

CALIFORNIA COASTAL COMMISSION

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Staff: Gabriel Buhr-LB
Staff Report: January 15, 2007
Hearing Date: February 6-8, 2008
Commission Action:

F10a**STAFF REPORT: MATERIAL AMENDMENT****AMENDMENT
APPLICATION No.:**

5-99-206-A5

APPLICANT:

Greg Burden

AGENT:

Carlton Graham

PROJECT LOCATION:2565 Riviera Drive, City of Laguna Beach
(previously referred to as Parcel 1 and 2)

DESCRIPTION OF CURRENT AMENDMENT #5: Construction of a new 5,644 square-foot, one-story, single family residence with a 2,188 square foot basement storage/mechanical area, a detached 633 square-foot second residential unit, and two detached garages totaling 2,483 square-feet on a 44,764 square-foot, vacant, bluff top lot. The proposed project also includes a lot line merger of Parcel 1 and Parcel 2 into one lot.

DESCRIPTION OF ORIGINAL COASTAL DEVELOPMENT PERMIT: Subdivision of a single 2.04 acre parcel into three parcels of: 0.59 acres/25,482 square-feet (Parcel 1), 0.45 acres/19,776 square feet (Parcel 2) and 1.00 acres/43,560 square feet (Parcel 3).

DESCRIPTION OF AMENDMENT #1: Public sewer relocation and driveway construction.

DESCRIPTION OF AMENDMENT #2: Reduction in minimum bluff edge setback from 40 feet to 25 feet on Parcel 3 and a minor lot line adjustment to modify the size of each parcel.

DESCRIPTION OF AMENDMENT #3: Combined drainage plan for parcels 1, 2, and 3 (not approved).

DESCRIPTION OF AMENDMENT #4: Construction of a new 13,278 square foot, three level, single family residence with 5,032 square foot basement storage/mechanical area and an attached 1,159 square foot garage on a vacant, bluff top lot.

LOCAL APPROVALS RECEIVED: City of Laguna Beach Approval in Concept dated November 14, 2007.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-99-206 (Smith and Swinden); City of Laguna Beach Local Coastal Program (used as guidance in this area of deferred certification).

EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map
3. Site Plan
4. Elevations
5. Lot Line Adjustment

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed coastal development permit amendment with **ten (10)** special conditions. The special conditions would: **1)** clarify that all conditions imposed under the original permit and previous amendments remain in effect unless modified by this amendment or previous Commission approved amendments; **2)** require a construction phase erosion control/water quality management plan; **3)** require conformance with the Water Quality Management Plan already submitted; **4)** require a pool leak prevention and monitoring plan; **5)** conformance with the landscape plan already submitted; **6)** require conformance to geotechnical recommendations; **7)** require that future on-site development require an amendment to this permit; **8)** prohibit future shoreline/bluff protective devices; **9)** require that the applicant assume the risk of development; and, **10)** requires the recordation of a deed restriction reflecting the above restrictions on the property. The special conditions are necessary to bring the proposed development into conformance with the geologic stability, water quality, and shoreline protection policies of the Coastal Act.

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.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The project is a substantial change from that previously approved. Therefore, pursuant to Section 13166 of the Commission's regulations, the Executive Director is referring this application to the Commission.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-99-206 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the 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 TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD CONDITIONS

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

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

III. SPECIAL CONDITIONS

1. Conditions Imposed Under Original

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-99-206 remain in effect. If the specifications of any plans approved to comply with permit 5-99-206 are inconsistent with either the project description submitted with this amendment or the conditions imposed by this amendment, the applicant shall submit new plans to the Commission, for the review and approval of the Executive Director, that are consistent with the terms and conditions of this permit as modified by this amendment 5-99-206 A5.

2. Construction Best Management Practices

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

- Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction.
- Reasonable and prudent measures shall be taken to prevent all discharge of fuel or oily waste from heavy machinery or construction equipment or power tools into areas subject to runoff into the storm drains. The applicant and applicant's contractors shall have adequate equipment available to contain any such spill immediately.
- All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain, and shall not be stored in contact with the soil.
- All debris and trash shall be disposed of in the proper trash and recycling receptacles at the end of each construction day.
- All storm drain inlets and catch basin shall be protected by sand bags and/or straw waddles during construction.

