicants to submit a pool protection plan.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The applicant currently has no landscape plans. Any proposed vegetated landscaped areas located on site should only consist of native plants or non-native drought tolerant plants, which are non-invasive. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

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

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 No. 9** requiring that the property owners record a deed restriction against the property, referencing all of the above Special Conditions of this permit

and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

## CONCLUSION

The Commission has required **Nine (9) Special Conditions**, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These special conditions include: 1) assumption of risk; 2) revised project plans showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist.; 3) no future blufftop or shoreline protective device; 4) additional approvals for any future development; 5) evidence of conformance with geotechnical recommendations; 6) submittal of a final drainage and run-off control plan; 7) submittal of a pool protection plan; 8) submittal of a final landscaping plan; and 9) a deed restriction against the property, referencing all of the special conditions contained in this staff report. Only as conditioned to comply with the provisions of these special conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

### **D. PUBLIC ACCESS**

Section 30240 (b) of the Coastal Act states:

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

The project site is a coastal bluff top lot situated on the seaward side of Shorecliff Road, which is the first public road immediately inland of Little Corona Beach. The level beach area of this lot that is located at the base of the bluff (Little Corona Beach) is private to the mean high tide line and is designated Recreational and Environmental Open Space in the City's Land Use Plan (LUP). The part of the beach seaward of the mean high tide line, which would change depending on the tide, is public. The public accessway to Little Corona Beach nearest to the subject site is located at the east end of Ocean Boulevard, approximately one quarter mile to the northwest. Development at this site, if approved, must be sited and designed to be compatible with Section 30240 (b) of the Coastal Act. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. ~~It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to coastal resources. The proposed project, as submitted, would be a significant new development encroaching seaward.~~ As proposed, the house and hardscape would have extended seaward of the bluff edge. As conditioned, no portion of the development is seaward of the bluff edge. Also, the site is currently developed with a single-family residence. Upon completion of the project, the development will remain as a single-family residence. In addition, the proposed development would provide more than adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit. Therefore, the project, as conditioned, has been designed to prevent impacts that would



significantly degrade the surrounding areas.

Therefore, the Commission finds that the proposed development would be consistent with Section 30212 and 30252 of the Coastal Act regarding public access.

~~The proximity of the proposed project to Little Corona Beach raises Coastal Act concerns, as it would be new seaward encroaching development that could discourage use of the beach. The project could diminish the value of the beach for public use by discouraging public access to the beach through the presence of the new residence above the beach located at the zero bluff edge setback and in some instances beyond the bluff edge and the hardscape and pool located a minimal distance from the bluff edge. The existing beach already is relatively narrow. The proposed bluff development would be imposing structural features that could affect public use of the beach by discouraging the public from using the beach area intended for public use. This would force the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project could adversely impact public access to the beach.~~

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

## **E. ALTERNATIVES**

~~Due to the project's impact on coastal views and the alteration of natural landforms, possible project alternatives were requested from the applicants in order to find an approvable project that would limit impact on coastal views and alteration of natural landforms. The applicants have stated that they have looked at other alternatives; however, the applicants feel that the current project proposal is the best and least impacting. The Commission disagrees and believes that there are other alternatives that are better (more consistent with the policies in Chapter 3 of the Coastal Act, as well as the LUP policies) and that would have less impact on coastal resources.~~

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

### **1. No Project**

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

### **2. Remodeling of the Existing Home**

~~An alternative to the proposed project would be remodeling of the existing home so that it adheres to the minimum 25-foot setback from the bluff edge for habitable structures and the minimum 10-foot from the bluff edge for hardscape appurtenant features so that the potential that the development will contribute to visual impacts and adversely impact slope stability will be minimized. This alternative would preserve the bluff face as an undeveloped vegetated slope.~~

3. ~~Demolishing and Rebuilding the Existing Home~~

~~Another alternative to the proposed project would be demolishing and rebuilding the existing home, consistent with the typically imposed setbacks as described above. As such, there would be no disturbance of the bluff face and it would remain as an undeveloped vegetated slope.~~

**EF. LOCAL COASTAL PROGRAM**

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

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. The certified LUP was updated on January 9, 1990 and it was also significantly updated in October 2005. Because Newport Beach has only a certified Land Use Plan the standard of review for development remains Chapter 3 of the Coastal Act. The certified LUP is used as guidance. Since the City only has an LUP, the policies of the LUP are used only as guidance. The recently updated (October 2005) Newport Beach LUP includes the following policies that relate to development at the subject site:

*Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.*

*On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.*

~~The construction of the proposed project is inconsistent with the policies in the City's certified LUP and as well as Chapter 3 policies of the Coastal Act discusses previously, specifically Sections 30251 and 30240 (b). Development on the coastal bluff would cause adverse impacts to the natural landform, the coastal scenic resources and public access, which is inconsistent with these Sections of the Coastal Act. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration and visual impacts. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and be~~



~~incompatible with their recreational use. Approval of the proposed development would prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act, as required by Section 30604(a), by authorizing development inconsistent with those policies. Therefore, because the project is found inconsistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal Act, issuance of the permit would be inconsistent with Section 30604(a), and the permit must be denied.~~

The proposed project was submitted in December 2004, which is prior to the adoption of the recently updated LUP. The certified LUP that was updated on January 9, 1990 did not require a specific 25-foot setback from the bluff edge.

However, minimal grading is proposed in conjunction with the project and therefore no extensive landform alteration will take place. As per the LUP requirements, an assumption of risk special condition is being required and a comprehensive geological investigation was supplied with the application. Therefore, the proposed development is consistent with the guidance as provided by certified LUP policies.

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

#### **FG. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

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

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

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible

alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

H:\FSY\Staff Reports\June06\5-04-466-[Camden L.L.C]RF(CDM)

## Appendix A

A. Coastal Development Permit (CDP) Application No. 5-93-016-(Beall), 161 Shorecliff Drive (Located 4 Lots Up-Coast of Subject Site)

At the March 1983 Coastal Commission Hearing, the Commission approved CDP Application No. 5-93-016-(Beall) for landscape renovation including replacement of two stairs on the bluff top, construction of an overlook and lawn area, and renovation of an irrigation system and shrub planting located on a bluff parcel. An existing single-family residence was located on site; however, no work was proposed to the residence. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. Work on the bluff top was proposed and typically a minimal bluff edge setback or application of a stringline would have been applied to achieve the required setback. However, application of a stringline was not applicable due to the topography of the bluff. Therefore, a minimal 25-foot bluff edge setback was imposed instead. The Commission approved the project subject to two (2) Special Conditions. Special Condition No. 1 required revised project plans indicating that no new development would occur within 25-feet of the bluff edge. Special Condition No.2 required screening of a drainage pipe on the bluff and dissipation device at the base of the bluff. As in the case of the proposed project, the implementation of a stringline was deemed inappropriate due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a minimal 25-foot geologic setback was imposed instead.~~

B. Coastal Development Permit (CDP) Application No. 5-90-1069-(Real Vest), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

At the March 1991 Coastal Commission Hearing, the Commission approved CDP Application No. 5-90-1069-(Real Vest) for demolition and construction of a single-family residence located on a bluff-parcel. In addition, increasing the size of the pool house and constructing a swimming pool and spa were also proposed. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. Staff recognized that a true application of the structural stringline is inapplicable at the subject site due to the uneven coastline. In spite of this, rather than abandon the use of a structural stringline, the staff report proposed a "modified" structural stringline and found that the proposed location of the residence was compatible with the purpose and intent of the structural stringline. While the structural components of the project were found to be less problematic, the accessory development proposed seaward of the residence was more contentious. A setback based on a strict stringline for the accessory structures (i.e. swimming pool and decks) is impossible in this instance, as the up-coast property has no equivalent kinds of development. Therefore, a geologic setback of 25-feet was imposed for all development. The Commission approved the project subject to four (4) Special Conditions. Special Condition No. 1 required revised project plans indicating that no new development would occur seaward of the 87-foot contour line. Special Condition No.2 required conformance with geotechnical recommendations. Special Condition No.3 required submittal of a drainage/erosion control plan. Special Condition No.4 required

submittal of a landscaping plan. As in the case of the proposed project, the implementation of a stringline is prevented due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a geotechnical setback was imposed instead.~~

The applicant filed a request for reconsideration of Special Condition No. 1. However, that reconsideration request was ultimately withdrawn.

C. Assignment of Permit Application No. T5-90-1069-(Real Vest), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

On July 22, 1992, the Coastal Commission approved assignment of permit from Real Vest to the Wahler Family Trust.

D. Amendment to Coastal Development Permit (CDP) Application No. 5-90-1069-A1-(The Wahler Family Trust), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

At the August 1993 Coastal Commission Hearing, the Commission approved an Amendment to CDP Application No. 5-90-1069-(The Wahler Family Trust) for construction of a sub-grade pool equipment storage room and grading located on a bluff parcel. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access policies of the Coastal Act. While the proposed storage room would not encroach into the required bluff edge setback previously established in the original permit, additional development (i.e. cut and fill and a retaining wall) was proposed to take place seaward of the bluff edge. Therefore, a Special Condition was imposed, which required submission of revised project plans indicating no development will occur beyond the 87-foot contour line consistent with the bluff top setback established in CDP No. 5-90-1069. ~~As in the case of the proposed project, adherence to a geologic setback was required.~~

E. Request for Reconsideration No. R5-90-1069 and Amendment to Coastal Development Permit (CDP) Application No. 5-90-1069-A2-(The Wahler Family Trust), 165 Shorecliff Road (Located 3 Lots Up-Coast of Subject Site)

On March 1993 construction began associated with CDP No. 5-90-1069. However, development took place that was not approved under this permit: 1) a guesthouse seaward of the modified structural stringline, and 2) grading, construction of a retaining wall, pool and lawn area all seaward of the 87-foot contour elevation. To resolve the issues raised by the unpermitted development and to determine the appropriate setback, a reconsideration request was scheduled for the Commission Hearing in April 1995. At that time the Commission rejected the reconsideration and instead directed staff to accept an application for an amendment.

At the August 1995 Coastal Commission Hearing, the Commission approved a 2<sup>nd</sup> Amendment to CDP Application No. 5-90-1069-(The Wahler Family Trust) for: 1) construction of a guesthouse seaward of the modified structural stringline, and 2) grading, construction of a retaining wall, pool and lawn area all seaward of the 87-foot contour elevation. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard, visual resources, and public access

policies of the Coastal Act. Staff determined that even though construction of the guesthouse was seaward of the structural stringline, it will not result in adverse visual impacts and is compatible with the existing surrounding development. In addition, Commission staff found that the grading, retaining wall, pool and lawn would maintain a 25-foot setback from the bluff edge; hence it would be consistent with hazard policies of the Coastal Act. The Commission approved the project subject to all previous Special Conditions and also imposed two (2) additional Special Conditions. Special Condition No. 1 modified the original Special Condition No. 1, which prohibited development seaward of the 87-foot contour. The new language stated that the guesthouse could not encroach anymore seaward than on the plans and that all development, including grading, shall be setback a minimum of 25-feet from the edge of the bluff. Special Condition No. 2 required submittal of landscaping plan indicating that only native and low water use plants will be used. ~~As in the case of the proposed project, adherence to a geologic setback was required.~~

F. Coastal Development Permit (CDP) Application No. P-79-4774-(George), 169 Shorecliff Road (Located 2 lots Up-Coast of Subject Site)

At the February 1979 South Coast Regional Commission Hearing, the Commission approved CDP Application No. P-79-4774-(George) for an addition to the existing 1<sup>st</sup> floor and a new 2<sup>nd</sup> floor addition to an existing one-story single-family residence on a bluff parcel. In addition, decks and a swimming pool were proposed. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard and visual resource policies of the Coastal Act. The existing structure exceeded the structural and deck stringlines and allowing the proposed pool would increase this seaward intrusion. In addition, the proposed pool would be placed within 13-feet of the bluff edge. Thus, in order to achieve the required setback and to conform with Sections 30251 and 30253 of the Coastal Act, a 25-foot geologic setback from the bluff edge was implemented instead. Therefore, Commission staff recommended approval of the proposed project subject to three (3) Special Conditions. Special Condition No. 1 required revised plans indicating a) no portion of the completed residence, including decks, seaward of the existing residence and decks and b) the swimming pool and associated decking relocated to a point 25-feet landward of the 90-foot elevation line shown on the topography plan (this 25-feet shall be designated as the bluff edge setback). Special Condition No. 2 required geotechnical conformance. Special Condition No. 3 required a deed restriction that prohibited development within the 25-foot bluff edge setback. The permit was never issued. As described in the staff report, the house sits on a fairly level lot, however the rear yard slopes steeply to an abrupt 40-foot high vertical cliff. In this case, the existing structure already exceeded the stringline and the proposed pool would further exceed this stringline. Also, the differing topography of the site would make implementation of the stringline difficult. Thus, application of the stringline would not be acceptable for the site. In addition, the proposed pool would be located within 13-feet of the bluff edge. As in the case of the proposed project, the implementation of a stringline is prevented due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a minimal 25 foot geologic bluff edge setback was imposed instead.~~

The applicants appealed the approval and the appeal was heard at the May 1979 South Coast Regional Commission Hearing. The applicants contended that the edge of bluff was interpreted at an artificial location and that setback requirements imposed on the

project by the Commission approval were unfairly imposed. However, the Commission found No Substantial Issue.

G. Coastal Development Permit (CDP) Application No. P-80-6914-(George), 169 Shorecliff Road (Located 2 lots Up-Coast of Subject Site)

At the July 1980 South Coast Regional Commission Hearing, the Commission approved CDP Application No. P-80-6914-(George) for construction of a swimming pool and decks and additions to the 1<sup>st</sup> floor and 2<sup>nd</sup> floor of an existing two-story single-family dwelling on a bluff parcel. The issues addressed in the Staff Report were the conformance of the proposed development with the geologic hazard and visual resource policies of the Coastal Act. Staff determined that a structural stringline could not be implemented for the site since the existing structure exceeded the structural stringline. In addition, a deck stringline could not be implemented since the adjacent pool up-coast of the site was located on the far side of the parcel and would not provide a normal application of the stringline. Thus, a 25-foot geologic bluff edge setback was implemented instead. Therefore, Commission staff recommended approval of the proposed project subject to four (4) Special Conditions. Special Condition No. 1 required revised plans indicating a) no portion of the completed residence, including decks, seaward of the existing residence and decks and b) the swimming pool and associated decking relocated to appoint 25-feet landward of the 90-foot elevation line shown on the topography plan (this 25-feet shall be designated as the bluff edge setback). Special Condition No. 2 required geotechnical conformance. Special Condition No.3 required a deed restriction that prohibited development within the 25-foot bluff edge setback. Special Condition No. 4 required an irrevocable offer to dedicate and easement for public access and passive recreational use along the shoreline. The application was approved, but Special Condition No. 4 was deleted. The permit was issued on July 30, 1980. As described in the staff report, the house sits on a fairly level lot, however the rear yard slopes steeply to an abrupt 40-foot high vertical cliff. The topography of this site is different compared to the proposed project site, where the rear yard and bluff face are more of a gentle slope. As in the case of the proposed project, the implementation of a stringline is prevented due to the topography of the bluff. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, a minimal 25-foot geologic bluff edge setback was imposed instead.~~

H. Coastal Development Permit (CDP) Application No. A-78-4367-(Berteau), 173 Shorecliff Road (Located Adjacent Up-Coast of Subject Site)

At the December 1978 South Coast Regional Commission Hearing, the Commission approved CDP Application No. A-78-4367-(Berteau) for construction of a swimming pool and jacuzzi on a bluff parcel (~~Exhibit #5~~). No Special Conditions were imposed. The permit was issued on December 21, 1978.

I. Coastal Development Permit (CDP) Application No. 5-96-234-DW-(Berteau), 173 Shorecliff Road (Located Adjacent Up-Coast of Subject Site)

At the December 1996 Coastal Commission Hearing, the Commission approved a Waiver for CDP Application No. 5-96-234-(Berteau) for the remodel and addition to an existing single-family residence located on a bluff parcel (~~Exhibit #6~~). In addition, minor alterations to the existing swimming pool and spa (within the existing footprint) were

proposed. The approved plans depict an existing pool equipment room located adjacent to the pool. However, this equipment room was not a part of the proposed project, nor was it approved with this De-Minimis Waiver. The additions to the residence were on the landward side of the residence. The proposed project did not result in any further development seaward of the existing development. Thus, seaward encroachment of new development was not an issue.

J. Administrative Permit (AP) Application No. 5-84-834-(Price), 183 Shorecliff Road  
(Located Adjacent Down-Coast of Subject Site)

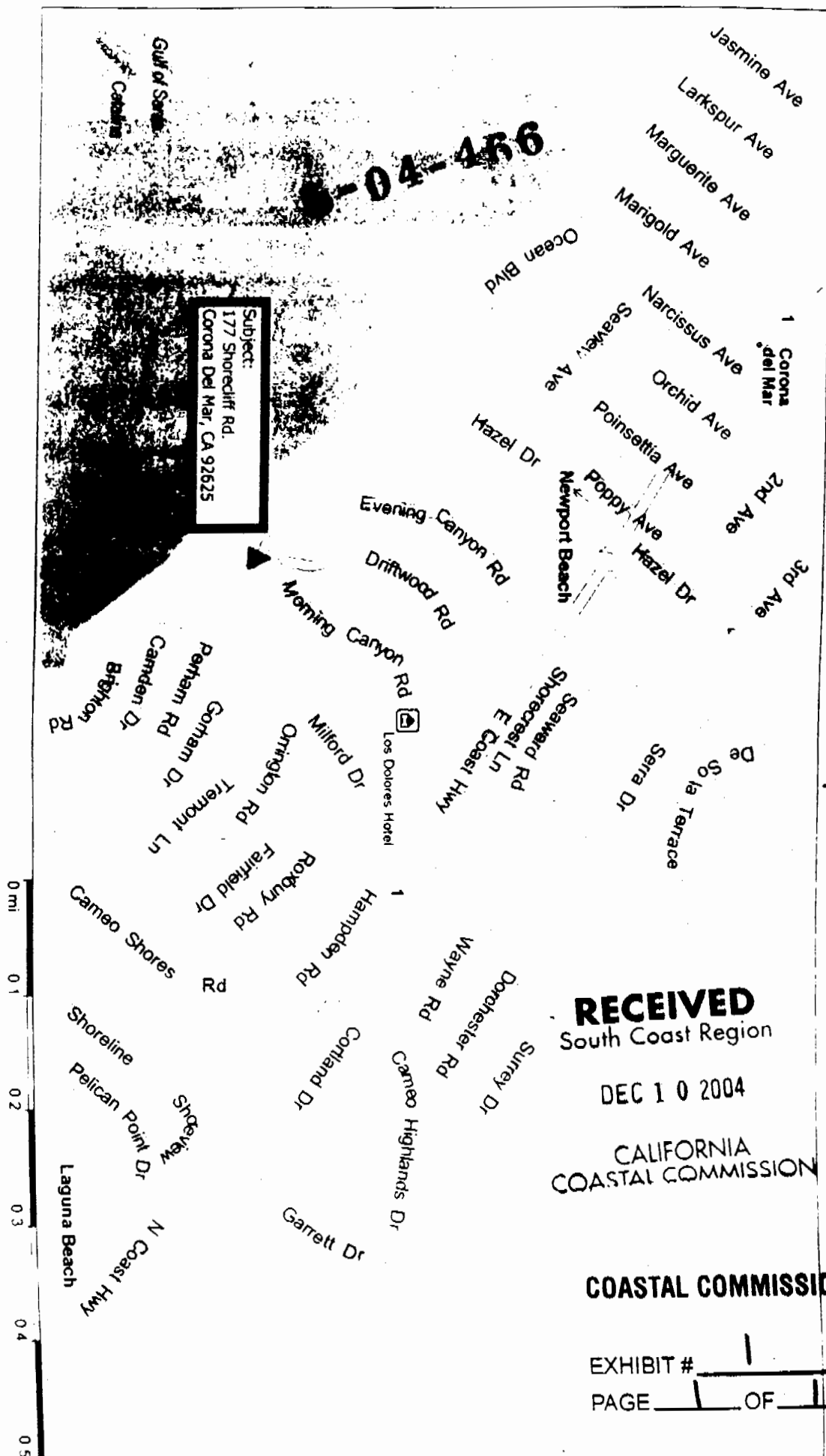
At the January 1985 Coastal Commission Hearing, the Commission approved AP Application No. 5-84-834-(Price) for the demolition and construction of a new single-family residence located on a bluff parcel. No Special Conditions were imposed. The permit was issued on March 15, 1993.