3. Water Quality Management Plan

- A. The applicant shall conform to the water quality management plan produced by by Toal Engineering Inc. and dated December 13, 2007 detailing that roof drainage and runoff from all impervious areas will be directed to landscaped areas and permeable paving to allow for natural percolation where possible, while remaining runoff will be directed to a sump and filter system before being discharged to the public storm drain system.
- B. The permittee shall undertake development in accordance with the final plan. Any proposed changes to the final plan shall be reported to the Executive Director. No changes to the final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Pool Leak Prevention & Monitoring Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of final pool plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed swimming pool and spa. The pool 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 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 water storage tank and 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.
- B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Landscaping Plan

- A. The applicant shall conform to the landscape plan received on November 15, 2007 showing vegetated landscaped areas consisting of native plants or non-native drought tolerant plants, which are non-invasive. Local native plant stock shall be used if available. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), 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. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). Existing vegetation that does not conform to the above requirements shall be removed.
- B. No permanent in-ground irrigation systems shall be installed on site. Temporary above ground irrigation is allowed to establish plantings.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Conformance of Design and Construction Plans to Geotechnical Information

- A. All final design and construction plans, including grading, foundations, site plans, elevation plans, and drainage plans, shall meet or exceed all recommendations and requirements contained in *Preliminary Geotechnical Report for New Residence, 2565 & 2575 Riviera Drive, Irvine Cove, Laguna Beach, CA 92651* prepared by Borella Geology Inc. dated July 10, 2006.
- B. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.]
- 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 of this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Future Development

This permit amendment is only for the development described in coastal development permit amendment 5-99-206-A5. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by the coastal development permit amendment 5-99-206-A5. Accordingly, any future improvements to the structures authorized by this permit amendment shall require an amendment to permit 5-99-206 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. No Future Shoreline/Bluff Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of him/herself and all other successors and assigns, that no shoreline/bluff protective device(s) shall ever be constructed to protect the development at the subject site approved pursuant to Coastal Development Permit Amendment No. 5-99-206-A5 including future improvements, in the event that the property is threatened with damage or destruction from bluff and slope instability, erosion, landslides or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of him/herself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of him/herself and all successors and assigns that the landowner shall remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that any portion of the development is destroyed, the permittee 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.

- C. In the event the edge of the bluff recedes to within ten (10) feet of the principal residence but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the residence are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without shore or bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

9. Assumption of Risk, Waiver of Liability and Indemnity

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

10. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, 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 amendment 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 amendment. 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 amendment shall continue to restrict the use and enjoyment of the subject property so long as either this

permit amendment or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Amendment Project Description

The applicant is proposing to amend coastal development permit 5-99-206 to allow the construction of a single family residence on two of the three lots (parcel 1 and 2) created by the subdivision approved under coastal development permit 5-99-206. The proposed amendment would also merge these two lots (parcel 1 and 2) together. The merged subject lot will be 44,764 square feet. The proposed single family residence will be a 5,644 square foot, one level, single family residence with an additional 2,188 square foot basement storage/mechanical area, a 633 square foot detached second residential unit, and two detached garages totaling 2,483 square feet on a vacant, bluff top lot. The height of the proposed structure above the curb of the frontage road is approximately 8 feet.

The site is located in the R-1 Residential Low Density Zoning District. However, this designation has not been certified by the Commission. The site is a vacant sloping parcel bound to the north, west and east by residential development and to the south by a coastal bluff and the Pacific Ocean.

The subject site is located between the first public road and the sea on Riviera Drive in the private community of Abalone Point, which is located within the Irvine Cove area of deferred certification within the City of Laguna Beach, County of Orange.

B. Description of Project Originally Approved and Subsequent Amendments

ORIGINAL PROJECT DESCRIPTION: Approval of the original coastal development permit allowed the subdivision of a single 2.04 acre parcel into three parcels of: 0.59 acres/25,482 square-feet (Parcel 1), 0.45 acres/19,776 square feet (Parcel 2), and 1.00 acres/43,560 square feet (Parcel 3) for future residential development. No construction was included in the original coastal development permit.

Approval of original permit was subject to five (5) special conditions: 1) establishment of a setback from the bluff edge for all development, ranging from 40 to 25 feet inland from the bluff edge; 2) prohibition of future shoreline protection devices and the recordation of a deed restriction reflecting this prohibition; 3) recordation of an Assumption of Risk deed restriction; 4) incorporation of drainage and run-off control measures necessary to minimize potential adverse effects on blufftop stability and the recordation of a deed restriction reflecting this requirement; and, 5) imposition of landscaping requirements necessary to reduce adverse visual and geologic impacts and adverse impacts to environmentally sensitive habitat areas through the spread of non-native invasive plant species.

DESCRIPTION OF AMENDMENT #1: Public sewer relocation and driveway construction. The amendment allowed the existing sewer line to be relocated to a more inland location across the

three parcels that were approved under the original CDP. The relocation of the sewer line minimizes potential hazards associated with development sited near the bluff edge. The driveway construction that was approved under this amendment allows the removal of a long, meandering driveway or access road that runs parallel to the frontage street (Riviera Drive) and continues down to a private community beach house located below the subject site (not a part of the subdivision approved by CDP 5-99-206). As reconstructed, the driveway takes more direct access from the frontage street. The relocation of the access road allows accommodation of individual driveway access from Riviera Drive to the parcels created by the subdivision approved under CDP 5-99-206.

DESCRIPTION OF AMENDMENT #2: Reduction in minimum bluff edge setback from 40 feet to 25 feet (to apply to future development) at Parcel 3 of Parcel Map # 98-212. The Commission's original approval imposed a minimum 40 foot bluff edge setback for a portion of parcel 3 between the western property line and the midpoint of the promontory between parcels 1 and 3, and a minimum setback of 25 feet from the bluff edge for the remainder of the site. In approving the original CDP, the Commission recognized that a lesser setback may be appropriate if evidence is provided that the long-term stability of the area subject to the 40 foot setback is comparable with the stability of the eastern portion of the property. Such evidence was submitted to the satisfaction of the Commission, and the required minimum setback was reduced accordingly.

DESCRIPTION OF AMENDMENT #3: Combined drainage plan for parcels 1, 2, and 3 as required in Special Condition No. 4 of the original CDP to address site drainage if proposed over the bluff face. Amendment request No. 3 is currently incomplete and will become moot if the drainage is directed onto the street rather than over the bluff face, as is the case in the proposed development and in Amendment #4.

DESCRIPTION OF AMENDMENT #4: Construction of a new 13,278 square foot, three level, single family residence with 5,032 square foot basement storage/mechanical area and an attached 1,159 square foot garage on a 43,560 square foot vacant lot (Parcel 3 of parcel Map # 98-212).

C. Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

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

New development on vacant parcels has the potential to adversely impact coastal water quality through the increase of impervious surfaces, increase of runoff, erosion and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources. Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be maintained and, where feasible, restored. The proposed project includes development of four buildings totaling a building footprint of 10,948 square feet, as well as associated hardscape and driveway areas. Thus, the proposed development will result in an increase in impervious area, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters and reduce the optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource polices of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs.

The original underlying Coastal Development Permit 5-99-206 included a Special Condition (4) that addressed future drainage and runoff control measures. Specifically it required that:

- (1) Discharge runoff from all roofs, patios, driveways and other impervious surfaces and slopes constructed on the site shall be collected and conveyed directly to the street by pipe.*

The applicant has submitted a proposed Water Quality Management Plan (WQMP) for the project site. The WQMP includes measures to improve infiltration on-site to reduce runoff amounts

including sod roofs for the two separate garage buildings totaling 2,483 square feet and the installation of permeable driveway and walkway surfaces. The WQMP also proposes to collect all runoff from rooftops and other impermeable surfaces on-site and direct the runoff to a collection basin where it will be filtered before being discharged into the public storm drain system. No runoff will be directed over the bluff face. The plan also contains instructions for the maintenance and monitoring of the installed drainage control devices. As designed, the submitted WQMP will reduce the impacts that the increased impervious surfaces will have on the water quality of the runoff from the subject site, and the Commission imposes **Special Condition 3** to ensure that the development conforms to the submitted WQMP for the subject property.

Interim erosion control measures implemented during construction will minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction. Therefore a **Special Condition 2** is imposed which requires that interim erosion control and construction BMPS to be incorporated during construction.

As conditioned, the Commission finds that the proposed development conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

D. Blufftop Development

Section 30253 of the Coastal Act states:

New development shall:

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

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

Section 30251 of the Coastal Act states that:

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

The subject site is a gently sloping blufftop parcel. The bluff top portion of the site has a relief of approximately 40 feet and is adjacent to an approximately 60 foot high coastal bluff. Development on a coastal bluff is inherently risky. In previous actions on this permit the Commission has imposed a minimum setback of 25 feet from the bluff edge and found that a stringline setback was not applicable at the subject site.