K. Coastal Development Permit (CDP) Application No. 5-94-168-(Price), 183 Shorecliff Road  
(Located Adjacent Down-Coast of Subject Site)

At the December 1994 Commission Hearing, the Commission approved CDP Application No. 5-94-168-(Price) for an addition to an existing single-family residence located on a bluff parcel. The issues addressed in the Staff Report were the conformance of the proposed development with the environmentally sensitive habitat area, geologic hazard, and public access policies of the Coastal Act. The project site was bound on one side by Morning Canyon and on the other side by Little Corona Beach. Typically, the Commission establishes an appropriate setback for both canyon front and oceanfront bluff top development. A minimal bluff edge setback or application of a stringline would achieve the required setback. The addition was located on the canyonward side of the property and not on the ocean side of the property. However, application of a stringline on the canyonward side of the lot, as well as a stringline on the seaward side of the lot, was not possible since there are no adjacent structures to use to establish the stringlines, due to the location of the lot as the last lot adjacent to the canyon before it reaches the beach. Thus, a bluff edge setback was deemed more appropriate. The setback of the proposed development was 105-feet from the centerline of the canyon, which is substantially more than the minimal 25-foot bluff edge setback that is typically required. Therefore, the proposed development was adequately setback. The Commission approved the project subject to two (2) Special Conditions. Special Condition No. 1 required conformance with geotechnical recommendations. Special Condition No.2 required future development to obtain an amendment. The permit was issued on August 31, 1995. As in the case of the proposed project, the implementation of a stringline is prevented. ~~In addition, this project is similar to the proposed project in that since a stringline could not be established to achieve the required set back, so a minimal 25-foot setback was imposed instead. However, in the case of this project, a setback of 105-foot was proposed, which would is substantially more than the minimal 25-foot geologic setback from bluff edge.~~



# Area Map



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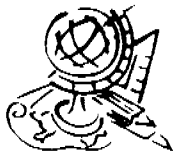
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EXHIBIT # 1

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South Coast Region

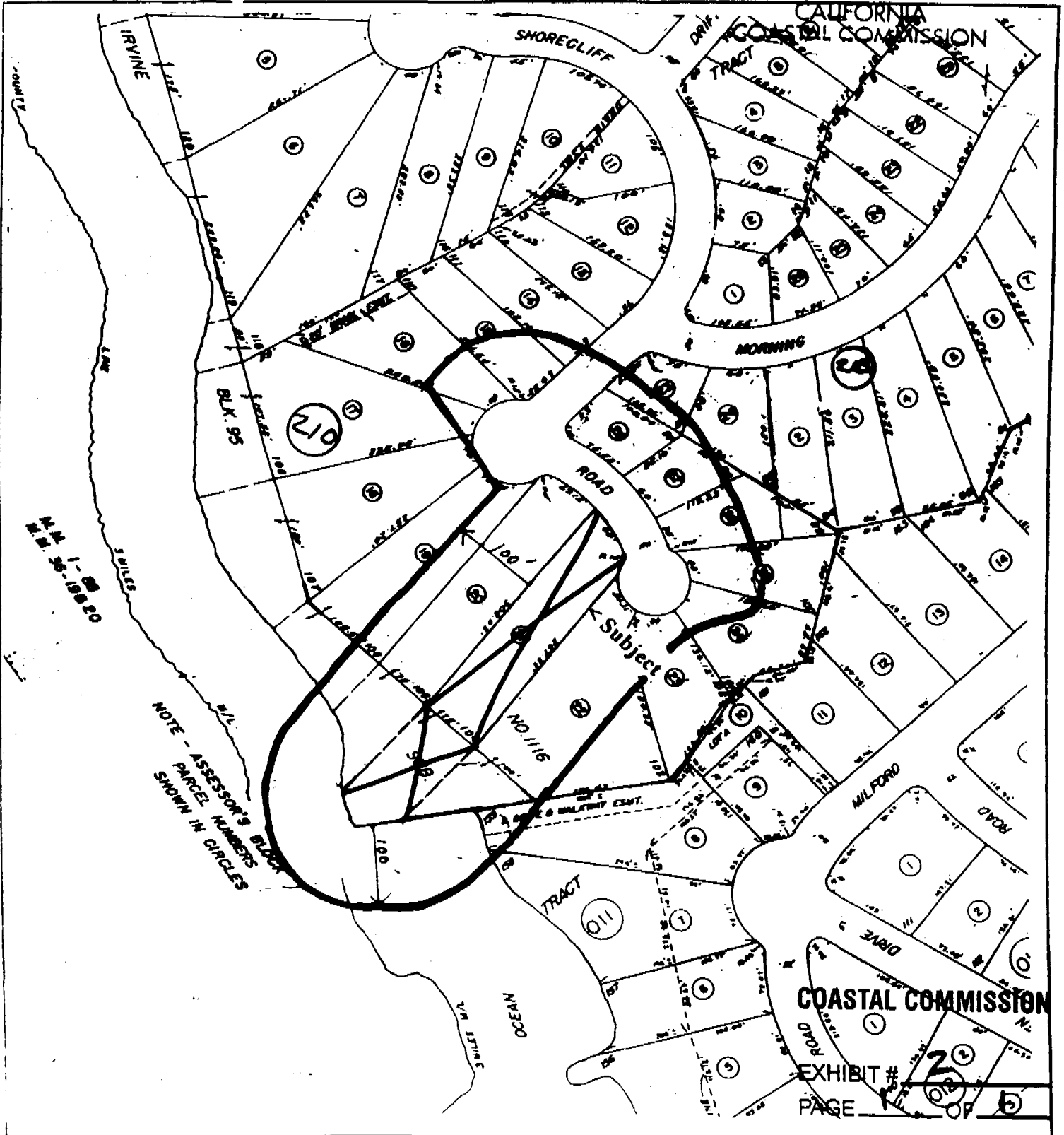
APN: 052-210-21

100' Radius (excluding roads)

Subject Address: 177 Shorecliff Road

Corona Del Mar, CA 92625

DEC 10 2004



**California Coastal  
Commission**

-EXIST  
OVER

- EXTENT OF COVERED PATIO

-EXISTING PIPE  
COLUMN

**BLUFF  
EDGE**

**COASTAL COMMISSION**

EXHIBIT #

PAGE 1 OF 1



**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**FILE COPY****T 18a****ADDENDUM**

June 8, 2006

**FILE COPY**

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM T 18a**, COASTAL COMMISSION PERMIT APPLICATION  
**No. 5-04-466-(Camden)** FOR THE COMMISSION MEETING OF **June 13, 2006**.

Commission staff recommends revisions to Section IV (Findings and Declarations) of the staff report for clarification purposes. Language to be added is shown in **bold, underlined italic** and language to be deleted is in ~~double strike out~~, as shown below:

**Page 8 – Modify Section IV.A.2., as follows:**

The proposed project consists of demolition of an existing single-family residence with an attached garage and construction of a new 8,990 square foot, two-story single-family residence plus basement, a 860 square foot 2<sup>nd</sup> floor deck, a 441 square foot roof deck, a 293 square foot 1<sup>st</sup> floor one-car garage, and a 2,444 square foot subterranean six-car garage, which is part of the basement level on a coastal bluff top lot (~~Exhibit #3~~). This proposed development would still encroach to and in some instances beyond the bluff edge. In addition, the applicants are proposing hardscape beyond the bluff edge and a new pool located on the bluff face (~~Exhibit #3~~). ~~The proposed pool would be on the bluff top no further seaward than the existing pool~~ **bluff edge** bench cut into the bluff face, seaward of the bluff edge. Grading will consist of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The foundation of the residence will consist of a combination of deepened footings and retaining walls.

**Page 15 – Modify Section IV.C.1., as follows:**

... features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts. The proposed residential structure and hardscape encroaches to and in some instances beyond the bluff edge, while ~~hardscape and a the new pool are is on the bluff top no further seaward than the existing pool~~ **bluff edge** confined to the footprint of the existing pool and hardscape; however, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge. Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks. Rather than placing development landward of the 25-foot setback and 10-foot setback from bluff edge, and include an adequate safety buffer to address anticipated bluff retreat over the life of the development and minimize risks, the proposed project includes development seaward of the 25-foot and 10-foot setbacks. However at the hearing, the Commission determined that due to the site-specific information it received

regarding the stability of the site that a minimal setback was acceptable. The bluff edge was determined to be the appropriate setback. Thus, no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development shall extend seaward of the bluff edge. In addition, the proposed deepened foundation and grading is being used to mitigate risks, not minimize or avoid them. New development, such as the proposed residence, should be sited and designed to minimize or avoid risks.

**Page 17 – Modify Section IV.C.3.b., as follows:**

The Commission typically requires that even when coastal bluffs are relatively stable, habitable structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts. The proposed residential structure and hardscape encroach to and in some instances beyond the bluff edge, while the new pool is on the bluff top no further seaward than the ~~existing pool~~ bluff edge. Therefore, the proposed residence and hardscape and appurtenant features do not adhere to the typically required 25-foot and 10-foot bluff edge setbacks. However at the hearing, the Commission determined, due to the site-specific information regarding the stability of the site, that a minimal setback was acceptable. The bluff edge was determined to be the appropriate minimal setback. The Commission also found that this setback was protective of the scenic resources of the area. Therefore, the Commission is imposing **Special Condition No. 2**, which requires the applicant to submit revised project plans

...

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 OceanGate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**T 15b**

Filed:  
49th Day:  
180th Day:  
Staff:  
Staff Report:  
Hearing Date:  
Commission Action:

July 20, 2006  
September 7, 2006  
January 16, 2007  
Fernie Sy-LB **FSy**  
November 22, 2006  
December 12-15, 2006

**FILE COPY****STAFF REPORT: MATERIAL AMENDMENT**

**APPLICATION NO.:** 5-04-466-A1

**FILE COPY**

**APPLICANT:** 4627 Camden, LLC

**PROJECT LOCATION:** 177 Shorecliff, Corona Del Mar (Orange County)

**DESCRIPTION OF PROJECT ORIGINALLY APPROVED:**

At the January 2006 Commission Hearing, the Commission approved demolition of an existing single-family residence with an attached garage and construction of a new 8,990 square foot, two-story single-family residence plus basement, a 860 square foot 2<sup>nd</sup> floor deck, a 441 square foot roof deck, a 293 square foot 1<sup>st</sup> floor one-car garage, and a 2,444 square foot subterranean six-car garage, which is part of the basement level on a coastal bluff top lot. In addition, the applicant had proposed hardscape beyond the bluff edge and a new pool located on the bluff top no further seaward than the bluff edge. Grading would consist of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The foundation of the residence would consist of a combination of deepened footings and retaining walls. As submitted, the proposed development would have encroached to and in some instances beyond the bluff edge. Due to the site-specific information it received regarding the stability of the site, the Commission found that a minimal setback from the bluff face was acceptable, but development seaward of the bluff edge was not acceptable. Thus, the Commission imposed a special condition (Special Condition No. 2) requiring that all development on the site must be set back to the bluff edge and not project seaward of the bluff edge.

**DESCRIPTION OF AMENDMENT:**

The proposed residence is being redesigned in part to conform to the requirements of Special Condition 2 and in part to add new elements. The newly proposed elements include: 1) a new 792 square foot sub-basement underneath the previously approved basement (i.e. there will be a two-level basement); 2) expansion of a mechanical storage room (basement level) from 344 to 631 square feet; 3) additional cut to accommodate the new sub-basement (from 3,715 cubic yards to 4,380 cubic yards), reduced fill (from 270 cubic yards to 220 cubic yards) and increased export (from 3,445 cubic yards to 4,160 cubic yards); and 4) a change to the foundation system which would also now consist of caissons as well as deepened footings and retaining walls including twelve (12) 24" diameter caissons along the western side yard property line and nine (9) 24" diameter caissons along the eastern side yard property line. Other changes to the design of the residence are proposed, however, these are largely attributable to changes required by Special Condition 2 and include the following: the basement has been reduced to 3,522 square feet to 2,903

square feet; the basement level garage has been reduced from 2,444 square feet to 2,283 square feet; the 1<sup>st</sup> floor deck has been reduced from 1,401 square feet to 701 square feet. Post project, the residence will be two-stories with a basement and sub-basement areas (i.e. two-level basement) consisting of 9,528 square feet with a 298 square foot garage area and a 2,283 square foot subterranean garage area. All of the changes to the development being requested in this amendment will comply with the previously imposed condition (Special Condition No. 2) requiring that all development be sited landward of the bluff edge.

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 Newport Beach only has a certified Land Use Plan (LUP) 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 applied was Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

**SUMMARY OF STAFF RECOMMENDATION:**

Commission staff recommends that the Commission **APPROVE** the proposed amendment with **TWO (2) SPECIAL CONDITIONS** addressing: **1)** prior conditions; and **2)** conformance with geotechnical recommendations.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Review of Revised Architectural Plan (Project No. 71486-01/Report No. 06-5771) by Geofirm dated April 5, 2006
2. Elieff Structural Narrative by KNA Engineering, Inc. dated April 25, 2006

**LOCAL APPROVALS RECEIVED:**

Approval-in-Concept (#2659-2004) from the City of Newport Beach Planning Department dated December 3, 2004; and Revised Approval-in-Concept (#2659-2004) from the City of Newport Beach Planning Department dated May 18, 2006.

**EXHIBITS:**

1. Vicinity Map
2. Site Plan
3. Sub-Basement Floor Plan
4. Section Plan
5. Foundation Plan
6. Coastal Development Permit No. 5-04-466 Notice of Intent to Issue Permit Dated February 2, 2006

**PROCEDURAL NOTE:**

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

The amendment request involves changes to a previously approved single-family residence. The subject application is being forwarded to the Commission because the Executive Director has determined that the proposed amendment is a material change and affects conditions required for the purposes of protecting coastal resources or coastal access.

Section 13166 of the Commission Regulations also calls for the Executive Director to reject a permit amendment request if it would lessen the intent of the previously approved permit.

The proposed amendment would not lessen the intended effect of 5-04-466 envisioned in the Commission's January 2006 action approving the project with conditions. Therefore, the Executive Director accepted the amendment request.

**STANDARD OF REVIEW:**

Since the City of Newport Beach does not have a certified Local Coastal Program (LCP), the standard of review for this amendment is the Coastal Act. Since the City only has a Land Use Plan (LUP), the policies of the LUP are used only as guidance.

**STAFF RECOMMENDATION:**

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

**MOTION:**

*I move that the Commission approve permit amendment CDP #5-04-466-A1 pursuant to the staff recommendation.*

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



**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

The Commission hereby approves a coastal development permit amendment for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, located between the first public road and the sea, will be in conformity with the certified LCP and the public access and recreation policies of the Coastal Act. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. STANDARD CONDITIONS**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. SPECIAL CONDITIONS**

**A. PRIOR CONDITIONS**

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-04-466 remain in effect. All standard and special conditions previously imposed under Coastal Development Permit No. 5-04-466 apply equally to the amendment.

**B. MODIFY SPECIAL CONDITION NO. 5 of 5-04-466, AS INDICATED BELOW**

Additions shown in **bold italic underline**, deletions shown in ~~strikeout~~

**5. CONFROMANCE WITH GEOTECHNICAL RECOMMENDATIONS**

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004, Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r), Permit Application 5-04-466, prepared by Geo Firm dated March 14, 2005, Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005; ~~and Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005.~~ **:Review of Revised Architectural Plan (Project No. 71486-01/Report No. 06-5771) by Geofirm dated April 5, 2006; and Elieff Structural Narrative by KNA Engineering, Inc. dated April 25, 2006.**
- B.** **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants 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 permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

**IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares as follows:

**A. PROJECT LOCATION, HISTORY AND DESCRIPTION**

The proposed single-family residence at 177 Shorecliff Road is located on a coastal bluff top lot situated on the seaward side of Shorecliff Road in the community of Shorecliffs in Corona Del Mar (Newport Beach) (Exhibit #1). The lot size is approximately 21,459 square feet and the City of Newport Beach Land Use Plan (LUP) assigns two different land use designations for different portions of the subject site. The base of the bluff and the adjacent beach area is designated Recreational and Environmental Open Space and the area from the base up to the street is designated Single-Family Detached Residential. The project is

located within an existing developed urban residential area and the existing house is located at the bluff edge, which is approximately at the 67-foot contour, and the existing pool is located on the bluff top. To the North of the project site is Shorecliff Road. To the East and West of the project site exist single-family residential developments. To the South of the project site is an undeveloped vegetated bluff, Little Corona Beach and the Pacific Ocean. The project site consists of a quarter-acre level building pad supported above a generally natural coastal bluff face. The overall height of the slope is approximately 50-feet. The slope ratio is variable, with the lower slope near 3.5:1 (horizontal: vertical) and the upper slope near 1.5:1, but overall; the slope is near a 2:1 ratio. In the project area, the lower slope is mantled with an apron of slopewash. At the base of the bluff is a narrow beach area that transitions from sandy beach to rocky beach.

At the January 2006 Commission Hearing, the Commission approved demolition of an existing single-family residence with an attached garage and construction of a new 8,990 square foot, two-story single-family residence plus basement, a 860 square foot 2<sup>nd</sup> floor deck, a 441 square foot roof deck, a 293 square foot 1<sup>st</sup> floor one-car garage, and a 2,444 square foot subterranean six-car garage, which is part of the basement level on a coastal bluff top lot. In addition, the applicant had proposed hardscape beyond the bluff edge and a new pool located on the bluff top no further seaward than the bluff edge. Grading would consist of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The foundation of the residence would consist of a combination of deepened footings and retaining walls. As submitted, the proposed development would have encroached to and in some instances beyond the bluff edge. Due to the site-specific information it received regarding the stability of the site, the Commission found that a minimal setback from the bluff face was acceptable, but development seaward of the bluff edge was not acceptable. Thus, the Commission imposed Special Condition No. 2 (see Exhibit #6) requiring that all development on the site must be set back to the bluff edge and not project seaward of the bluff edge.

The proposed project has been redesigned according to Special Condition No. 2, which was imposed by the Commission at the January 2006 Hearing. The applicant has revised the plans accordingly to adhere to the Special Condition No. 2 but has also made changes such as increasing the floor area by 173 square feet resulting in a residence with 9,528 square feet of living space and has also made changes that increase the parking, mechanical and storage areas by 126 square feet resulting in a total 3,212 square feet. More specifically, these new elements consist of the following: 1) a new 792 square foot sub-basement underneath the previously approved basement (i.e. there will be a two-level basement); 2) expansion of a mechanical storage room (basement level) from 344 to 631 square feet; 3) additional cut to accommodate the new sub-basement (from 3,715 cubic yards to 4,380 cubic yards), reduced fill (from 270 cubic yards to 220 cubic yards) and increased export (from 3,445 cubic yards to 4,160 cubic yards); and 4) a change to the foundation system which would also now consist of caissons as well as deepened footings and retaining walls including twelve (12) 24" diameter caissons along the western side yard property line and nine (9) 24" diameter caissons along the eastern side yard property line. As stated previously other changes to the design of the residence are proposed that are largely attributable to changes required by Special Condition No. 2 and include the following: the basement has been reduced to 3,522 square feet to 2,903 square feet; the basement level garage has been reduced from 2,444 square feet to 2,283 square feet; the 1<sup>st</sup> floor deck has been reduced from 1,401 square feet to 701 square feet.

## **B. HAZARDS**

Section 30253 states in 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.*

The proposed amendment consists of significant changes to the single-family residence from the original proposal that was heard at the January 2006 Commission Hearing, including expanded grading and an additional component to the previously proposed foundation system, as described above. To address site-specific geotechnical issues with the proposed residence, the applicant has submitted an update to a previous geotechnical investigation as well as a letter from an engineer discussing the new foundation element: Review of Revised Architectural Plan (Project No. 71486-01/Report No. 06-5771) by Geofirm dated April 5, 2006; and Elieff Structural Narrative by KNA Engineering, Inc. dated April 25, 2006. In order to insure that risks of development are minimized, as per Section 30253, the Commission imposes **SPECIAL CONDITION NO. B**, which modifies previously imposed Special Condition No. 5 to state that the geotechnical consultant's recommendations provided to address the amended project should be incorporated into the design of the project. As a condition of approval the applicants shall submit for the review and approval of the Executive Director foundation plans reviewed and signed by a consulting geologist indicating that the recommendations have been incorporated.