Section 30253 of the Coastal Act requires that risks and geologic instability be minimized. Setting development back from the edge of the bluff can substantially decrease risk because the further from the bluff edge development is located, the less likely it is that that development may become jeopardized. Likewise, setbacks decrease the likelihood of geologic instability. The added weight of development, watering or irrigating plants, and human activity closer to the bluff edge can all increase the rate of erosion and bluff retreat. Thus, by reducing these factors bluff stability can be increased. In addition, Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be protected. Setting development further back from the edge of the coastal bluff decreases the project's visibility from the beach below and as seen from the water. For these reasons, the Commission typically imposes some type of bluff top set back. The edge of the bluff at this site was determined by the Commission at the time the underlying subdivision was approved.

In the project vicinity, the Commission typically imposes a minimum bluff top setback of 25 feet from the edge of the bluff. The intent of the setback is to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff erosion rates as a result of rising sea level. The geotechnical information submitted with the proposed amendment indicates that a 25 foot setback is adequate to maintain stability of the site. Special Condition No. 2 of underlying coastal development permit 5-99-206 A2 states:

- A. *No Development, as defined in Section 30206 of the Coastal Act, shall occur in the designated blufftop setback area generally depicted on Exhibit 6 of the current staff report (dated January 16, 2003) and as specifically defined as follows:*
 - (1) *The areas on all three parcels subject to this permit between (a) the bluff edge, as identified on Parcel Map No. 98-212 (where it is referred to as "BLUFF TOP"), and (b) the point twenty-five feet (25') landward of that bluff edge.*
- B. *Within the designated blufftop setback area, only native drought-tolerant plant species shall be allowed.*
- C. *The following development may be allowed within the setback area, if approved by the Coastal Commission or successor agency, as an amendment to this coastal development permit:*
 - (1) *Construction of the realigned sewer line.*

The proposed project conforms to the conditions imposed on the prior amendment (5-99-206-A2) in regards to the 25-foot setback from the bluff edge as determined by the Commission geologist, no development other than native, drought-tolerant vegetation is proposed within the setback area. All of the development proposed in the project, including the residence, garages, pool and spa, is located outside of the established 25-foot setback area from the bluff edge. As conditioned the Commission finds that the proposed development is consistent with requirements of Sections 30251 and 30253 of the Coastal Act that hazards be minimized and that coastal views be protected.

To evaluate the feasibility of residential development at the subject site, the applicant commissioned a geotechnical investigation by Borella Geology, Inc. The scope of the investigation involved review of previous research and surface mapping; site reconnaissance; excavation of seven backhoe trenches ranging from 1.5 to 13 feet in depth; laboratory testing of site materials; and analysis of the exploration and laboratory data to develop recommendations pertaining to use of the site, bluff stability and grading. The following report was prepared for the subject site: *Preliminary Geotechnical Report for New Residence, 2565 & 2775 Riviera Drive*, prepared by Borella Geology, Inc. and dated July 10, 2006.

The geotechnical consultant has found that the subject site is suitable for the proposed development provided the recommendations contained in the geotechnical information prepared by the consultant are implemented in design and construction of the project. In order to assure that risks are minimized, the geotechnical consultant's recommendation should be incorporated into the design of the project. As a condition of approval **Special Condition 6** requires the applicant to submit plans, including grading and foundation plans, indicating that the recommendations contained in the aforementioned geotechnical report have been incorporated into the design of the proposed project.

Future Protective Device

The subject site is a bluff top ocean front lot. In general, bluff top lots are inherently hazardous. It is the nature of bluffs, and especially ocean bluffs, to erode. Bluff erosion 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 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 (e.g. coastal development permit files 5-99-332 A1 (Frahm); P-80-7431 (Kinard); 5-93-254-G (Arnold); 5-88-177(Arnold)). In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff erosion on a particular site may take place, and cannot predict if or when a residence or property may be come endangered.

Section 30253 of the Coastal Act requires 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.

The Coastal Act limits construction of these protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for residential development only for existing principal structures. The construction of a shoreline protective device to protect a new residential development would not be

required by Section 30235 of the Coastal Act. In addition, the construction of a shoreline protective device to protect new residential development would conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including coastal bluffs which would be subject to increased erosion from such a device.

No shoreline protection device is proposed. The proposed development includes construction of a new single family residence, which constitutes new development for the purposes of Sections 30235 and 30253. Because the proposed project is new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site is stable, that the project should be safe for the life of the project, and that no shoreline protection devices will be needed. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, as stated above, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices. Therefore, the Commission imposes **Special Condition 8** which prohibits the applicant and their successors in interest from constructing shoreline/bluff protective devices to protect the proposed development and requiring that the applicant waive, on behalf of itself and all successors and assigns, any right to construct protective devices for the proposed project that may exist under 30235.

Assumption of Risk

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. The site is an oceanfront, bluff top lot, which is inherently hazardous. Given that the applicant has chosen to implement the project despite potential risks from bluff erosion and landslide, the applicant must assume the risks. Therefore, the Commission imposes **Special Condition 9** requiring the applicant to assume the risk of the development. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, **Special Condition 10** requires a deed restriction including all conditions placed on the project be recorded. The deed restriction ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

Landscape and Irrigation

Another factor that can minimize the hazards inherent to bluff development is limiting the amount of water introduced to the bluff top area. In order to maximize bluff stability the amount of water introduced to the site should be minimized. Introduced water on-site can be reduced by limiting permanent irrigation systems and by directing runoff from impervious surfaces to the public storm drain system and away from the bluff face. In Special Condition 4 of the underlying Coastal Development Permit 5-99-206 the Commission addressed these measures stating:

(1) Discharge runoff from all roofs, patios, driveways and other impervious surfaces and slopes constructed on the site shall be collected and conveyed directly to the street by pipe.

(2) No in-ground irrigation systems shall be allowed. Temporary above-ground irrigation for the purpose of establishing vegetation is allowed.

The proposed landscape and irrigation plans do not include permanent, in-ground irrigation, and all runoff will be collected and discharged to the public storm drain system after being filtered on-site. Temporary irrigation is allowed to establish plantings. The Commission imposes **Special Condition 5** to ensure that the applicant follow the landscape plan received on November 15, 2007 depicting that all irrigation on-site will be temporary and above-ground. Only as conditioned can the Commission find the proposed development consistent with Section 30253 of the Coastal Act which requires that hazards be minimized.

Furthermore, all plants in the landscaping plan should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

The underlying Coastal Development Permit 5-99-206 included a special condition (5) related to landscaping requirements for the subject site. The requirements include that all vegetation established within the 25-foot bluff setback zone shall consist of native, drought tolerant vegetation, and that in the landscaped portions of the front and side yards only ornamental or native, drought tolerant vegetation are permitted, non-invasive, non-native ornamental plants are permitted in above-ground planters or pots.

Invasive plants can invade an area and displace native plants, impeding restoration and preservation efforts. Seed dispersal can occur via water transport and drainage, wind, and via avian and mammalian species. 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) in their publications.

In addition, to further decrease the potential for bluff instability, deep-rooted, low water use, plants should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the bluff top. Drought resistant plantings and minimal irrigation encourage root penetration which increases bluff stability. The applicant has submitted a landscape plan (received November 15, 2007) that only includes native plants or non-native drought tolerant plants, which are non-invasive and conforms to the landscaping requirements previously placed on the original permit (5-99-206). Therefore, the Commission imposes **Special Condition 5**, which requires the applicant to comply with the submitted landscape plan. Thus, only as conditioned, is the landscape plan consistent with Section 30253 of the Coastal Act.

The proposed project includes construction of an infinity pool and spa. If water from the proposed pool and spa 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/spa 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 4**, which requires the applicants to submit a pool and spa leak prevention and monitoring plan. Only as conditioned can the proposed water tank, pool and spa be found consistent with Section 30253 which requires that risks be minimized.

Conclusion

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with Sections 30251 and 30253 of the Coastal Act which require that landform alteration be minimized, scenic coastal views be protected, and geologic stability be assured.

E. Development and Community Character

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 7**, which requires either an amendment or an additional coastal development permit from the Commission for any future improvements to the single-family residence not authorized by this permit.

F. Public Access and Recreation

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development is located between the sea and the nearest public road.

Section 30212 of the Coastal Act states, in relevant part:

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

The proposed development is located within an existing locked gate community (Abalone Point) located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. However, the proposed development, construction of a single family residence in an area inaccessible to the public, will not affect the existing public access condition. It is the locked gate community, not this residence, that impedes public access. Access is provided in the project vicinity at Crystal Cove State Park, located immediately north of the subject site. The proposed development will not create any new adverse impacts to existing public access or recreation in the area. Therefore, the Commission finds that the project is consistent with the public access and recreation policies of the Coastal Act.