Only as conditioned to incorporate and comply with the recommendations of the applicant's geotechnical consultant is the proposed project consistent with Section 30253 of the Coastal Act.

## **C. PUBLIC ACCESS**

Section 30240 (b) of the Coastal Act states:

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

The project site is a coastal bluff top lot situated on the seaward side of Shorecliff Road, which is the first public road immediately inland of Little Corona Beach. The level beach area of this lot that is located at the base of the bluff (Little Corona Beach) is private to the mean high tide line and is designated Recreational and Environmental Open Space in the City's Land Use Plan (LUP). The part of the beach seaward of the mean high tide line, which would change depending on the tide, is public. The public accessway to Little Corona

Beach nearest to the subject site is located at the east end of Ocean Boulevard, approximately one quarter mile to the northwest. Development at this site, if approved, must be sited and designed to be compatible with Section 30240 (b) of the Coastal Act. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. As previously conditioned, no portion of the development will be seaward of the bluff edge and this will not change with the proposed amendment. In addition, the proposed amendment will still result in the site remaining as a single-family residence that would provide more than adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit. Therefore, the project, as conditioned, has been designed to prevent impacts that would significantly degrade the surrounding areas.

Therefore, the Commission finds that the proposed development would be consistent with Section 30240(b) of the Coastal Act regarding the continuance of public recreation areas.

#### **D. LOCAL COASTAL PROGRAM**

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

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. The certified LUP was updated on January 9, 1990 and it was also significantly updated in October 2005. Because Newport Beach has only a certified Land Use Plan the standard of review for development remains Chapter 3 of the Coastal Act. The certified LUP is used as guidance. Since the City only has an LUP, the policies of the LUP are used only as guidance. The recently updated (October 2005) Newport Beach LUP includes the following policies that relate to development at the subject site:

*Require all new blufftop development located on a bluff subject to marine erosion to be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development.*

*On bluffs subject to marine erosion, require new accessory structures such as decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards.*

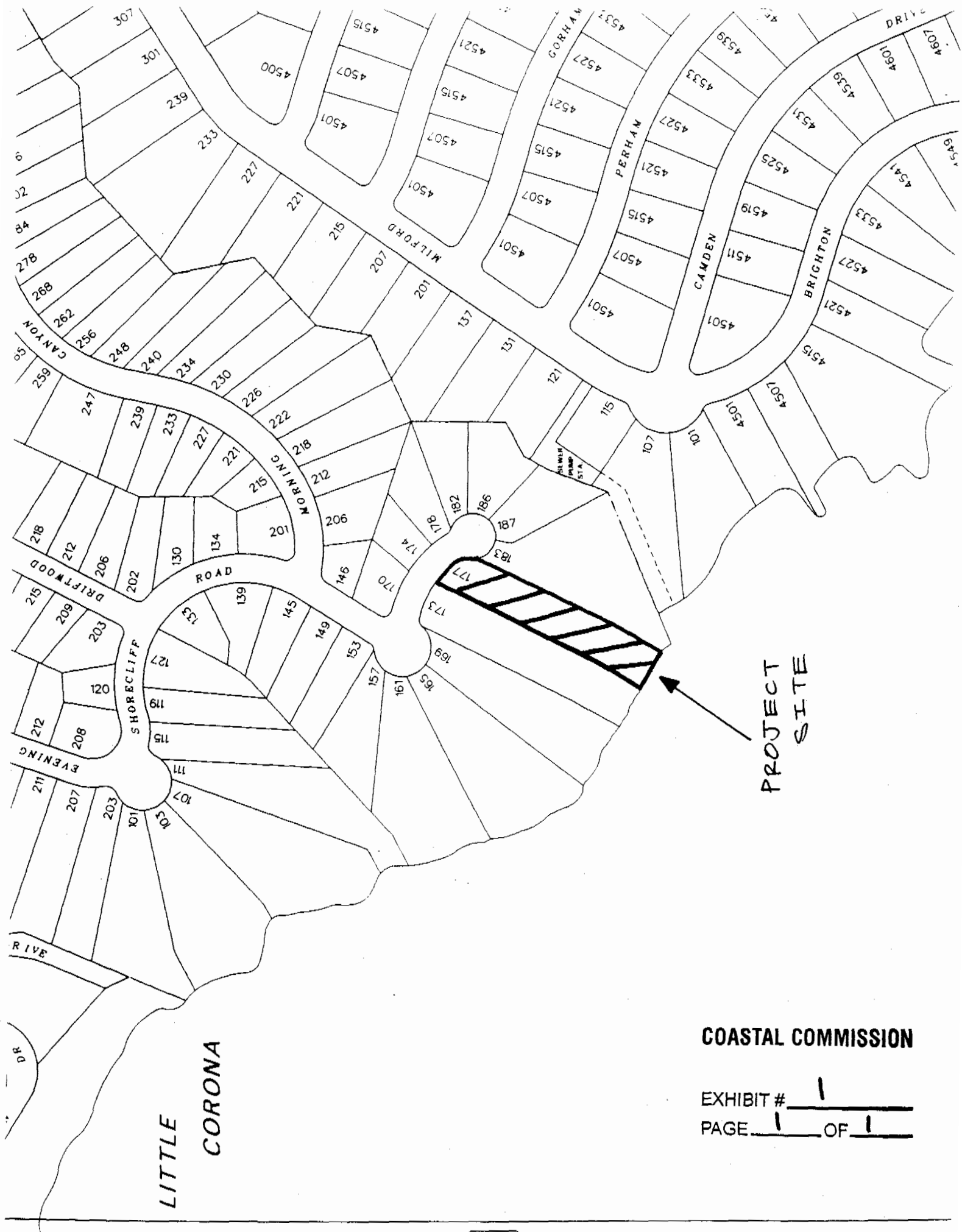
The originally proposed project was submitted in December 2004, which was prior to the adoption of the recently updated LUP. The certified LUP that was updated on January 9, 1990 did not require a specific 25-foot setback from the bluff edge.

However, the grading proposed remains limited with the amended project and therefore no extensive landform alteration will take place. As per the LUP requirements, an assumption of risk special condition was and still is required pursuant to Special Condition A of the amendment, among other conditions that apply equally to the proposed amended project which address no future shoreline protective devices, drainage, hazards related to pools and spas, future development, and landscaping. In addition, an update to the comprehensive geological investigation was supplied with the proposed amendment application. Therefore, the proposed development is consistent with the guidance as provided by certified LUP policies.

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

#### **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



COASTAL COMMISSION

EXHIBIT # 1  
PAGE 1 OF 1

ELIEFF RESIDENCE  
17 SHORECLIFF ROAD  
CORONA DEL MAR, CA

Site Plan

Scale

DATE	7/19/2006
BY	jehh
CHECKED	
DATE	
BY	
CHECKED	
DATE	
BY	
CHECKED	
DATE	



A-1

SHORECLIFF ROAD

PROPOSED  
RESIDENTIAL  
South Coast Region

Scale 1" = 10'

SITE PLAN

COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1





Date	10/1/00
Project	10000
Sheet	10000
Scale	10000
Author	10000
Checker	10000
Engineer	10000

SUB BASEMENT FLOOR PLAN

Brian Jeannotte Architect

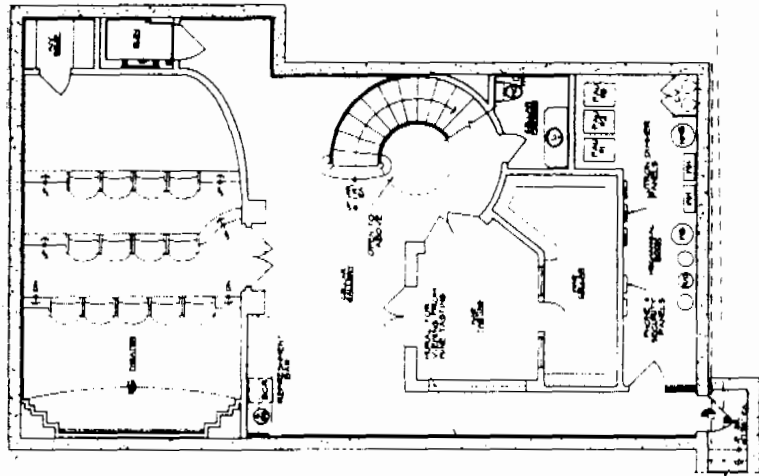
CLIFF RESIDENCE  
177 SHORECLIFF ROAD  
CORONA DEL MAR, CA

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 1

SUB BASEMENT FLOOR PLAN

NEW SUB-BASEMENT





# CONCEPTUAL FOUNDATION PLAN

**CALIFORNIA COASTAL COMMISSION**

South Coast District Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416  
(562) 590-5071

Date: February 2, 2006  
Permit Application No. 5-04-466  
Page: 1 of 8

**NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

**THIS IS NOT A COASTAL DEVELOPMENT PERMIT**

THE SOLE PURPOSE OF THIS NOTICE IS TO INFORM THE APPLICANT OF THE STEPS NECESSARY TO OBTAIN A VALID AND EFFECTIVE COASTAL DEVELOPMENT PERMIT ("CDP"). A Coastal Development Permit for the development described below has been approved but is not yet effective. Development on the site cannot commence until the CDP is effective. In order for the CDP to be effective, Commission staff must issue the CDP to the applicant, and the applicant must sign and return the CDP. **Commission staff cannot issue the CDP until the applicant has fulfilled each of the "prior to issuance" Special Conditions.** A list of all of the Special Conditions for this permit is attached.

The Commission's approval of the CDP is valid for two years from the date of approval. To prevent expiration of the CDP, you must fulfill the "prior to issuance" Special Conditions, obtain and sign the CDP, and commence development within two years of the approval date specified below. You may apply for an extension of the permit pursuant to the Commission's regulations at Cal. Code Regs. title 14, section 13169.

On **January 11, 2006**, the California Coastal Commission approved Coastal Development Permit No. **5-04-466**, requested by **4627 Camden, L.L.C., Attn: Bruce & Kathy Elieff** subject to the attached conditions, for development consisting of: **Demolition and construction of a new 8,990 square foot, two-story plus basement single-family residence with a 293 square foot 1st floor one-car garage and a 2,444 square foot subterranean six-car garage on a coastal bluff top lot. In addition, hardscape and a new pool are proposed. The foundation of the residence will consist of a combination of deepened footings and retaining walls. Grading will consist of 7,430 cubic yards. More specifically described in the application file in the Commission offices. Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied.**

The development is within the coastal zone in **177 Shorecliff Road, Corona Del Mar (Orange County) 052-210-21.**

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 1 OF 9

## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

Date: February 2, 2006

Permit Application No.: 5-04-466

Page 2 of 8

If you have any questions regarding how to fulfill the "prior to issuance" Special Conditions for CDP No. 5-04-466, please contact the Coastal Program Analyst identified below.

Sincerely,

PETER M. DOUGLAS

Executive Director

By: Fernie J. Sy

Coastal Program Analyst

Date: February 2, 2006

### **ACKNOWLEDGMENT**

The undersigned permittee acknowledges receipt of this Notice and fully understands its contents, including all conditions imposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Permittee

Please sign and return one copy of this form to the Commission office at the above address.

### **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.

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 2 OF 9

## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

Date: February 2, 2006

Permit Application No. 5-04-466

Page 3 of 8

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.

### **SPECIAL CONDITIONS:**

NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS). IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISTRICT OFFICE.

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

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

#### **2. Revised Project Plans**

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

**COASTAL COMMISSION**

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## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

Date February 2, 2006

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That no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist and shown on Exhibit B-1, which is attached with this Notice of Intent To Issue Permit.

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

### **3. No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-04-466 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence and hardscape, if any government agency has ordered that the structure(s) is/are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

### **4. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-04-466. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30235 are hereby waived.

**COASTAL COMMISSION**

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30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-04-466. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, change in use from a permanent residential unit and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-04-466 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

### **5. Conformance with Geotechnical Recommendations**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*), prepared by Geo Firm dated August 17, 2004, *Response to California Coastal Commission Notice of Incomplete Application dated January 7, 2005, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5499r*), Permit Application 5-04-466, prepared by Geo Firm dated March 14, 2005, *Letter from KNA Engineering, Inc. to Brion Jeanette Architecture dated March 29, 2005*; and *Letter from Geo Firm to Brion Jeannette Architecture dated March 31, 2005*.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants 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 permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

**COASTAL COMMISSION**

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### **6. Drainage and Runoff Control Plan**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of final drainage and run-off control plans. The drainage and runoff control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the residence and all yard areas, shall be collected on site for discharge to the street through piping without allowing water to percolate into the ground.
- B.** The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- C.** The applicants shall maintain the functionality of the approved drainage and runoff control plan to assure that water is collected and discharged to the street without percolating into the ground.

### **7. Pool and Spa Protection Plan**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of final pool and spa protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool and spa. The final pool and spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool and spa which are separate from the water meter for the house to allow for the monitoring of water usage for the pool and spa, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool and spa that conveys any water leakage to an appropriate drainage system. **COASTAL COMMISSION** applicants shall comply with the final pool plan approved by the Executive Director.

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## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

Date: February 2, 2006

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### **8. Landscaping Plan**

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

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

**COASTAL COMMISSION**

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## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

Date: February 2, 2006

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- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
- (b) a schedule for installation of plants.

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

### **9. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have 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.

**COASTAL COMMISSION**

EXHIBIT # 6  
PAGE 8 OF 9





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FRED GAINES  
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South Coast Region

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CALIFORNIA  
COASTAL COMMISSION

March 28, 2007

Ms. Teresa Henry  
California Coastal Commission  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, California 90801

Re: Permit No. 5-04-466 (Elieff)  
Condition Satisfaction - Special Condition No. 2A

Dear Teresa:

This office represents Bruce & Kathy Elieff, the permittees in Coastal Development Permit No. 5-04-466 (as amended by Coastal Development Permit No. 5-04-466 A1). CDP 5-04-466 was approved by the Commission on January 11, 2006 and CDP Amendment No. 5-04-466 A1 was approved by the Commission on December 12, 2006.

The Staff Recommendation on CDP 5-04-466 was to deny. The Commission rejected that recommendation and approved CDP 5-04-466 with conditions. When the conditions were drafted, Special Condition No. 2A was written as follows:

2. Revised Project Plans

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

That no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist and shown on Exhibit B-1, which is attached with this Notice of Intent to Issue Permit.

On February 2, 2007, plans prepared by Brion Jeannette Architecture to satisfy Special Condition No. 2 were submitted to your office. The plans submitted showed all of the proposed residence, basement, deck, roofline, stairs and any other principal or accessory improvement located behind the line designated by the Commission's staff geologist as the limit for such development.

On March 5, 2007, Permit Analyst Fernie Sy communicated by email with Jeff Benson of Jeannette's office rejecting the plans as consistent with Special Condition No. 2. The email stated as follows:

I spoke to staff about the Camden grading issue and staff has determined that they will not entertain the idea of any grading past the bluff edge. This would have to be brought back to a Commission hearing for discussion. Thus, a meeting between staff and your office to discuss the issue is not necessary. If you have further questions, you can contact Karl or Teresa.

It is my understanding of this email that the position of the Commission Staff is that Special Condition No. 2 prohibits grading or the removal of existing soils located seaward of the "bluff edge" designated on Exhibit B-1. The "bluff edge" is also the limit of the location of the at grade decks seaward of the residence. The Staff position that grading an unimproved and landscaped level area seaward of the decks is prohibited is not consistent either with the language of Special Condition No. 2 or with the motion made by Commissioner Wan to approve CDP 5-04-466. The reasons for this are set forth below and are supported by the documents which are attached hereto.

1. **The language of Special Condition No. 2 limits only certain kinds of development and does not include grading.**

The language of Special Condition No. 2 specifies exactly what the Commission wanted moved behind the "bluff edge" line. The language specified development which consisted of structures and accessories which would be constructed. The list of elements was specific to "the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development". Grading or soil removal is not included. (I have attached the language of Special Condition No. 2 together with the portion of the Revised Findings explaining why it was imposed as Exhibit A).

When Special Condition No. 2 included in the final language the terms "other principal or accessory development", the Commission did not intend the use of the word development in the sense of the definition contained in Public Resources Code §30106 which is broad. It was

intended to described the structural elements which the Commission wanted moved behind the bluff edge. Had the Commission intended that all development, including removal of the soils to make a level grade with the house, the Special Condition would have either (i) included grading or soil removal as prohibited, or (ii) not listed the prohibited elements and said that all development was prohibited. The Staff position that the Commission's intent in Special Condition No. 2 was to prohibit removing the soil which may lay seaward of the "bluff edge" is not a reasonable reading of the Special Condition.

2. **The motion to approve with conditions supports the Applicant's interpretation of Special Condition No. 2.**

The motion to approve subject to conditions was specific that what became Special Condition No. 2 was directed to structural, deck and other constructed improvements and not grading or removal of soils. As Exhibit B I have attached pages 42-61 of the transcript of the proceedings on January 11, 2006. The motion by Commissioner Wan stated:

"I would like to make an amending motion that would require that the applicant make changes to the design in the area where Dr. Johnsson has – it is unfortunate that we don't have it in front of us so we can point to it – but, to where Dr. Johnsson is confident that the edge of the bluff is at 67 feet, that **no portion of the house, or the deck, or the stairs, be extended beyond the edge of the bluff.**" Transcript, January 11, 2006, p. 42, ln. 6-12 [emphasis added].

The motion was seconded by Commissioner Orr. Chair Caldwell then described the motion as follows:

"Okay, it has been moved by Commissioner Wan, seconded by Commissioner Orr, that the application, actually, modify the structure so that **no part of the structure is extending beyond the bluff edge**, as determined by Dr. Johnsson today." Transcript, January 11, 2006, p. 42, ln. 20-24 [emphasis added].

Commissioner Wan then spoke to the intent of her motion.

"But, as far as the amending motion is concerned, at least **if this aspect of the building** is pulled back so that it, at least, is not over the bluff edge, and where Dr. Johnsson says he is confident about the bluff edge, then I have to agree with him. That, at least, takes care of the major issue." Transcript, January 11, 2006, p. 43, ln. 20-25 [emphasis added].



The discussion that followed demonstrated that the Commissioners were concerned with the physical improvements and some Commissioners used the term "development" to refer to those physical improvements. At no time did any Commissioner even imply that the finished grade seaward of the "bluff edge" line could not be level with the decks. When Commissioner Wan was asked to restate the motion, she again used the term, "that the applicant be required to pull back that part of the development beyond the edge of the bluff." Transcript, January 11, 2006, p. 50, ln. 11-12 [emphasis added]. Commissioner Wan's reference to "that part of the development" is clearly to her language in the motion that the house, the deck and the stairs be moved behind the "bluff edge" line.

When the Revised Findings were drafted, Special Condition No. 2 included the language "other principal or accessory development". The Applicant did not understand that language to prohibit a level grade seaward of the decks. At the time it was written I do not believe that the Staff understood the language in that respect. As described below, when the Permit Amendment Application was made, the Commission found that the plans complied with Special Condition No. 2.

3. **The plan submitted by the Applicant for the Permit Amendment depicted a level grade beyond the decks which were behind the "bluff edge" line and the Commission found those plans to be consistent with Special Condition No. 2.**

In July 2006, the Applicant filed the Permit Amendment. The Revised Findings had been adopted the month before. The plan submitted in connection with the Permit Amendment depicted the removal of the soils to a level grade with all improvements behind the "bluff edge" line and landscaping in accordance with Special Condition No. 7 elsewhere. (Indeed, every plan submitted by the Applicant has shown this same level area. Exhibit C shows the section drawing of each of the plans submitted.)

The Commission approved the Permit Amendment. At no time did Staff suggest, nor did the findings on the Amendment require, that the grade of the unimproved but landscaped area seaward of the edge of the deck was not acceptable. In its findings on the Permit Amendment, the Commission found that the plans submitted for the Amendment had "been redesigned according to Special Condition No. 2, which was imposed by the Commission at the January 2006 Hearing. The applicant has revised the plans accordingly to adhere to Special Condition No. 2 . . ." The plans which were submitted and described in this fashion showed the grade beyond the decks to be level. The Commission found that those plans complied with Special Condition No. 2.

4. **The quantity of grading in the project description includes the grading of the soils to a level plane seaward of the defined "bluff edge".**

The applicant has always requested to grade the soils to a level grade from the floor level of the basement area to the point where that level intersected the existing slope. As noted above, every plan depicted the surface between the structures and the bluff in this manner. The quantity of grading set forth in the project description in the Revised Findings is "3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export". This quantity of grading includes the soils in the area for which the Staff now claims there is no authority in the permit action to remove the soils. If there is not authority to level this grade, then the Project Description and the Findings should have lowered the quantity of grading approved.

Further, the grading quantities included in the Permit Amendment included grading of a level area seaward of the decks. Although grading was increased to create a sub-basement, the authorized quantity of grading (including the area at issue) was described as 4,380 cubic yards of cut which included removing the soils which the Staff now claims cannot be removed.

5. **The interpretation by the Staff of Special Condition No. 2 produces an absurd result.**

Construction of the residence approved by the Commission leaving the soils at existing grade seaward of the "bluff edge" line is not possible and results in an unworkable design. As Exhibit D I have attached conceptual drawings depicting the results which the application of the Special Condition No. 2 in the manner now advanced by the Staff would create. At the defined "bluff edge", the soils would remain leaving a vertical cut from 2 to 7 feet in height. In Sections A and B, this vertical cut would be immediately outside rooms from which windows and sliding doors exit to the terrace.

The basement level of the house always daylighted on the seaward side. It is not reasonable to conclude that the Commission did not intend to allow the rooms located there to look out over a level grade and to enjoy views of the ocean. If the Applicant cannot remove the soils that the Staff now says is prohibited by Special Condition No. 2, there are no views.

Is it the Staff's opinion that the Commission intended that the windows of the home look out onto the back of the ungraded slope? Is it the Staff's opinion that the Commission intended that some retaining wall be erected to support the back of this cut? Without a retaining wall, the landward side of the slope would be required to be no greater than 2 to 1, pushing the structure back as much as an additional 14 feet at the north side. The Commission's motion was that all improvements consisting of structure and surface materials be landward of the "bluff edge" line,

Ms. Teresa Henry  
March 28, 2007  
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not landward of some new line defined by the hill of soils that Staff now suggests must be preserved.

6. **Conclusion.**

I request that the Executive Director find that the plans submitted by Brion Jeannette Architecture on February 2, 2007 are in compliance with Special Condition No. 2. We are willing to meet with you at any time to discuss this. If you decline to approve the plans and do not wish to meet regarding this matter, please set this matter before the Commission at the earliest possible date for a resolution.

Sincerely,



SHERMAN L. STACEY

SLS/sh

cc: Mr. Peter Douglas  
Ms. Sherilyn Sarb  
Mr. Fernie Sy  
Mr. & Mrs. Bruce Elieff  
Mr. Brion Jeannette

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**T 18a**

Staff:  
Staff Report:  
Hearing Date:  
Commission Action:

Fernie Sy-LB  
May 25, 2006  
June 13-16, 2006

**STAFF REPORT: REVISED FINDINGS**

**RECEIVED**  
South Coast Region

NOV 6 2007

**APPLICATION NO.:** 5-04-466  
**APPLICANTS:** Camden L.L.C., Attn: Bruce & Kathy Elieff  
**AGENT:** Brion Jeannette & Associates  
**PROJECT LOCATION:** 177 Shorecliff, Corona Del Mar (Orange County)

CALIFORNIA  
COASTAL COMMISSION

**PROJECT DESCRIPTION:** Demolition and construction of a new 8,990 square foot, two-story plus basement single-family residence with a 293 square foot 1<sup>st</sup> floor one-car garage and a 2,444 square foot subterranean six-car garage on a coastal bluff top lot, on deepened footing foundation. Also approved new hardscape, landscape and retaining walls. Grading consists of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone).

**DATE OF COMMISSION ACTION:** January 11, 2006  
**COMMISSIONERS ON PREVAILING SIDE:** Commissioners Kram, Kruer, Neely, Reilly, Shallenberger, Wan and Caldwell.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of January 11, 2006 approving the applicant's proposal to demolish and construct a new single-family residence on a coastal bluff top lot. The major issue raised at the public hearing related to the appropriateness of approving the project regarding scenic resources and hazard policies of the Coastal Act.

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 Newport Beach only has a certified Land Use Plan (LUP) 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 applied was Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

**LOCAL APPROVALS RECEIVED:** Approval-in-Concept (#2659-2004) from the City of Newport Beach Planning Department dated December 3, 2004.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; *Preliminary Geotechnical Investigation for New Single Family Residence, 177 Shorecliff Road, Corona Del Mar California, Project No. 71486-00/Report No. 04-5376*, prepared by Geo Firm dated August

EXHIBIT A

1 of 5

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

That no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist and shown on Exhibit B-1, which is attached with this Notice of Intent To Issue Permit.

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

**3. No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-04-466 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.**

- B. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the residence and hardscape, if any government agency has ordered that the structure(s) is/are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.**

**4. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-04-466. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-04-466. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, change in use from a permanent residential unit and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections

#### IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

##### A. **PROJECT LOCATION, DESCRIPTION AND PRIOR COMMISSION ACTION**

###### 1. Project Location

The proposed single-family residence at 177 Shorecliff Road is located on a coastal bluff top lot situated on the seaward side of Shorecliff Road in the community of Shorecliffs in Corona Del Mar (Newport Beach) (Exhibits #1-2). The lot size is approximately 21,459 square feet and the City of Newport Beach Land Use Plan (LUP) assigns two different land use designations for different portions of the subject site. The base of the bluff and the adjacent beach area is designated Recreational and Environmental Open Space and the area from the base up to the street is designated Single-Family Detached Residential. The project is located within an existing developed urban residential area and the existing house is located at the bluff edge, which is approximately at the 67-foot contour, and the existing pool is located on the bluff top ~~bench cut into the bluff face, seaward of the bluff edge~~. To the North of the project site is Shorecliff Road. To the East and West of the project site exist single-family residential developments. To the South of the project site is an undeveloped vegetated bluff, Little Corona Beach and the Pacific Ocean. The project site consists of a quarter-acre level building pad supported above a generally natural coastal bluff face. The overall height of the slope is approximately 50-feet. The slope ratio is variable, with the lower slope near 3.5:1 (horizontal: vertical) and the upper slope near 1.5:1, but overall; the slope is near a 2:1 ratio. In the project area, the lower slope is mantled with an apron of slopewash. At the base of the bluff is a narrow beach area that transitions from sandy beach to rocky beach.

###### 2. Project Description

The proposed project consists of demolition of an existing single-family residence with an attached garage and construction of a new 8,990 square foot, two-story single-family residence plus basement, a 860 square foot 2<sup>nd</sup> floor deck, a 441 square foot roof deck, a 293 square foot 1<sup>st</sup> floor one-car garage, and a 2,444 square foot subterranean six-car garage, which is part of the basement level on a coastal bluff top lot (~~Exhibit #3~~). This proposed development would ~~still~~ encroach to and in some instances beyond the bluff edge. In addition, the applicants are proposing hardscape beyond the bluff edge and a new pool located on the bluff face (~~Exhibit #3~~). ~~The proposed pool would be on the bluff top no further seaward than the existing pool bench cut into the bluff face, seaward of the bluff edge.~~ Grading will consist of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The foundation of the residence will consist of a combination of deepened footings and retaining walls.

###### 3. Prior Commission Action in Subject Area

See Appendix A

~~decks, patios and walkways that do not require structural foundations to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards [Emphasis added].~~ The proposed residential structure encroaches to and in some instances beyond the bluff edge, while hardscape and a new pool are confined to the footprint of the existing pool and hardscape; however, the proposed pool would be on the bench cut into the bluff face, seaward of the bluff edge. Therefore, portions of the proposed residence and hardscape and appurtenant features do not adhere to the required 25-foot and 10-foot bluff edge setbacks. Thus, the proposed development is inconsistent with the recently updated LUP because the development does not adhere to the required 25-foot and 10-foot bluff edge setbacks.

### 3. Landform Alteration

The proposed project will consist of grading that will comprise of 7,430 cubic yards (3,715 cubic yards of cut, 270 cubic yards of fill and 3,445 cubic yards of export to a location outside of the coastal zone). The proposed grading would be accomplished in order to place the proposed structures on the bluff top and bluff face. Currently, the bluff face is highly scenic and undeveloped; however, the proposed project would result in significant alteration of the bluff face. As such, new development at the subject site must be appropriately sited to minimize adverse effects to natural landforms. The proposed development does not minimize such adverse effects and is inconsistent with Section 30251 of the Coastal Act.

### Conclusion

The Commission finds that the proposed project is not sited and designed to protect scenic and visual qualities of coastal areas as a resource of public importance. Denial of the proposed project would preserve existing scenic resources. The alteration of the bluff would result in an adverse visual effect when viewed from public vantage points such as Little Corona Beach. The Commission finds that the proposed project would result in the alteration of natural landforms. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites and therefore must be denied.

Establishing a limit of development and setting development further back from the edge of the coastal bluff decreases a development's visibility from public vantage points. For these reasons, the Commission typically imposes some type of bluff edge set back.

### City Setback

The plans submitted by the applicant show that the project conforms to the City zoning setback requirement of 6-feet from the rear property line, but conformance with the City required setback however does not address the potential visual and scenic resource impacts that the oceanward encroaching development will have on the project site. Adhering to the City setback of 6-feet from the rear property line does not achieve the objectives of Coastal Act Section 30251 because the rear property line is located on the beach.

### Stringline

Since the City's rear property line setback cannot be used to avoid the potential impacts that the oceanward encroaching development will have on the project site, the applicability of the structural and deck stringlines will be evaluated. Two types of string lines are applied to evaluate a proposed project--a structural string line and a deck string line. A structural string line refers to the line drawn from the *nearest* adjacent corners of adjacent habitable structures. Similarly, a deck string line refers to the line drawn from the *nearest* adjacent corners of adjacent decks. Applying a stringline to the proposed project is difficult due to the differing topography of the project site and adjacent residences that would be used to make this analysis. The bluff edge of the adjacent sites and area undulate widely from lot to lot, so a setback based upon stringline would not adequately protect the bluff landform. Therefore, a stringline cannot be applied in this case. As to be seen in the following hazards section of the staff report, the Commission found that the bluff edge is a sufficient setback. In regards to Section 30251 of the Coastal Act, this setback is also consistent with community character as this minimal setback would prevent development seaward of the bluff edge and also would be protective of scenic resources. Therefore, the Commission imposed **Special Condition No. 2**, which requires the applicant to submit revised project plans showing that no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist (Exhibit #3).

In addition, the future development restriction will ensure that improvements are not made at the blufftop that could affect the visual appearance of the coastal bluff or affect the stability of the bluff. The landscaping condition requires that the applicant install native and/or non-native, drought tolerant, non-invasive plants throughout the site.

Therefore, the Commission finds that, as proposed and conditioned, the project will not obstruct significant coastal views from public vantage points and is consistent with the visual resource protection provisions of Section 30251 of the Coastal Act.

### **C. 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.*

The subject site is an oceanfront lot where the toe of the bluff is periodically subject to direct wave attack. There is no wide sandy beach or intervening development between the toe of the bluff and the ocean. Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. Environmental factors include seismicity,



STATE OF CALIFORNIA  
COASTAL COMMISSION

CERTIFIED COPY

CAMDEN, L.L.C.

COMMUNITY OF CORONA DEL MAR

CITY OF NEWPORT BEACH

COUNTY OF ORANGE

Application No. 5-04-466

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday, January 11, 2006  
Agenda Item No. 8.a.

Los Angeles Harbor Hotel  
601 S. Palos Verdes St.  
San Pedro, California

EXHIBIT B 1 of 22

1 But, this is not our most shining hour.

2 CHAIR CALDWELL: Commissioner Wan.

3 [ MOTION ]

4 COMMISSIONER WAN: I'll make some comments about  
5 it, after I make an amending motion.

6 I would like to make an amending motion that would  
7 require that the applicant make the changes to the design in  
8 the area where Dr. Johnsson has -- it is unfortunate that we  
9 don't have it in front of us so we can point to it -- but, to  
10 where Dr. Johnsson is confident that the edge of bluff is at  
11 67 feet, that no portion of the house, or the deck, or the  
12 stairs, be extended beyond the edge of the bluff.

13 CHAIR CALDWELL: Commissioner Kruer, did you want  
14 to "second" that motion?

15 CHAIR KRUE: No, I am trying to make a comment,  
16 maybe to --

17 CHAIR CALDWELL: Well, we need a "second" in order  
18 to discuss it.

19 COMMISSIONER ORR: Second.

20 CHAIR CALDWELL: Okay, it has been moved by  
21 Commissioner Wan, seconded by Commissioner Orr, that the  
22 applicant, actually, modify the structure so that no part of  
23 the structure is extending beyond the bluff edge, as  
24 determined by Dr. Johnsson today.

25 CHAIR KRUE: Okay, I --

1 COMMISSIONER WAN: Let me finish speaking to my  
2 motion.

3 CHAIR KRUEER: Sure.

4 COMMISSIONER WAN: At least this would take of,  
5 from my perspective, the most important aspect of this.

6 I happen to agree with what Dr. Burke said about,  
7 you know, turning your neighbor in as the result of the  
8 process. What is unfortunate is that we don't have -- and I  
9 don't think any government jurisdiction has the ability to go  
10 out and see whether the conditions that are imposed on  
11 development are actually complied with. I mean, we would  
12 have to have somebody go out for condition compliance on  
13 every approval that we make, and that is unfortunate, but  
14 there is no way we would have the funds to be able to that.  
15 So, this is not an exception.

16 It is unfortunate, and it happens frequently in  
17 this hearing room, by the way, where we discover things that  
18 we don't know about. So, I agree with you that that is not a  
19 good way to do business, but we can't help it.

20 But, as far as the amending motion is concerned,  
21 at least if this aspect of the building is pulled back so  
22 that it, at least, is not over the bluff edge, and where Dr.  
23 Johnsson says he is confident about the bluff edge, then I  
24 have to agree with him. That, at least, takes care of the  
25 major issue.

1 CHAIR CALDWELL: All right.

2 Commissioner Kruer.

3 CHAIR KRUER: Yes, in light of reviewing this, and  
4 in light of Dr. Johnsson's further clarifications, et cetera,  
5 I, for me, I think it is going to be so minor, the change,  
6 that at this issue of the game, where they have agreed last  
7 month to fall back, after a lot of Commission discussion, et  
8 cetera.

9 I mean you are talking about almost nothing now,  
10 because where he is drawing the cross section through, and  
11 where that line comes through that he is confident of, it is  
12 not nearly the totality of looking at it, what this area,  
13 before where the basement was drawn, et cetera. Where he is  
14 uncomfortable with it, makes me more uncomfortable that maybe  
15 even that little piece, that is so minor in comparison now, I  
16 am going to support Commissioner Reilly's motion.

17 CHAIR CALDWELL: All right.

18 Commissioner Burke, then Commissioner  
19 Shallenberger.

20 [ No Response ]

21 Commissioner Burke, did you want to say something?

22 COMMISSIONER BURKE: I have decided to not speak.

23 CHAIR CALDWELL: Withdraw your comment? okay.

24 Commissioner Shallenberger.

25 COMMISSIONER SHALLENBERGER: Yes, I support the

1 amending motion, and because I think it is consistent with  
2 the direction that the Coastal Commission gave the applicant  
3 at our last hearing.

4 And, I am troubled by, that we are not dealing  
5 with the 25-foot setback. I want it on the record, and  
6 hopefully when we finish with this item, I would like to put  
7 it on the record, again, that this precedent concept is  
8 something that we need to help applicants understand that  
9 every time an application comes to us, staff makes recommend-  
10 ations, and the Commission should make their decision based  
11 on current knowledge.

12 And, as knowledge changes, and as LCPs change, the  
13 standards for approval change, but the reason for this one,  
14 it doesn't bother me, is that we did give direction at the  
15 last meeting, and the direction we gave was that we wanted  
16 all of the development pulled back behind the bluff.

17 And, so the amending motion that is before us,  
18 where Commissioner Krueger thinks is minor, it may be. I still  
19 think it is consistent with the direction that we gave at the  
20 last Commission meeting, and I think we should approve it,  
21 and then I think we should approve the project as amended.

22 CHAIR CALDWELL: Commissioner Reilly.

23 COMMISSIONER REILLY: Thank you, Madam Chair.

24 If we are going to ask the applicant to go back  
25 and do another redesign, I would feel more comfortable



1 supporting the amendment if it also included a request for  
2 Dr. Johnsson to make a final determination on the site.

3 CHAIR KRUE: That is fine.

4 COMMISSIONER WAN: That's fine. I have no problem  
5 with that.

6 CHAIR CALDWELL: He is going to have to, under any  
7 circumstances, isn't he, for the applicant to clearly  
8 understand? no, all right.

9 Dr. Johnsson, do you have any objection to that?

10 SENIOR GEOLOGIST JOHNSON: Not at all.

11 CHAIR CALDWELL: Okay.

12 Commissioner Burke, I know that you have been  
13 dying to offer a comment here.

14 COMMISSIONER BURKE: Yeah, I changed my mind. I  
15 am taking the woman's prerogative on this thing, to change my  
16 mind.

17 CHAIR CALDWELL: We are going to call it the Burke  
18 prerogative from here on out.

19 COMMISSIONER BURKE: Thank you, thank you, thank  
20 you, I finally have something named after me.

21 Here is, you know, what Commissioner Wan is saying  
22 is absolutely true, there is no question about that. But,  
23 what she is saying is, also, that they can go ahead and agree  
24 to this today. We don't need to carry it forward. And, then  
25 they can build what they want to build because we aren't

1 going to find out about it anyway, that is what she said.

2 CHAIR CALDWELL: So, Commissioner Burke, as you  
3 were saying --

4 COMMISSIONER BURKE: No, no, that is what she  
5 said, on the record. So, you know, I just wanted to make  
6 sure that everybody -- you know, that is --

7 CHAIR CALDWELL: That was a helpful comment.

8 COMMISSIONER BURKE: But, I just wanted to make  
9 sure that everybody understands.

10 CHAIR CALDWELL: Commissioner Secord, before you  
11 speak, I just want to be clear about the whole issue about  
12 the neighbors' property, and the property at 173, came up  
13 because the applicant raised the issue of fairness, and that  
14 is how this whole enquiry came about, and why we were looking  
15 at the neighboring properties, to see where they were  
16 relative to the bluff edge, and that is why we ended up in  
17 this situation realizing that the neighbor's property wasn't  
18 built to plan. So, if we could just be clear about that.

19 Dr. Secord.

20 COMMISSIONER SECORD: I would like to recommend a  
21 "No" vote on the amendment, and an affirmative vote on the  
22 main motion, which was Commissioner Reilly's motion that I  
23 seconded.

24 I think this applicant has come, and listened to  
25 the Commission, has redrawn their project, has done exactly

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1 what we are supposed to do, it just seems unconscionable to  
2 me to put him off another month, or even another day, because  
3 I think this is an approvable project, and the amount of  
4 difference of where the house is, and where the house might  
5 be, is very small and the LUP for Newport Beach, I think, is  
6 a red herring. So, I would recommend a "No" vote on the  
7 amendment, and a "Yes" vote on the main motion.

8 CHAIR CALDWELL: Thank you, Dr. Secord.

9 I have a question for our legal counsel. Is the  
10 Newport LUP a red herring, or not, in this case? does it  
11 apply, or does it not?

12 DEPUTY ATTORNEY GENERAL PATTERSON: Yes,  
13 Chairwoman Caldwell, the city does not have a fully certified  
14 Local Coastal Program.

15 The standard of review for the Commission is the  
16 Coastal Act, as I understand it, and the city's recently  
17 certified Land Use Plan is considered guidance for the  
18 Commission.

19 CHAIR CALDWELL: Okay, thank you.  
20 Commissioner Orr.

21 COMMISSIONER ORR: Yes, I would like to make a  
22 very brief comment, because I think we are about ready to  
23 vote on this.

24 But, in response to what Commissioner Secord just  
25 said, I think that it seemed to me, what I heard from the

1 applicant's architect was that it wouldn't be a major matter.  
2 We are not just dealing with this little basement part, but  
3 there is also the deck posts that are outside, and the  
4 stairway that are outside the bluff, or beyond the bluff  
5 delineation that Dr. Johnsson is comfortable with, and so for  
6 that reason I would recommend a "Yes" vote on the amending  
7 motion, and then I will support the main motion.

8 COMMISSIONER WAN: Call the question.

9 CHAIR CALDWELL: Dr. Burke, do you have a question  
10 for the applicant?

11 COMMISSIONER BURKE: Oh, I didn't hear the  
12 architect say that, so if you said that, then you know, it  
13 might give me second thoughts here.

14 MR. JEANNETTE: I really appreciate Commissioner  
15 Reilly's motion, and if I might add just one more piece of  
16 information.

17 This is the permit granted to lot 173, the  
18 adjacent neighbor that everybody keeps saying did his work  
19 illegally. I met with his architect --

20 CHAIR CALDWELL: Okay.

21 MR. JEANNETTE: -- and I am sorry that I am  
22 bringing this up late, but I --

23 CHAIR CALDWELL: That is not responsive to the  
24 question.

25 MR. JEANNETTE: Yes.

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1 CHAIR CALDWELL: Thank you, sir.

2 So, let's go to the amending motion, then, and  
3 have a vote on that.

4 Just to clarify, the amending motion --  
5 Commissioner Wan, do you want to restate it, because I think  
6 Commissioner Reilly offered a friendly --

7 COMMISSIONER WAN: Which I accepted.

8 CHAIR CALDWELL: -- suggestion, so can you restate  
9 your motion.

10 COMMISSIONER WAN: Let's see, how to restate this,  
11 that the applicant be required to pull back that part of the  
12 development beyond the edge of the bluff, as not has been  
13 determined by Dr. Johnsson, but will be determined by Dr.  
14 Johnsson when he goes out and looks at it.

15 So, if he is going to determine the bluff edge,  
16 and the applicant will be required to pull the development  
17 back, just past the edge of the bluff.

18 CHAIR CALDWELL: "Seconder" agree to that?

19 COMMISSIONER ORR: Yes.

20 CHAIR CALDWELL: All right.

21 Let's have a roll call vote on this. They are  
22 seeking a "Yes" vote.

23 SECRETARY GOEHLER: Commissioner Burke?

24 COMMISSIONER BURKE: No.

25 SECRETARY GOEHLER: Commissioner Orr?

1 COMMISSIONER ORR: Yes.  
2 SECRETARY GOEHLER: Commissioner Kram?  
3 COMMISSIONER KRAM: No.  
4 SECRETARY GOEHLER: Commissioner Kruer?  
5 CHAIR KRUER: Yes.  
6 SECRETARY GOEHLER: Commissioner Neely?  
7 COMMISSIONER NEELY: Yes.  
8 SECRETARY GOEHLER: Commissioner Potter?  
9 [ No Response ]  
10 Commissioner Reilly?  
11 COMMISSIONER REILLY: Yes.  
12 SECRETARY GOEHLER: Commissioner Secord?  
13 COMMISSIONER SECORD: No.  
14 SECRETARY GOEHLER: Commissioner Shallenberger?  
15 COMMISSIONER SHALLENBERGER: Yes.  
16 SECRETARY GOEHLER: Commissioner Wan?  
17 COMMISSIONER WAN: Yes.  
18 SECRETARY GOEHLER: Chairman Caldwell?  
19 CHAIR CALDWELL: Yes.  
20 SECRETARY GOEHLER: Seven, three.  
21 CHAIR CALDWELL: Okay, the amending motion passes.  
22 Let's go to the main motion.  
23 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.  
24 CHAIR CALDWELL: Yes.  
25 EXECUTIVE DIRECTOR DOUGLAS: It does appear that

1 the Commission may approve this motion, as now amended, there  
2 are, as you know, staff is recommending denial --

3 CHAIR CALDWELL: Yes.

4 EXECUTIVE DIRECTOR DOUGLAS: -- but, if the  
5 Commission is to approve it, we did prepare some suggested  
6 conditions that you asked us to work on last time --

7 COMMISSIONER REILLY: Is there a reason we didn't  
8 get a copy of those?

9 EXECUTIVE DIRECTOR DOUGLAS: Pardon me?

10 COMMISSIONER REILLY: Is there a reason we didn't  
11 get a copy of those?

12 EXECUTIVE DIRECTOR DOUGLAS: We have them here. I  
13 don't know if we got them distributed.

14 COMMISSIONER REILLY: Well, we asked for them.

15 EXECUTIVE DIRECTOR DOUGLAS: We did give a copy to  
16 the applicant's representative.

17 But, if you would like, we can give you those. We  
18 can --

19 CHAIR CALDWELL: I think now would be an  
20 appropriate time for you to review your --

21 COMMISSIONER WAN: Can you read them to us?

22 DEPUTY DIRECTOR LEE: I am sorry, Madam Chair and  
23 Commissioner Reilly, we did prepare them, and we have them  
24 here. We have copies to distribute to you, but because we  
25 did not change our recommendation, we didn't feel it was

1 appropriate to include them in the staff report.

2 I did provide a copy of them to the applicant's  
3 representative before the meeting today, this morning.

4 It would include an assumption of risk; a Special  
5 Condition 2 would be a revised project plans to conform with  
6 the amending motion, and to have the bluff edge delineation  
7 completed on the site by Dr. Johnsson; Special Condition 3  
8 would be a waiver of future shoreline or bluff protection;  
9 Special Condition 4 would be the Commission's future  
10 development provision that requires any improvements come  
11 back for Commission review or amendment; Special Condition  
12 No. 5 requires conformance with the geotechnical  
13 recommendations, such that prior to issuance the applicant  
14 would submit evidence that an appropriate licensed  
15 professional has reviewed the plans and signed off on them;  
16 Special Condition No. 6, would be submittal of a drainage and  
17 runoff control plan.

18 Because they are proposing the pool and the spa,  
19 Special Condition No. 7 provides for pool and spa protection  
20 plans for leak detection; Special Condition No. 8 is for  
21 submittal of a landscaping plan, including provisions against  
22 invasive species; and then recordation of those provisions  
23 through a deed restriction.

24 Those would be all of the recommended special  
25 conditions.

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1 CHIEF COUNSEL FAUST: Madam Chair.

2 EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

3 CHIEF COUNSEL FAUST: Madam Chair.

4 COMMISSIONER REILLY: Madam Chair.

5 CHAIR CALDWELL: We have three people speaking at  
6 once here, so Commissioner Reilly, first.

7 COMMISSIONER REILLY: Well, if you want to go to  
8 counsel, Madam Chair, that is fine with me.

9 CHAIR CALDWELL: All right.

10 CHIEF COUNSEL FAUST: I was just going to suggest  
11 that at some time prior to having the roll call vote on this,  
12 it would be useful to have the applicant comment on the  
13 conditions that staff is proposing.

14 EXECUTIVE DIRECTOR DOUGLAS: And, Madam Chair, I  
15 apologize for not having distributed these sooner. We'll  
16 have to get our act together, in terms of how we deal with  
17 suggested conditions, where the staff is recommending denial.

18 But, if you do feel that you need some additional  
19 time, my suggestion would be to trail this --

20 COMMISSIONER WAN: No, I don't want to do that.

21 COMMISSIONER REILLY: Well, let's ask the  
22 applicant's representative to come forward, Madam Chair.

23 And, I don't know if you followed the present-  
24 ation, but my understanding is that the conditions they gave  
25 you earlier, with the exception of No. 2, which has been

1 amended through the amendment that we just adopted, are the  
2 conditions that are being suggested by staff, and we would  
3 like to have your response to that.

4 MR. JEANNETTE: Yes, Commissioner Reilly, just for  
5 your knowledge, we do agree with the amendment. I am  
6 comfortable with the motion, Commissioner Wan's motion.

7 The second issue is, anything to do with the 25-  
8 foot bluff top setback, or anything like that, which is the  
9 middle paragraph of Item No. 2 --

10 COMMISSIONER REILLY: What I am saying is the  
11 amendment that we adopted replaced Item No. 2, so Item No. 2,  
12 as you have it on the paper there is eliminated. The  
13 amendment that we adopted is in its place. But, what about  
14 all of the other conditions?

15 MR. JEANNETTE: Item No. 3.c. talks about a 10-  
16 foot setback, which I would assume would also be amended?

17 COMMISSIONER REILLY: Staff?

18 DEPUTY DIRECTOR LEE: No, that has to do with  
19 just, in terms of if the bluff ever receded within 10 feet of  
20 the principle residence, then you have to take measures to  
21 address that immediate hazard.

22 COMMISSIONER REILLY: But, if we are approving a  
23 residence that is already within 10 feet --

24 DEPUTY DIRECTOR LEE: Okay.

25 COMMISSIONER REILLY: -- then, you know, then

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1 there --

2 EXECUTIVE DIRECTOR DOUGLAS: I think that  
3 condition needs to be modified to harmonize it with the  
4 amending motion --

5 COMMISSIONER WAN: Okay.

6 EXECUTIVE DIRECTOR DOUGLAS: -- that you approved.

7 COMMISSIONER REILLY: All right, anything else?

8 MR. JEANNETTE: No, I am satisfied with the rest.

9 COMMISSIONER REILLY: All right.

10 And, Madam Chair, I would, if the "seconders"  
11 consents, I would certainly incorporate these conditions into  
12 my motion.

13 CHAIR CALDWELL: Commissioner Secord.

14 COMMISSIONER SECORD: That would be fine.

15 CHAIR CALDWELL: Okay, very good.

16 Commissioner Shallenberger.

17 COMMISSIONER SHALLENBERGER: My only question is a  
18 comfort level that I would like to ask our legal counsel,  
19 sometimes when we do all of this verbally, and we have made  
20 some major changes in these findings, is it better to trail  
21 it for a few hours in order to let staff, actually, put  
22 before us the findings? and is that possible? I am not sure  
23 of process, but there is a lot that has been changed here,  
24 and I think it is really important that people are very clear  
25 on what the actual action was, and the findings to back it

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1 up.

2 CHIEF COUNSEL FAUST: Through the Chair.

3 Commissioner Shallenberger, I am, for the most  
4 part at least, not concerned with the findings, and I think  
5 that with regards to the conditions, pursuant to Commissioner  
6 Reilly's clarifying questions, I think that you have resolved  
7 those.

8 I do have one concern, and I think it is probably  
9 one that Dr. Johnsson might want to reassure the Commission  
10 about, if you were approving a project without knowing where  
11 the bluff line was, and you were saying staff can go out and  
12 determine the bluff line, and were approving that, I don't  
13 know that there would be a meeting of the minds between -- or  
14 that we could say there would be a meeting of the minds  
15 between Dr. Johnsson and the geologist for the applicant,  
16 until they were actually out there, and it might be uncertain  
17 whether they could. There is, in other words, a concern  
18 about how much the geologists actually know.

19 If Dr. Johnsson is not confident that he knows  
20 where the bluff line is, approximately -- of course, it can  
21 vary by inches, or perhaps even a foot, that is one thing.  
22 And, this is now a comfort level with Dr. Johnsson, and the  
23 geologist for the applicant.

24 And, if they don't know where it is, and they are  
25 going to go out and determine it, then it would be better to

18 of 22

1 have that determination made before this Commission actually  
2 approves the project, so that you knew you were having  
3 agreement on what was being said.

4 So, I think it is a question of Dr. Johnsson's  
5 comfort level with what he has been saying to the Commission  
6 about where that bluff line is, and how much that is in  
7 accord with what the geologist for the applicant is saying,  
8 as well.

9 COMMISSIONER REILLY: And, Madam Chair.

10 CHAIR CALDWELL: Yes.

11 COMMISSIONER REILLY: It was my intention to,  
12 simply, assume that in approving this that we are going with  
13 Dr. Johnsson's current determination, unless on a site visit  
14 he decides to modify that.

15 COMMISSIONER WAN: And, I would agree with that.  
16 That was my interpretation, as well, as the maker of the  
17 motion.

18 CHAIR CALDWELL: Okay, we've gotten that  
19 clarification.

20 Are we now ready to go to the vote?

21 [ No Response ]

22 Is there any objection to a unanimous roll call on  
23 this motion, on the main motion, which is to approve, subject  
24 to the amending motion, and incorporating the various  
25 additional conditions that have been set forth by staff, with

19 of 22

1 the exception of revised project plans, Section 2, and  
2 including harmonization between the language of the suggested  
3 Condition 3.c. and --

4 COMMISSIONER WAN: It is 2.a.

5 CHAIR KRUEER: It is 2.a.

6 COMMISSIONER WAN: Not 2.b.

7 EXECUTIVE DIRECTOR DOUGLAS: We are, basically,  
8 deleting the 10-foot provision, that sub-section.

9 CHAIR CALDWELL: Yes.

10 So, 2.b. stays, but 2.a. goes out? is that  
11 correct?

12 COMMISSIONER WAN: Right.

13 EXECUTIVE DIRECTOR DOUGLAS: It is 2.a. and b --

14 CHAIR CALDWELL: 2.a. and b. go?

15 EXECUTIVE DIRECTOR DOUGLAS: -- are deleted.

16 CHAIR CALDWELL: Okay, very good.

17 So, just to restate what we are voting on, we are  
18 voting on approval of this, subject to the amending motion,  
19 removal of additional Condition 2, and harmonization of  
20 Condition 3.c. as suggested by staff in this additional  
21 document that we were handed just a few moments ago.

22 Any objection to a unanimous roll call on this  
23 vote? The mover and seconder are seeking a "Yes" vote.

24 [ No Response ]

25 Seeing none --

20 of 22

1 MS. ANDREWS: Excuse me --

2 CHAIR CALDWELL: -- the motion --

3 MS. ANDREWS: -- I am sorry, I am sorry, I am  
4 sorry, I am really sorry.

5 The only thing that we are --

6 CHAIR CALDWELL: Can you, please, state your name  
7 for the record.

8 MS. ANDREWS: Donna Andrews, and I am here  
9 representing the applicant.

10 The only question we have is we need Mark to  
11 clearly articulate what the setback is, because the  
12 discussion was talking about a very small area where he had a  
13 question. So, we want to make sure that we are talking about  
14 just that small area.

15 EXECUTIVE DIRECTOR DOUGLAS: Well, the question is  
16 --

17 COMMISSIONER REILLY: The amendment was that no  
18 portion of the development could come seaward of Dr.  
19 Johnsson's determination of bluff top, bluff edge, and we are  
20 going with the bluff edge that he is showing on the map,  
21 unless on a site visit he decides to modify where that line  
22 is.

23 CHAIR CALDWELL: Is that clear?

24 MR. JEANNETTE: Yes, thank you.

25 CHAIR CALDWELL: Very good.

1           Is there any objection to a unanimous roll call on  
2 the motion? They are seeking a "Yes" vote.

3   [ No Response ]

4           Seeing none, the motion carries, and the project  
5 is approved subject to the modifications and conditions that  
6 we have just agreed to today.

7           Commissioner --

8           EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

9           CHAIR CALDWELL: Yes, go ahead.

10          EXECUTIVE DIRECTOR DOUGLAS: ( Housekeeping Item  
11 taken up ).

12          COMMISSIONER WAN: Can I just make one question,  
13 this was not, really -- I did not need to do this before the  
14 motion, but, I want to make sure that the findings don't, in  
15 some way, reflect -- or, I don't know what the issue would be  
16 -- but, that we are not ignoring the Newport Beach LUP, and  
17 that in this case, the applicant was completely finished with  
18 his approvals prior to that certification.

19          And, I don't know that there are very many  
20 individuals in that situation, but somehow that needs to be  
21 reflected, because that was the basis.

22          EXECUTIVE DIRECTOR DOUGLAS: I think that is what  
23 we heard --

24          COMMISSIONER WAN: Right.

25          EXECUTIVE DIRECTOR DOUGLAS: -- that, basically,

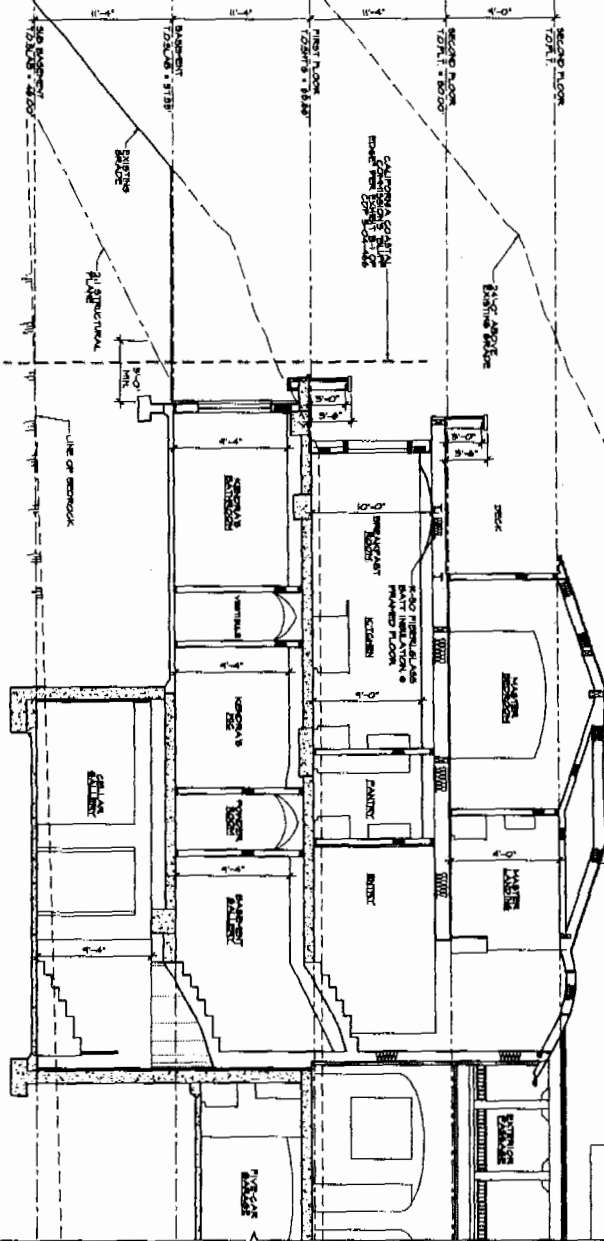
22 of 22



SECTION 'A'

SCALE 1/4" = 1'-0"

THE ARCHITECT, HONORABLE REPRESENTATION  
 OF THE CITY OF CORONA DEL MAR, CALIFORNIA  
 REVISION DATED MARCH 14, 2008



AMENDMENT  
 SUBMITTAL  
 6.9.06

BUILDING  
 SECTIONS

Brian Jeannotte Architecture

ELIOTT RESIDENCE  
 177 SHORECLIFF ROAD  
 CORONA DEL MAR, CA



SECTION 'A'

THE ARCHITECT HAS REVIEWED AND APPROVED THIS SET OF DRAWINGS FOR THE PURPOSES OF PERMITTING. THE ARCHITECT'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE DRAWINGS AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION PROVIDED HEREON. THE ARCHITECT'S REVIEW IS DATED MARCH 14, 2008.

SCALE: 1/4" = 1' - 0"

COMPLIANCE SUBMITTAL  
WITHOUT SUG. EXEMPTION  
9.19.06

BUILDING SECTIONS

Brian Jeannette Architecture

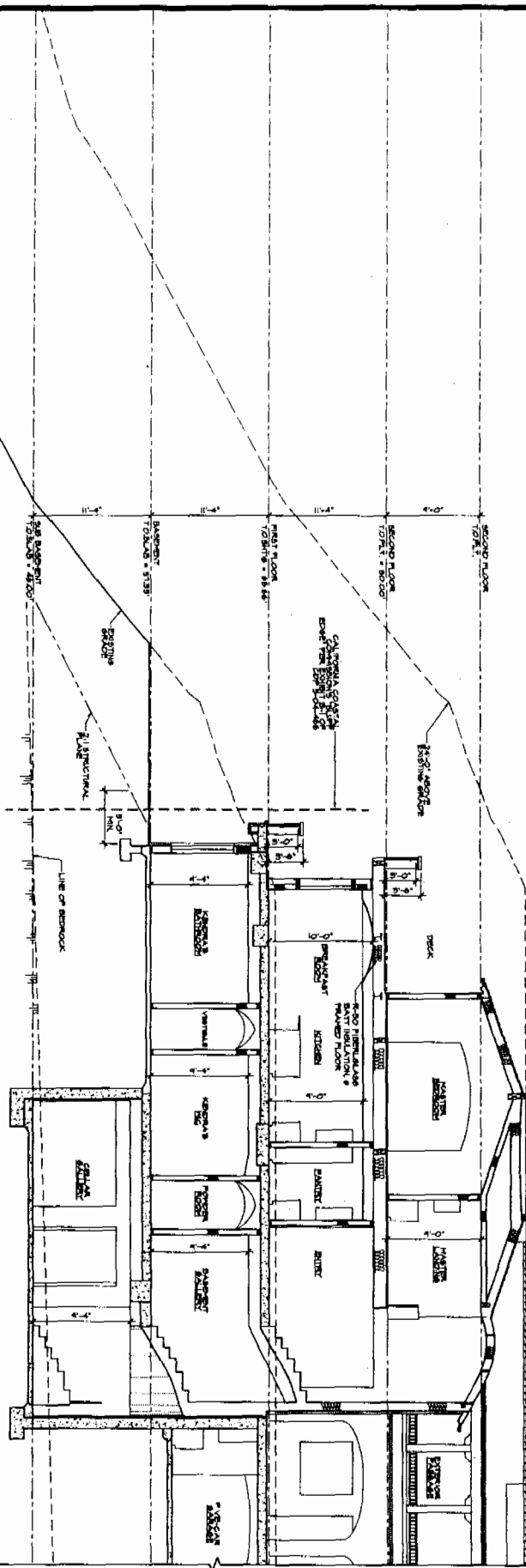
ELIEFF RESIDENCE  
171 SHORECLIFF ROAD  
CORONA DEL MAR, CA

SECTION 'A'

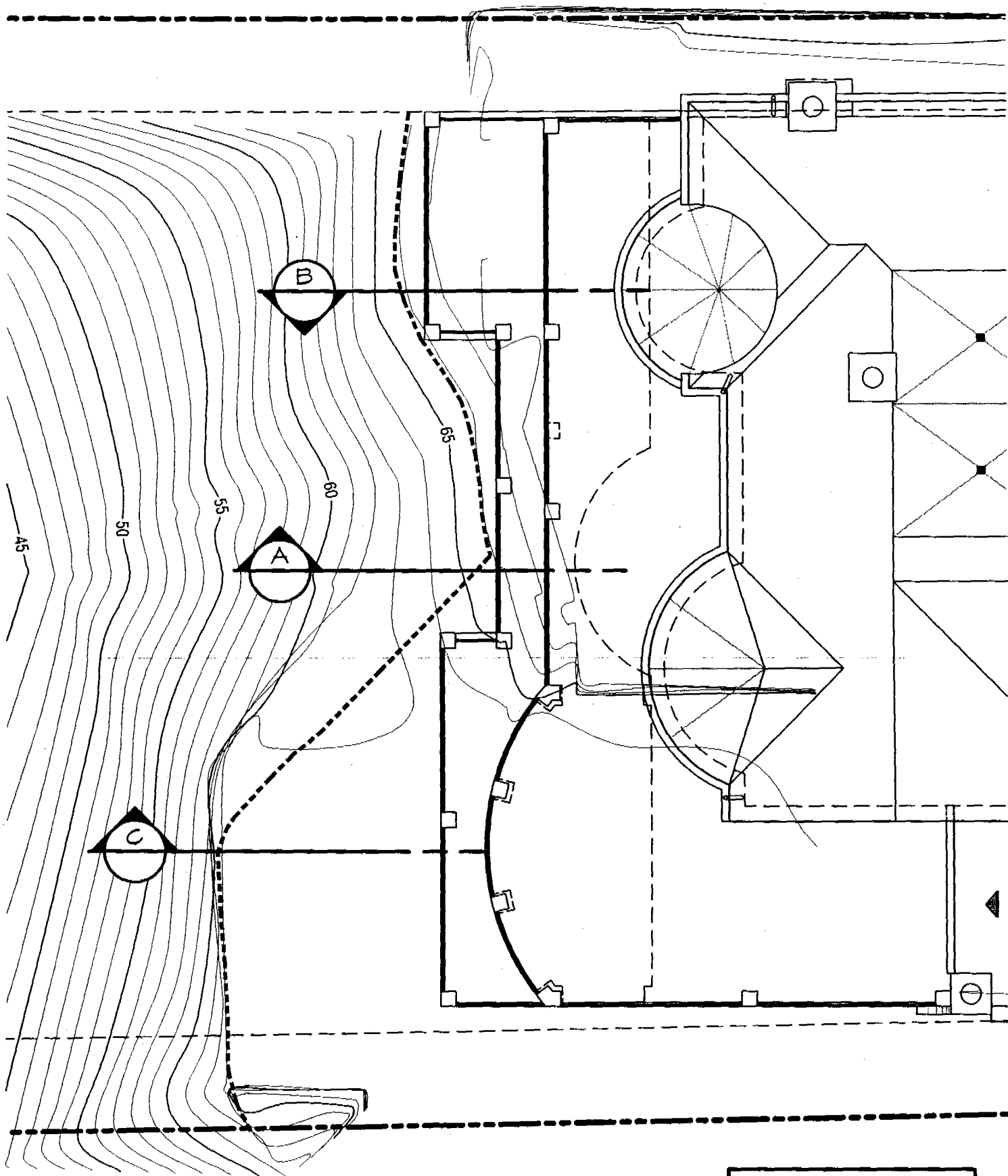
THE SHORECLIFF, HISTORIC PRESERVATION  
 ACTING TO PROTECT & IN RESPECTING  
 HISTORIC CHARACTER & ARCHITECTURE

SCALE 1/4" = 1'-0"

COMPLIANCE SUBMITTAL  
 WITH SUB BASEMENT  
 2.1.07



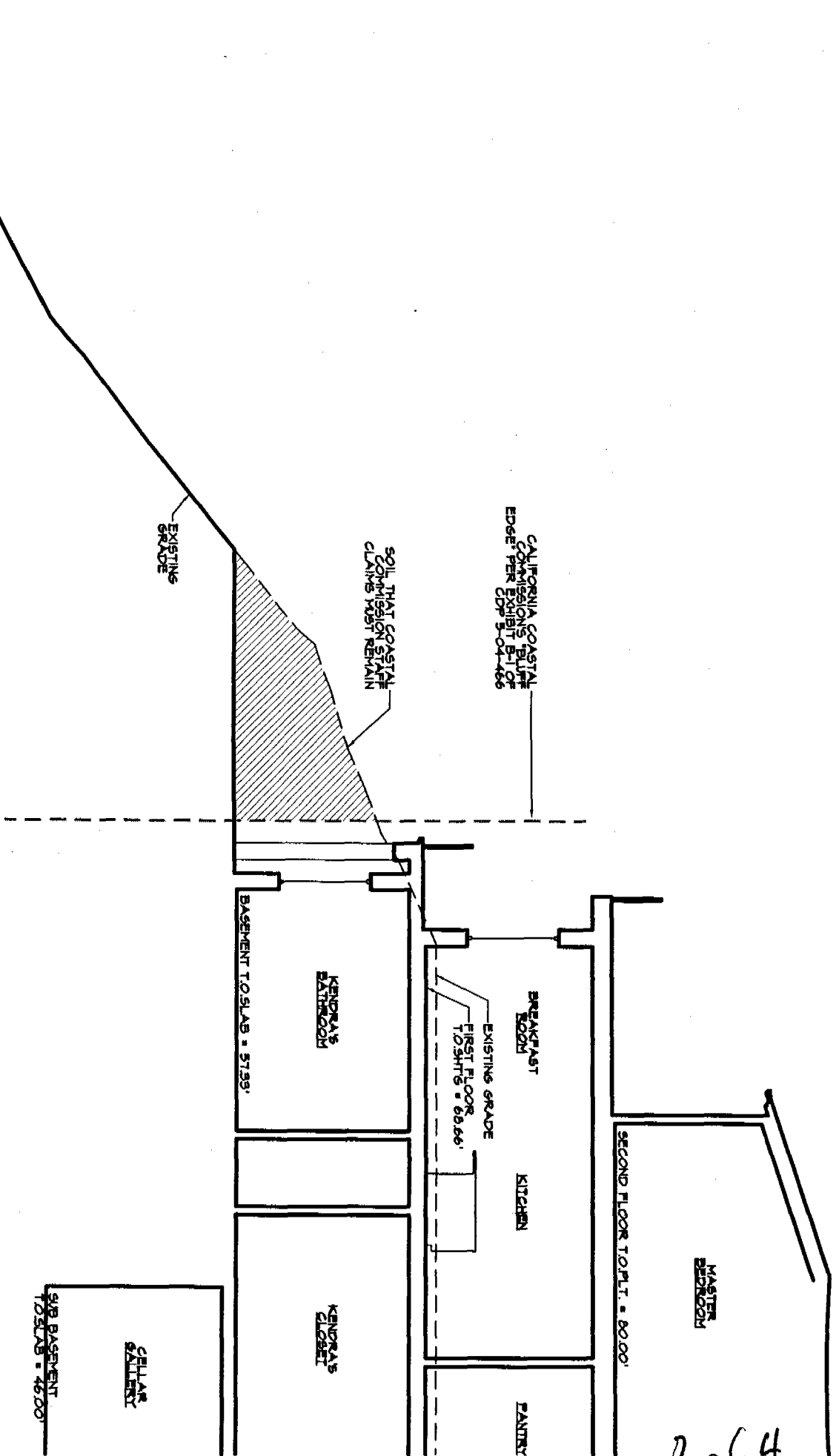
4064



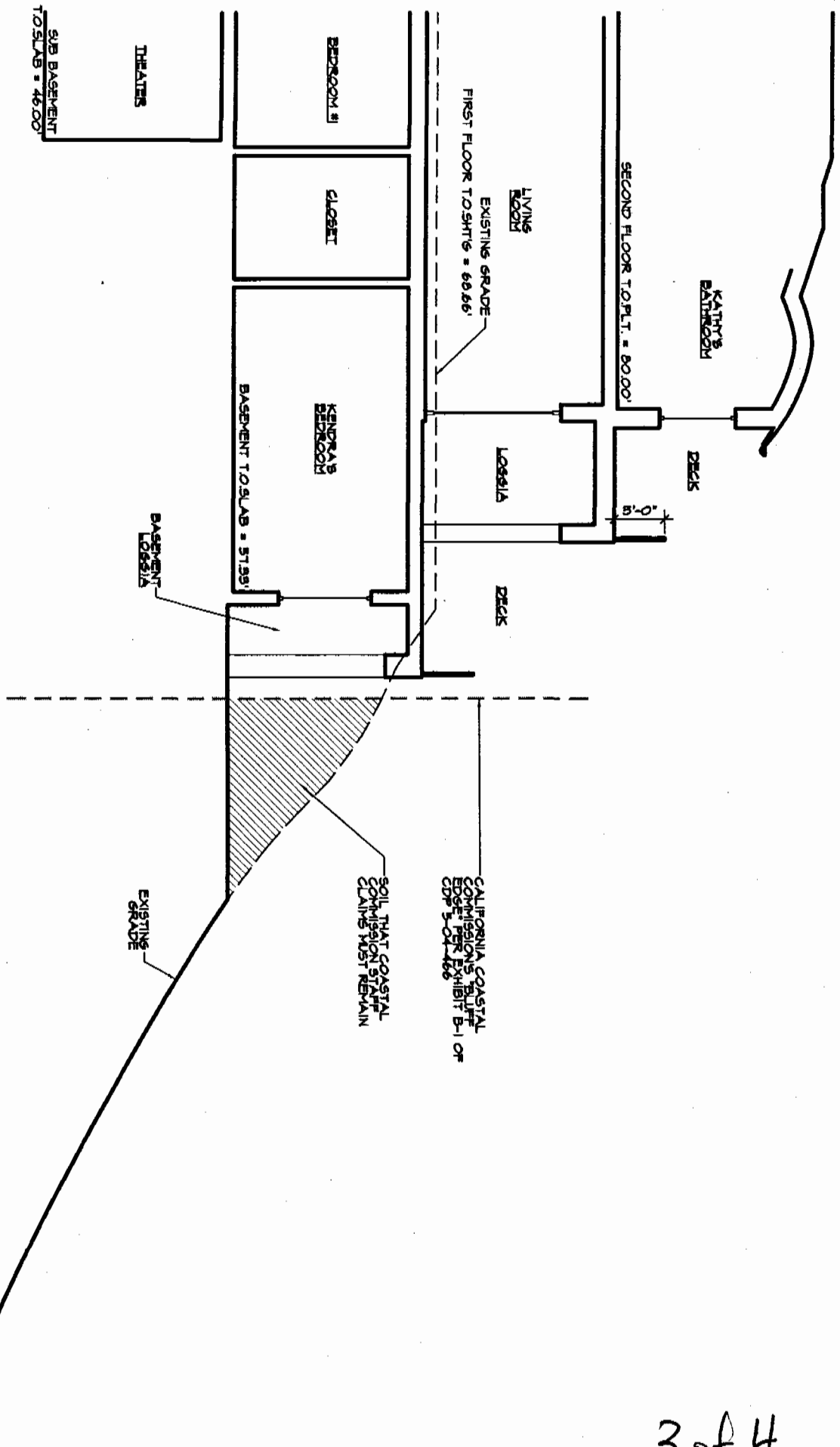
SCALE =  $\frac{1}{8}" = 1'-0"$   
ROOF PLAN

EXHIBIT D

1 of 4

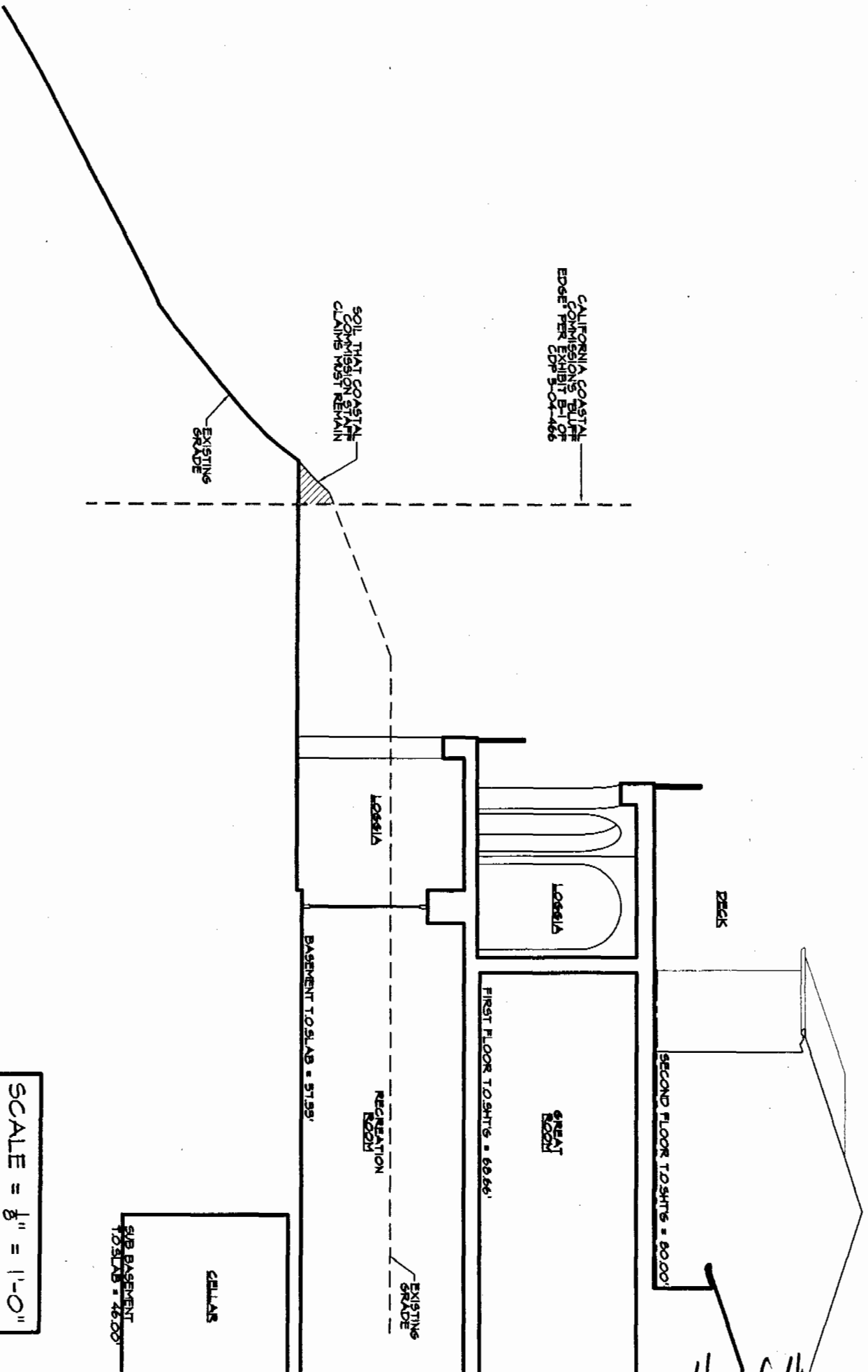


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SECTION 'A'



# SECTION 'B'

SCALE =  $\frac{1}{8}$ " = 1'-0"



4 of 4

SCALE =  $\frac{1}{8}$ " = 1'-0"

SECTION 'C'

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**W 19.5a**

Staff: Fernie Sy-LB  
Staff Report: November 1, 2007  
Hearing Date: November 14-16, 2007  
Commission Action:

**STAFF REPORT: DISPUTE RESOLUTION****DISPUTE RESOLUTION**

**NUMBER:** 5-06-466-EDD

**APPLICANTS:** Camden L.L.C., Attn: Bruce & Kathy Elieff

**AGENT:** Brion S. Jeannette & Associates, Inc., Attn: Brion S. Jeannette & Donna Andrews

**PROJECT LOCATION:** 177 Shorecliff Road, Newport Beach (Corona Del Mar), County of Orange

**DESCRIPTION:** Public hearing on dispute over proposed grading to take place seaward of the established bluff edge in compliance with Special Condition. No. 2 associated with the following project, as amended: demolition and construction of a new 8,990 square foot, two-story plus basement single-family residence with a 293 square foot 1st floor one-car garage and a 2,444 square foot subterranean six-car garage on a coastal bluff top lot at 177 Shorecliff Road.

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**SUMMARY OF STAFF RECOMMENDATION:**

The applicants contend that the grading to take place seaward of the established bluff edge in compliance with Special Condition No.2 was allowed by the Commission in their approval of the original permit at the January 2006 Commission hearing and that this proposed grading was also associated with the amendment application that was approved at the December 2006 Commission hearing. Commission staff does not agree with the applicants contentions. Special Condition No. 2 prohibits all grading seaward of the bluff edge. During the January 2006 Commission hearing, the specific discussion of grading as development was not raised. However, according to the Commission's definition of development, grading is considered development. Section 30106 of the Coastal Act defines development as the following: "*Development*" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...". Therefore, it is clear based on the plain language of Special Condition No. 2 that no development, including placement of structures, grading, etc. was to be allowed seaward of the established bluff edge. In addition, the applicants did not indicate that the amendment included grading seaward of the bluff edge until precise grading plans were submitted in January 2007, after the Commission took action on the amendment. Also when the Commission approved the project at the December 2006 amendment hearing, it did so under the condition that the project adhere to the previous conditions, which included the requirement that no development take place seaward of the bluff edge.

Commission staff recommends that applicants revise their proposed project so that grading will no longer occur seaward of the bluff edge line as required by Special Condition No. 2.

## **LIST OF EXHIBITS**

1. Building Section Plan (A-9) received March 24, 2006 and May 22, 2006
2. Conceptual Grading and Drainage Plan (G-1) received May 22, 2006
3. Conceptual Grading and Drainage Plan (G-1) received July 20, 2006
4. Precise Grading and Drainage Plan (Sheets 3-4) received January 4, 2007
5. Precise Grading and Drainage Plan (Sheets 3-4) received February 1, 2007

## **I. STAFF RECOMMENDATION ON DISPUTE RESOLUTION**

Staff recommends that the Commission adopt the following findings and resolution to determine that Special Condition No. 2 of CDP No. 5-04-466 allows grading seaward of the bluff edge.

**MOTION:** *I move that the Commission reject the Executive Director's interpretation of Special Condition No. 2 of CDP No. 5-04-466.*

### **Staff Recommendation that Special Condition No. 2 of CDP No. 5-04-466 Prohibits Grading Seaward of the Bluff Edge:**

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that Special Condition No. 2 of CDP No. 5-04-466 prohibits grading seaward of the bluff edge, and (2) the Commission's adoption of the following resolution and findings. A majority of the Commissioners present is required to approve the motion.

### **RESOLUTION:**

The Commission hereby finds that Special Condition No. 2 of CDP No. 5-04-466 prohibits grading seaward of the bluff edge and (2) adopts the findings recommended by staff below, or as modified at the hearing, to support the conclusions set forth in the staff report.

## **II. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

The subject site is located at 177 Shorecliff Road, in the City of Newport Beach (Corona Del Mar), County of Orange. As amended, the proposed project consisted of: demolition and construction of a new 8,990 square foot, two-story plus basement single-family residence with a 293 square foot 1st floor one-car garage and a 2,444 square foot subterranean six-car garage on a coastal bluff top lot at 177 Shorecliff Road.

The Commission finds that the applicants' proposed grading that will take place seaward of the established bluff edge is not in compliance with Special Condition No. 2, which states:

### **2. Revised Project Plans**



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

*That no portion of the proposed residence, basement, deck, roofline, stairs or any other principal or accessory development extend seaward of the bluff edge as determined by the Commission's staff geologist and shown on Exhibit B-1, which is attached with this Notice of Intent To Issue Permit (Emphasis added).*

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

The applicants contend that the grading to take place seaward of the established bluff edge in compliance with Special Condition No.2 was allowed by the Commission in their approval of the original permit at the January 2006 Commission hearing and that this proposed grading was also associated with the amendment application that was approved at the December 2006 Commission hearing. Commission staff does not agree with the applicants contentions.

In January 2006, Commission staff recommended denial of the original permit since the proposed project placed development within and seaward of the 25-foot bluff edge setback for the primary structure and the 10-foot setback from bluff edge for accessory structures, and included an inadequate safety buffer to address anticipated bluff retreat over the life of the development and minimize risks. The staff report included an exhibit produced by the Commission staff geologist which showed that the applicants' proposal included development seaward of the bluff edge. While Commission staff recommended denial of the permit, the Commission approved the proposed project with conditions. At the hearing it was also determined that the Commission staff geologist would visit the site to verify the bluff edge. Once the bluff edge was established, it was made clear that no development would be allowed seaward of that bluff edge. On January 17, 2006 the Commission staff geologist visited the project site and determined the bluff edge and on February 2, 2006, the Notice of Intent was sent out that included exhibit B-1 prepared by the Commission's staff geologist, which identified the bluff edge line.

In Special Condition No. 2, Commission staff identified specific elements (i.e. proposed residence, basement, deck, roofline, stairs or any other principal or accessory development) to be located landward of the established bluff edge since these elements were still shown to be located seaward of the bluff edge in the applicant's most recent plans presented at this January 2006 hearing. During the hearing the specific discussion of grading as development was not raised. However, according to the Commission's definition of development, grading is considered development. Section 30106 of the Coastal Act defines development as the following: "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...". Therefore, it is clear that no development, including placement of structures, grading, etc. was to be allowed seaward of the established bluff edge.

In order to comply with the Special Conditions imposed on the project, the applicant made significant changes to the originally proposed project. The applicants contacted staff to discuss these changes. On March 24, 2006 Commission staff received plans from the applicants to review to determine if they could be accepted by way of condition compliance or if an amendment was necessary. With this submittal it was not made known to Commission staff that grading past the seaward edge of the bluff edge was proposed.

After review, Commission staff determined that these changes necessitated an amendment and on May 22, 2006, Commission staff received the applicants' amendment application with plans and other required materials. The applicants claim that grading seaward of the bluff edge was made known to Commission staff from the very beginning of the amendment submittal; however, this is incorrect. The submitted conceptual grading and drainage plans (Exhibit #2) received on May 22, 2006 shaded the area that was to be conveyed as the area to be graded past the bluff edge and the plans also labeled this area with the following note: "*Area of Cut: 4380 Cu Yrds.*" The application and plans received by Commission staff on March 24, 2006 and May 22, 2006 made no clear reference that grading was going to take place seaward of the established bluff edge. For example, on Sheet A-9 (Exhibit #1) of the received plans dated March 24, 2006 and May 22, 2006 there is a section drawing that identifies the "*Existing Grade*" and the "*California Coastal Commission's 'Bluff Edge' per exhibit B-1 of CDP 5-04-466*" but does not identify grading seaward of the bluff edge. Sheet A-9 also identifies "*Kendra's Bathroom*" and what appears to be a window looking out seaward. The applicants' claim that this section plan shows that grading beyond the bluff edge will occur since "*daylighting*" of "*Kendra's Bathroom*" could only occur through such grading. While this section plan also identifies "*2:1 Structural Plane*" which can be assumed to refer to the grading the applicants have proposed, it is not labeled to refer to such grading nor do any of the plans identify grading occurring seaward of the bluff edge (grading limit not indicated nor bluff edge marked).

In addition, the applicants also submitted conceptual grading and drainage plans. Similar to what was stated previously, the Commission staff still was under the impression that no grading was proposed past the seaward bluff edge with this amendment given the prohibition in the previous permit. Had staff realized the applicant was proposing development (i.e. grading) beyond the bluff edge, the amendment application would have been rejected pursuant to 13166 of the CCR because it would have lessened the intended effect of Special Condition No. 2 of the original permit. In addition, the line drawn attempting to identify the limit of grading was very similar in appearance to the line drawn to identify the bluff edge. Upon review of these plans, Commission staff was able to identify that there were some items being proposed seaward of the bluff edge such as pool equipment, which Commission staff requested the applicant to remove. Commission staff was also able to identify that no part of the habitable structure was being proposed seaward of the bluff edge. Thus, with no clear identification on the submitted plans nor clear description by the applicants that grading seaward of the bluff edge was associated with the amendment application and that the proposed revised residence and accessory structures were shown on the plans to be setback behind the established bluff edge, Commission staff assumed that the project plans were consistent with Special Condition No.2.

In response to Commission staff's request to submit revised plans removing the proposed pool equipment that was still located seaward of the bluff edge, the applicants' submitted revised plans including a revised conceptual grading and drainage plan (Exhibit #3) and Commission staff received them on July 20, 2006. Thus again, with no clear identification on the submitted plans nor clear description by the applicants that grading seaward of the bluff edge was associated with the amendment application and that the proposed revised residence was shown on the plans to be setback behind the established bluff edge, Commission staff assumed that the project plans were

consistent with Special Condition No.2. However, an amendment needed to be processed due to the proposed changes.

With the application submittal deemed complete, the Amendment went to the December 2006 Commission. Commission staff recommended approval of the amendment since it had appeared that the proposed project was consistent with all the Special Conditions imposed on the original permit. Commission staff identified that the amendment dealt with the new proposed sub-basement, changes to originally proposed square footages and the use of caissons, but not grading past the bluff edge as claimed by the applicants since Commission staff did not understand that grading past the bluff edge was proposed (this grading was not included in the project description nor discussed in the staff report). The amendment was approved by the Commission which included updating Special Condition No. 5 to include a reference to more recent geotechnical reports; however, none of the remaining conditions from the original permit were modified and they still apply to the approved amendment. One of those conditions was Special Condition No.2, which prohibited development, including grading, from occurring seaward of the established bluff edge line. At no point during the Commission amendment hearing did the applicants raise the topic of grading. Thus, Commission staff and the Commission were under the impression that grading would not be located seaward of the bluff edge. The applicants had received the staff report prior to the hearing and could have contacted staff for clarification about the proposed grading. However, no such discussion took place. Upon approval of the amendment, the applicants proceeded to submit plans and other items to comply with the special conditions.

The first precise grading plans submitted by the applicant were received by Commission staff on January 4<sup>th</sup>, 2007 (Exhibit #4) and an updated plan was submitted and received on February 1<sup>st</sup>, 2007 (Exhibit #51). Upon review of these grading plans, Commission staff determined that grading was proposed to take place seaward of the established bluff edge, which was prohibited by Special Condition No. 2. The grading identified on these plans was very clear as opposed to the grading identified on the conceptual plans received on July 20, 2006. On March 2, 2007, Commission staff contacted the applicants' agent to notify them that this grading would not be allowed. When the amendment was approved in December 2006, Commission staff was not aware that grading shown seaward of the established bluff edge on plans submitted five (5) months earlier was to be included in the amendment request since the additional square footage being requested in the amendment application was not located near the bluff edge. The way that the amendment was proposed to Commission staff dealt with a proposed sub-basement, changes to originally proposed square footages and the use of caissons, but it did not include any grading past the bluff edge. As stated in the staff report for the amendment, no proposed development was to take place seaward of the established bluff edge: *"All of the changes to the development being requested in this amendment will comply with the previously imposed condition (Special Condition No. 2) requiring that all development be sited landward of the bluff edge."* At no point prior to the Commission hearing, during or after the commission hearing did the applicants question the inconsistent development concerning grading.

## CONCLUSION

Therefore, Commission staff concludes that grading is considered development and at the January 2006 Commission hearing, the Commission meant that all types of development, including grading, was prohibited seaward of the established bluff edge. In addition, Commission staff concludes that grading seaward of the bluff edge associated with the amendment was never specifically or directly made known to staff and that while the amendment was approved by the Commission at the December 2006 hearing, the approval never allowed the grading that was unknown to staff to

occur seaward of the established bluff edge. Commission staff recommends that applicants revise their proposed project so that grading will no longer occur seaward of the bluff edge line, as required by Special Condition No. 2.

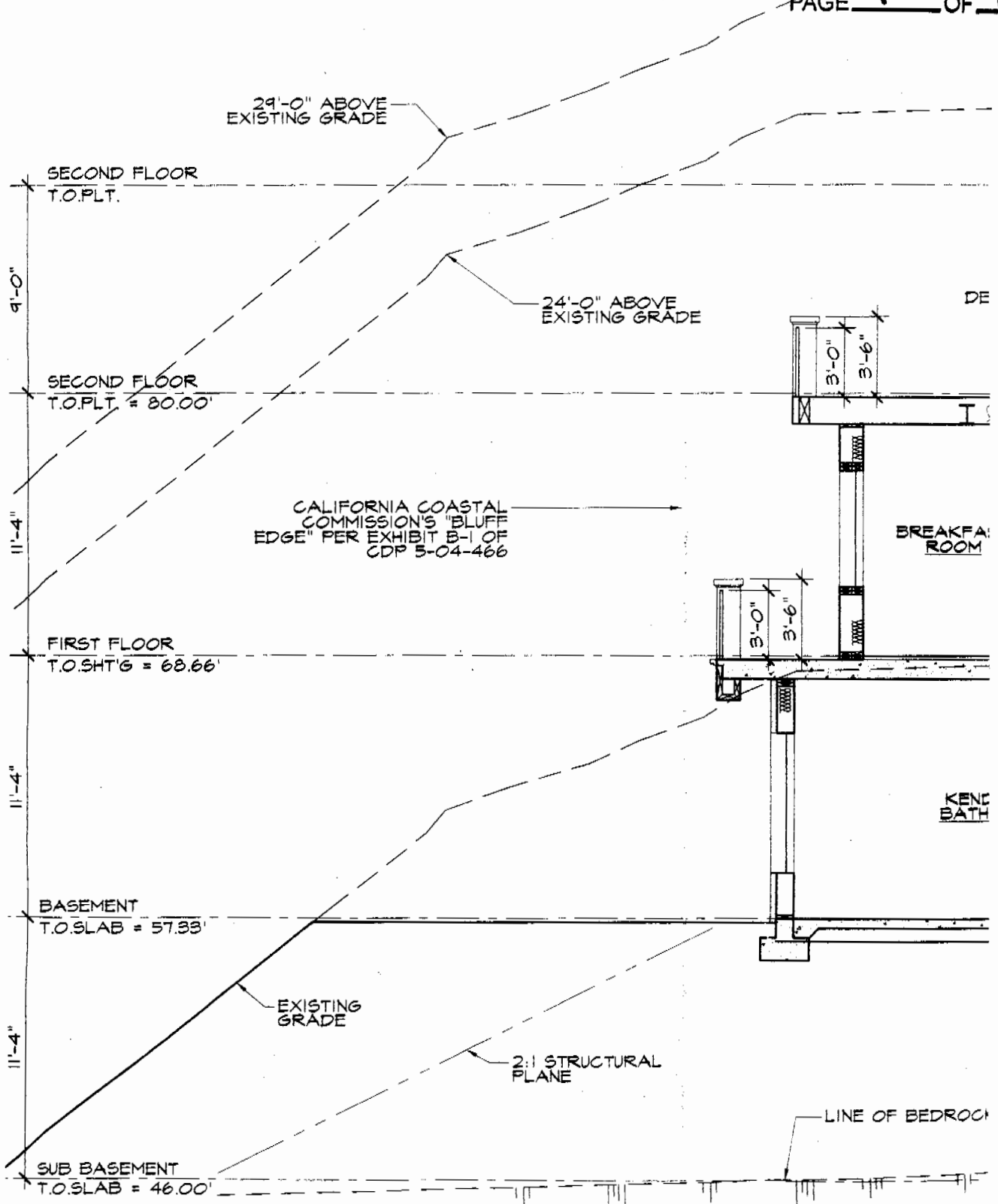
PLANS RECEIVED 3/24/06 & 5/22/06

• BUILDING SECTION PLANS •

COASTAL COMMISSION

SHEET A-9

EXHIBIT # 1  
PAGE 1 OF 1



TM - BEDROCK, MONTEREY FORMATION

PLANS RECEIVED 5/22/06

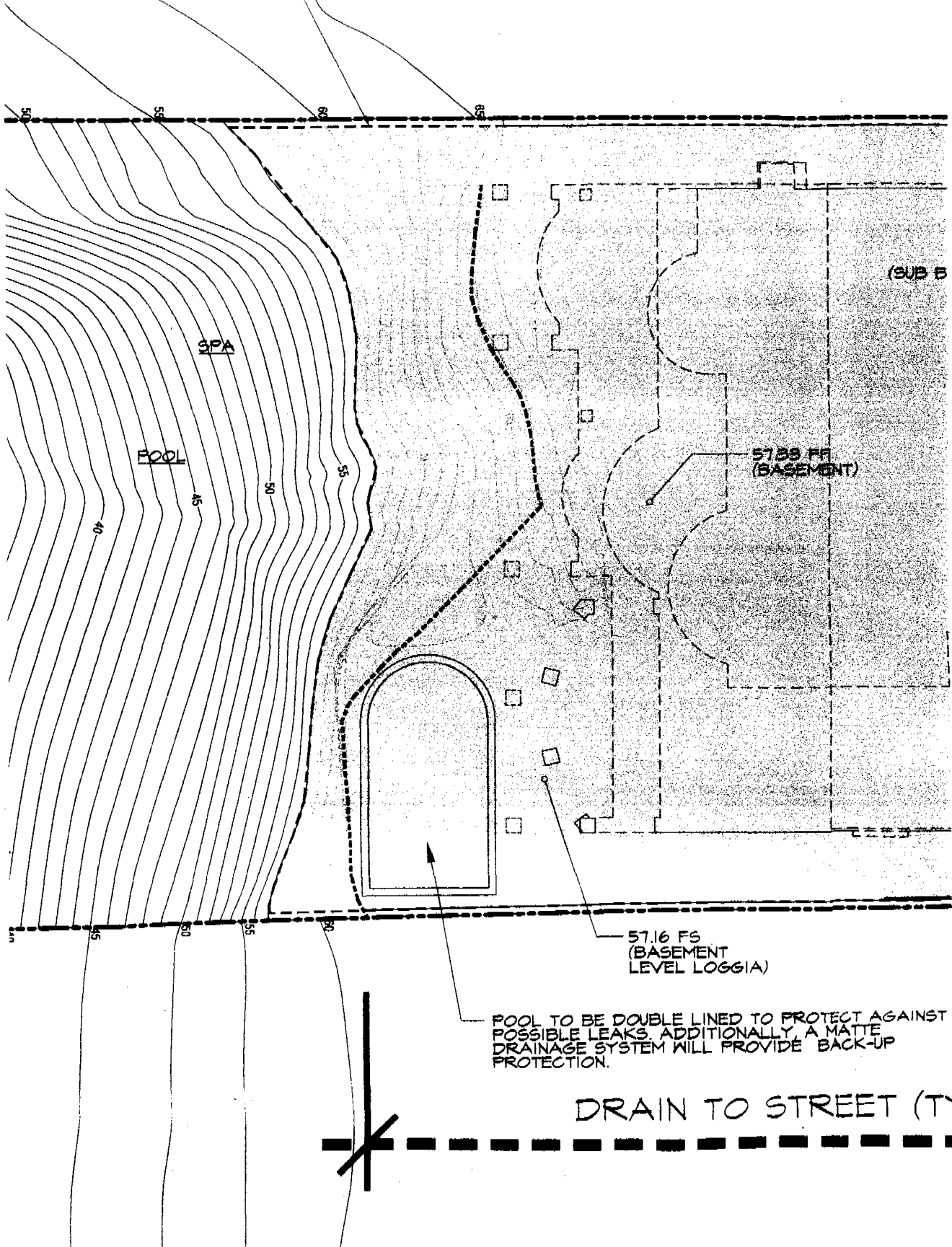
• CONCEPTUAL GRADING AND  
DRAINAGE PLAN •

COASTAL COMMISSION

SHEET G-1

EXHIBIT # 2  
PAGE 1 OF 1

AREA OF CUT:  
4380 CU YDS



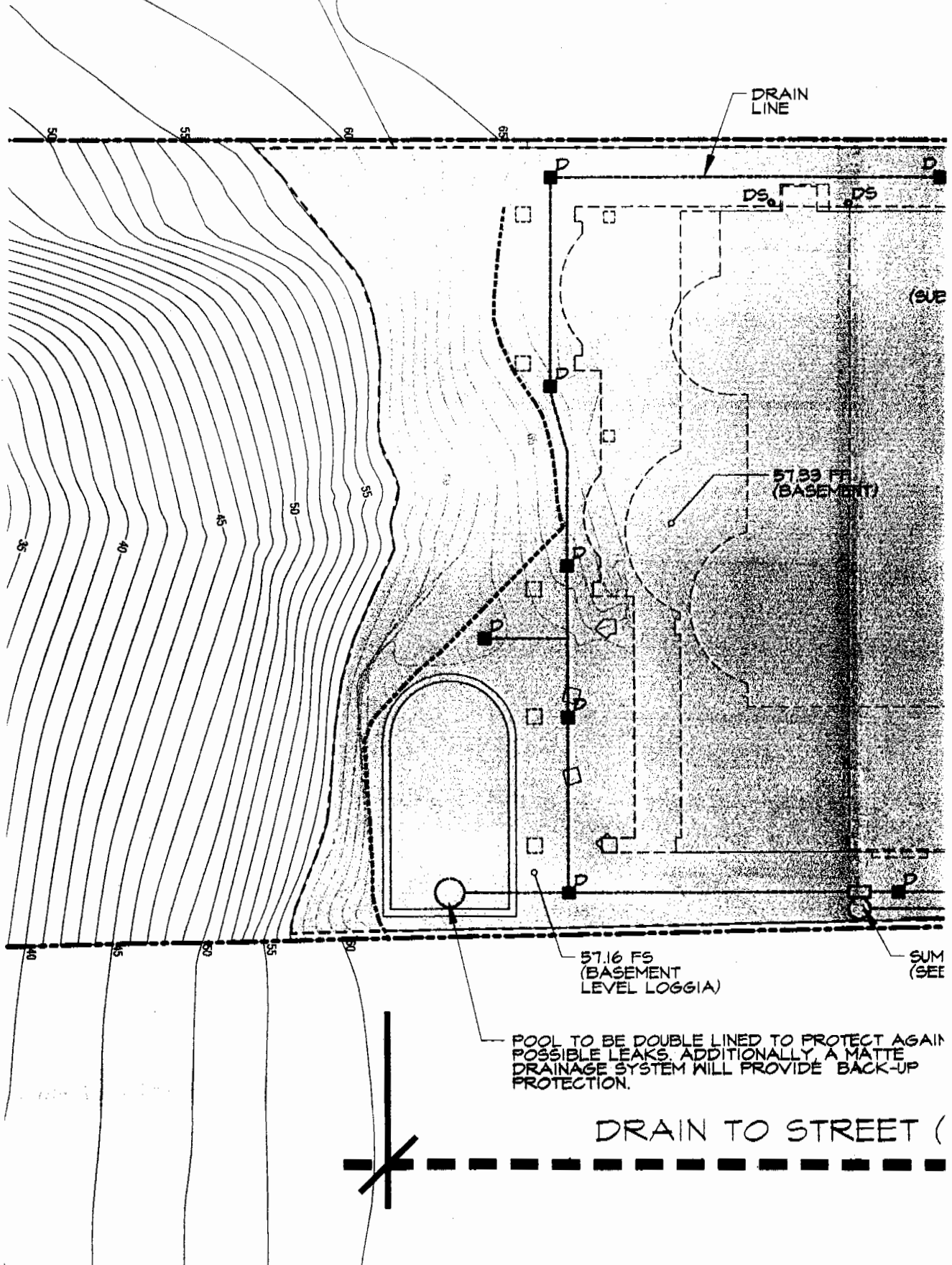
PLANS RECEIVED 7/20/06  
• CONCEPTUAL GRADING AND  
DRAINAGE PLAN •

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 1


SHEET G-1

AREA OF CUT:  
4380 CU YDS



TRACT THE  
EXHIBIT # 4  
PAGE 1  
EXIST. SINGLE FARM 2

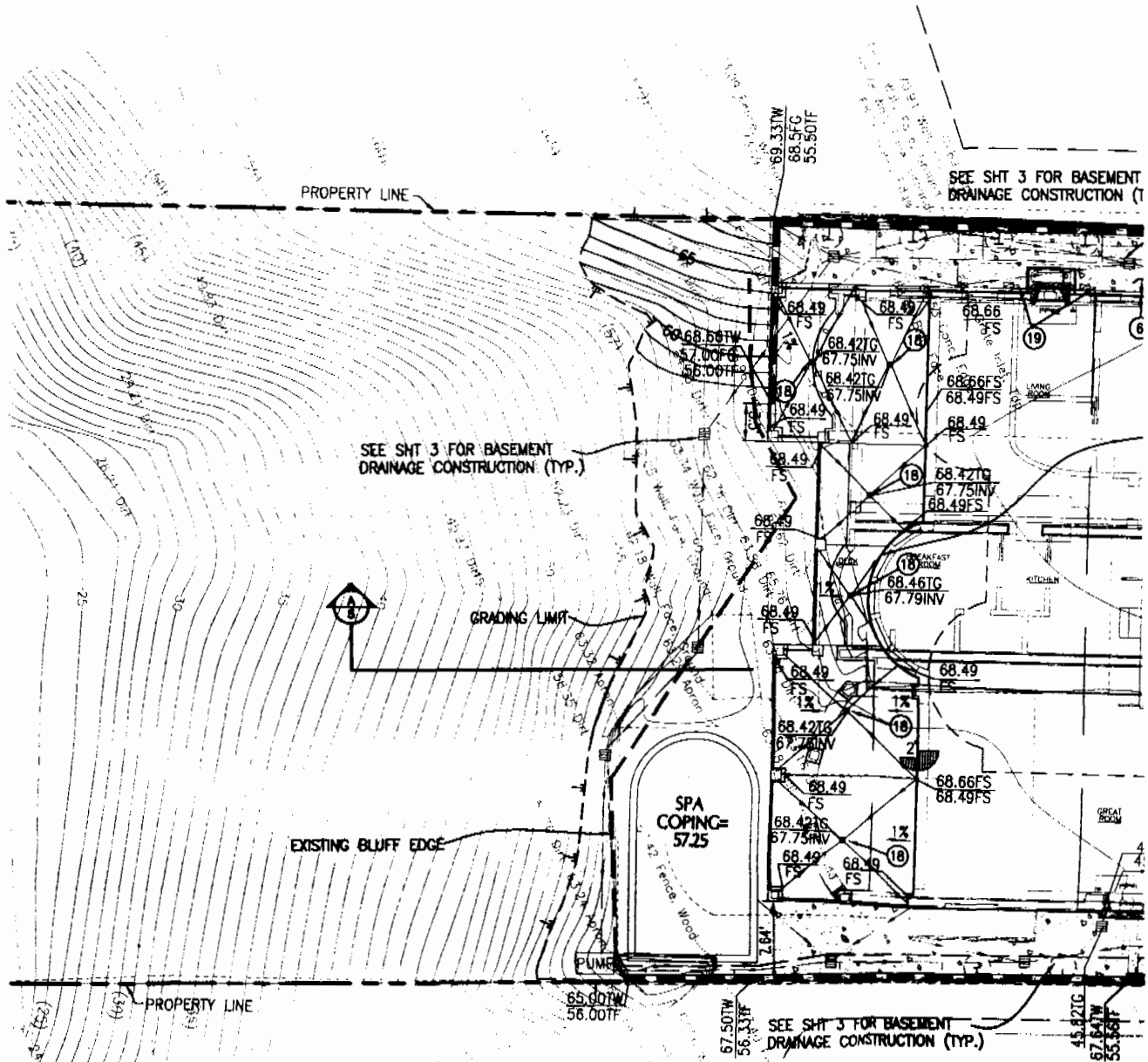


- ① CONSTRUCT 5" THICK CONCRETE DRIVEWAY WITH #4 BARS AT 16" O.C. EACH WAY
- ② CONSTRUCT RETAINING WALL PER SEPARATE PERMIT.
- ③ INSTALL ACO TRENCH DRAIN K-100S WITH ACO PERFORATED GRATING (ARCHITECT FINISH MATERIAL--EITHER GALVANIZED STEEL, STAINLESS STEEL, OR BRASS) OR A
- ④ INSTALL 6" DIA. P.V.C. SDR-35 STORM DRAIN PIPE.
- ⑤ INSTALL 12"x12" AREA DRAIN BY NDS PER DETAIL 
- ⑥ CONSTRUCT 5" THICK CONCRETE HARDSCAPE WITH #4 BARS AT 16" O.C. EACH W.
- ⑦ CONSTRUCT PRIVATE DRAIN THROUGH CURB PER CITY OF NEWPORT BEACH STD-1
- ⑧ INSTALL STORM DRAIN FILTRATION UNIT AND SUMP PUMP PER MECHANICAL PLANS.
- ⑨ INSTALL 3" STORM DRAIN FORCE MAIN (PIPE MATERIAL PER MECHANICAL PLANS).
- ⑩ PROTECT IN PLACE EXIST. IMPROVEMENT.
- ⑪ CONSTRUCT STEPS (7" RISE, 11" RUN) WITH HANDRAILS PER LANDSCAPE ARCHITECT
- ⑫ CONSTRUCT SCREEN WALL PER LANDSCAPE ARCHITECT'S PLANS.
- ⑬ INSTALL GATE PER LANDSCAPE ARCHITECT'S PLANS.
- ⑭ CONSTRUCT PLANTER WALLS PER LANDSCAPE ARCHITECT PLANS.



### • PRECISE GRADING PLANS • SHEET 4

EXHIBIT # 4  
PAGE 2 OF 2  
TRACT 2  
LOT 10



#### PRECISE GRADING CONSTRUCTION NOTES

- ① — CONSTRUCT 5" THICK CONCRETE DRIVEWAY WITH #4 BARS AT 16"
- ② — CONSTRUCT RETAINING WALL PER SEPARATE PERMIT.
- ③ — INSTALL AGO TRENCH DRAIN K-100S WITH AGO PERFORATED GRAI FINISH MATERIAL—EITHER GALVANIZED STEEL, STAINLESS STEEL, C
- ④ — INSTALL 6" DIA. P.V.C. SDR-35 STORM DRAIN PIPE.
- ⑤ — INSTALL 12"x12" AREA DRAIN BY NDS PER DETAIL ②
- ⑥ — CONSTRUCT 5" THICK CONCRETE HARDSCAPE WITH #4 BARS AT 1
- ⑦ — CONSTRUCT PRIVATE DRAIN THROUGH CURB PER CITY OF NEWPOR
- ⑧ — INSTALL STORM DRAIN FILTRATION UNIT AND SUMP PUMP PER MEI
- ⑨ — INSTALL 3" STORM DRAIN FORCE MAIN (PIPE MATERIAL PER MECH
- ⑩ — PROTECT IN PLACE EXIST. IMPROVEMENT.
- ⑪ — CONSTRUCT STEPS (7" RISE, 11" RUN) WITH HANDRAILS PER LAN
- ⑫ — CONSTRUCT SCREEN WALL PER LANDSCAPE ARCHITECT'S PLANS.

# PLANS RECEIVED 2/1/07

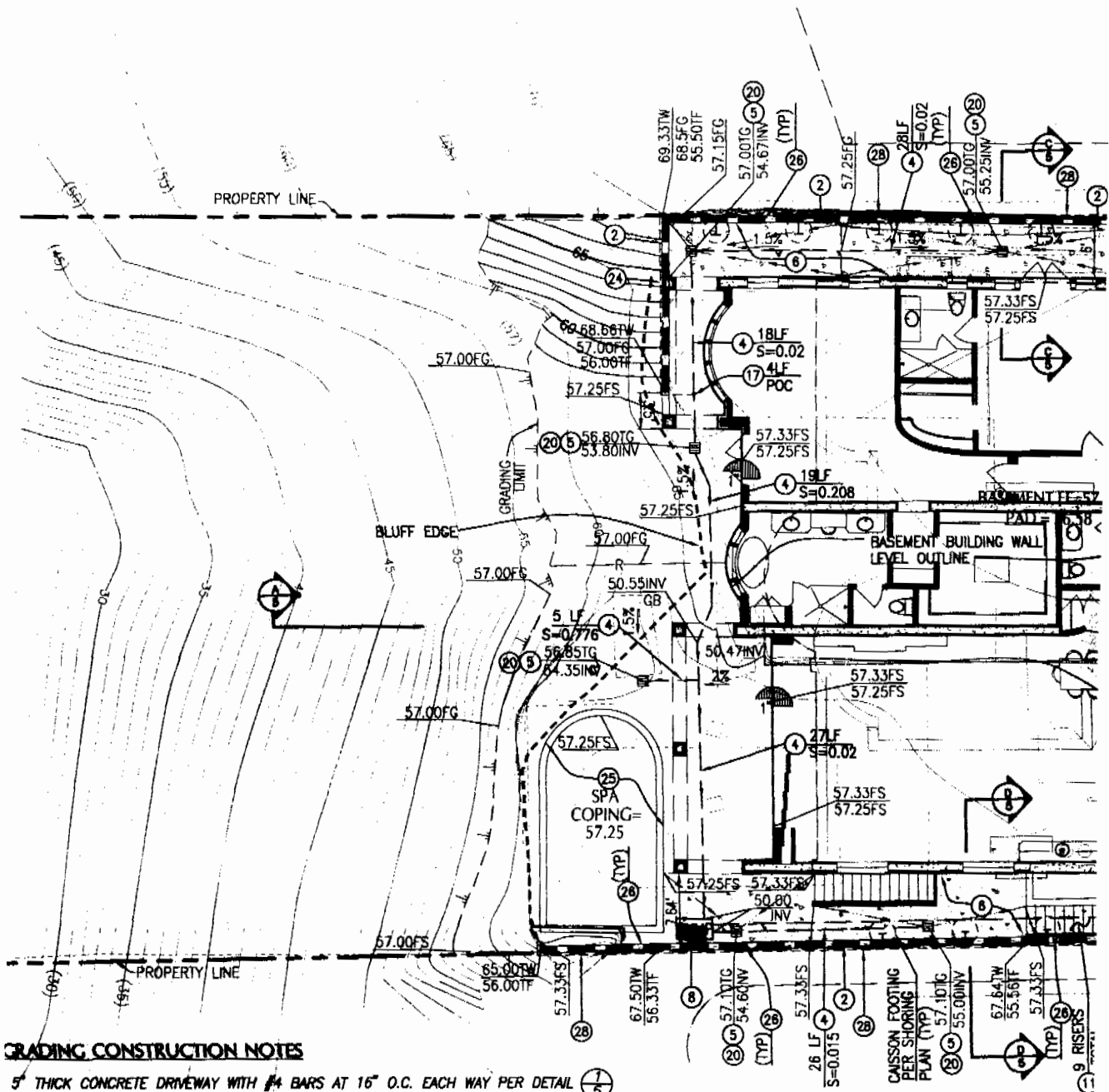
## •PRECISE GRADING PLANS•

COASTAL COMMISSION

**SHEET 3**

EXHIBIT # **5**  
TRACT #116  
PAGE **105** OF **2**

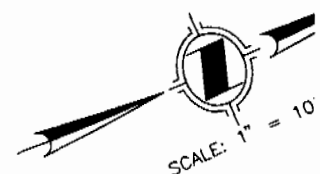
EXIST. SINGLE FAMILY DW



### GRADING CONSTRUCTION NOTES

- 5" THICK CONCRETE DRIVEWAY WITH #4 BARS AT 16" O.C. EACH WAY PER DETAIL (5)
- RETAINING WALL PER STRUCTURE PLANS.
- 3. TRENCH DRAIN K-100S WITH ACO-PERFORATED GRATING (ARCHITECT TO SPECIFY GRATE MATERIAL--EITHER GALVANIZED STEEL, STAINLESS STEEL, OR BRASS) OR APPROVED EQUAL DIA. P.V.C. SDR-35 STORM DRAIN PIPE.
- \*X12" AREA DRAIN BY MDS PER DETAIL (5)
- 5" THICK CONCRETE HARDSCAPE WITH #4 BARS AT 16" O.C. EACH WAY PER DETAIL (5)
- PRIVATE DRAIN THROUGH CURB PER CITY OF NEWPORT BEACH STD-184-L
- ORM DRAIN SUMP PUMP PER MECHANICAL AND PLUMBING ENGINEERS.
- DUCTILE IRON PIPE STORM DRAIN FORCE MAIN.
- V PLACE EXISTING IMPROVEMENT.
- " STEPS (7" RISE, 11" RUN) WITH HANDRAILS PER LANDSCAPE ARCHITECT'S SPECIFICATION.
- " SCREEN WALL PER LANDSCAPE ARCHITECT'S PLANS.
- ITE PER LANDSCAPE ARCHITECT'S PLANS.
- T PLANTER WALLS PER LANDSCAPE ARCHITECT PLANS.
- T 60" HIGH FENCE PER LANDSCAPE ARCHITECT'S PLANS.

TRACT 116  
LOT 103  
EXIST. SINGLE FAMILY



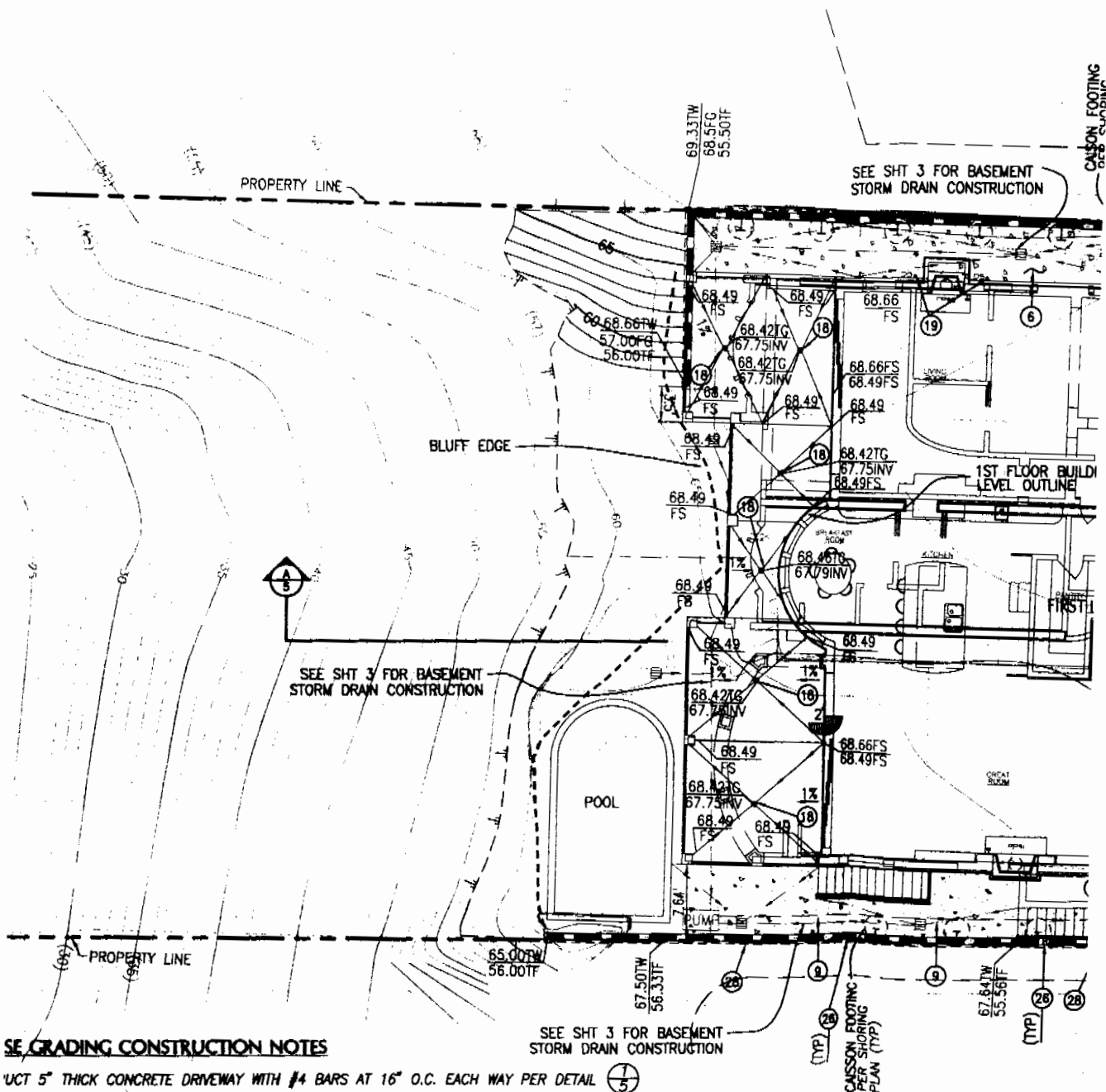
# PLANS RECEIVED 2/1/07

## • PRECISE GRADING PLANS •

COASTAL COMMISSION

SHEET 4

TRACT # 1115  
LOT 105  
PAGE 2 OF 2



### SE GRADING CONSTRUCTION NOTES

- 1. UCT 5" THICK CONCRETE DRIVEWAY WITH #4 BARS AT 16" O.C. EACH WAY PER DETAIL (5)
- 2. UCT RETAINING WALL PER STRUCTURE PLANS.
- 3. ACO TRENCH DRAIN K-100S WITH ACO PERFORATED GRATING (ARCHITECT TO SPECIFY GRATE MATERIAL--EITHER GALVANIZED STEEL, STAINLESS STEEL, OR BRASS) OR APPROVED EQUAL.
- 4. 6" DIA. P.V.C. SDR-35 STORM DRAIN PIPE. (5)
- 5. 12"X12" AREA DRAIN BY NDS PER DETAIL (5)
- 6. UCT 5" THICK CONCRETE HARDSCAPE WITH #4 BARS AT 16" O.C. EACH WAY PER DETAIL (5)
- 7. UCT PRIVATE DRAIN THROUGH CURB PER CITY OF NEWPORT BEACH STD-184-L.
- 8. 1. STORM DRAIN SUMP PUMP PER MECHANICAL AND PLUMBING ENGINEERS.
- 9. 1. 3" DUCTILE IRON PIPE STORM DRAIN FORCE MAIN.
- 10. CT IN PLACE EXISTING IMPROVEMENT.
- 11. UCT STEPS (7" RISE, 11" RUN) WITH HANDRAILS PER LANDSCAPE ARCHITECT'S SPECIFICATION.
- 12. UCT SCREEN WALL PER LANDSCAPE ARCHITECT'S PLANS.
- 13. 1. GATE PER LANDSCAPE ARCHITECT'S PLANS.
- 14. UCT PLANTER WALLS PER LANDSCAPE ARCHITECT PLANS.
- 15. UCT 60" HIGH FENCE PER LANDSCAPE ARCHITECT'S PLANS.
- 16. 1. STORM DRAIN THROUGH TYPE 1 PER CITY OF NEWPORT BEACH STD-162-L.

TRACT # 1115  
LOT 105