G. 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 which conforms with the Chapter 3 policies of the Coastal Act.

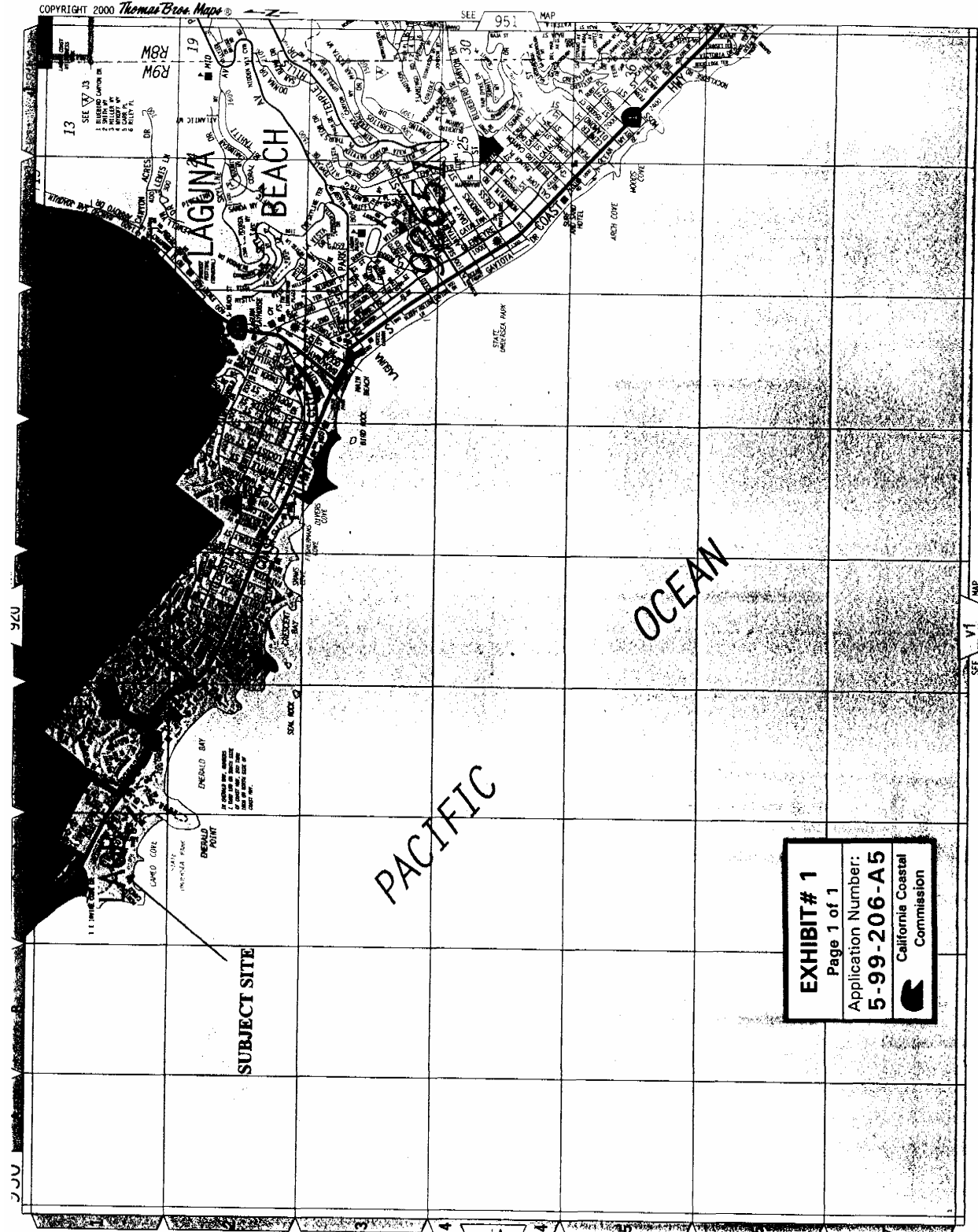
The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for four areas of deferred certification, in July 1992. In February 1993, the Commission concurred with the Executive Director's determination that the suggested modifications had been properly accepted and the City assumed permit issuing authority at that time. The subject site is located within the Irvine Cove area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as previously discussed above, the proposed development itself will not further decrease public access which is already adversely affected by the existing locked gate community. Further, the project has been found to conform to the water quality, hazard, and shoreline protection policies of the Coastal Act. Therefore, the Commission finds that approval of this project will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification.

G. California Environmental Quality Act

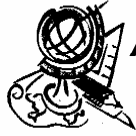
Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality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

The proposed development has been conditioned to assure that the project will not have a significant adverse impact on coastal resources, specifically, water quality and geologic hazard. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

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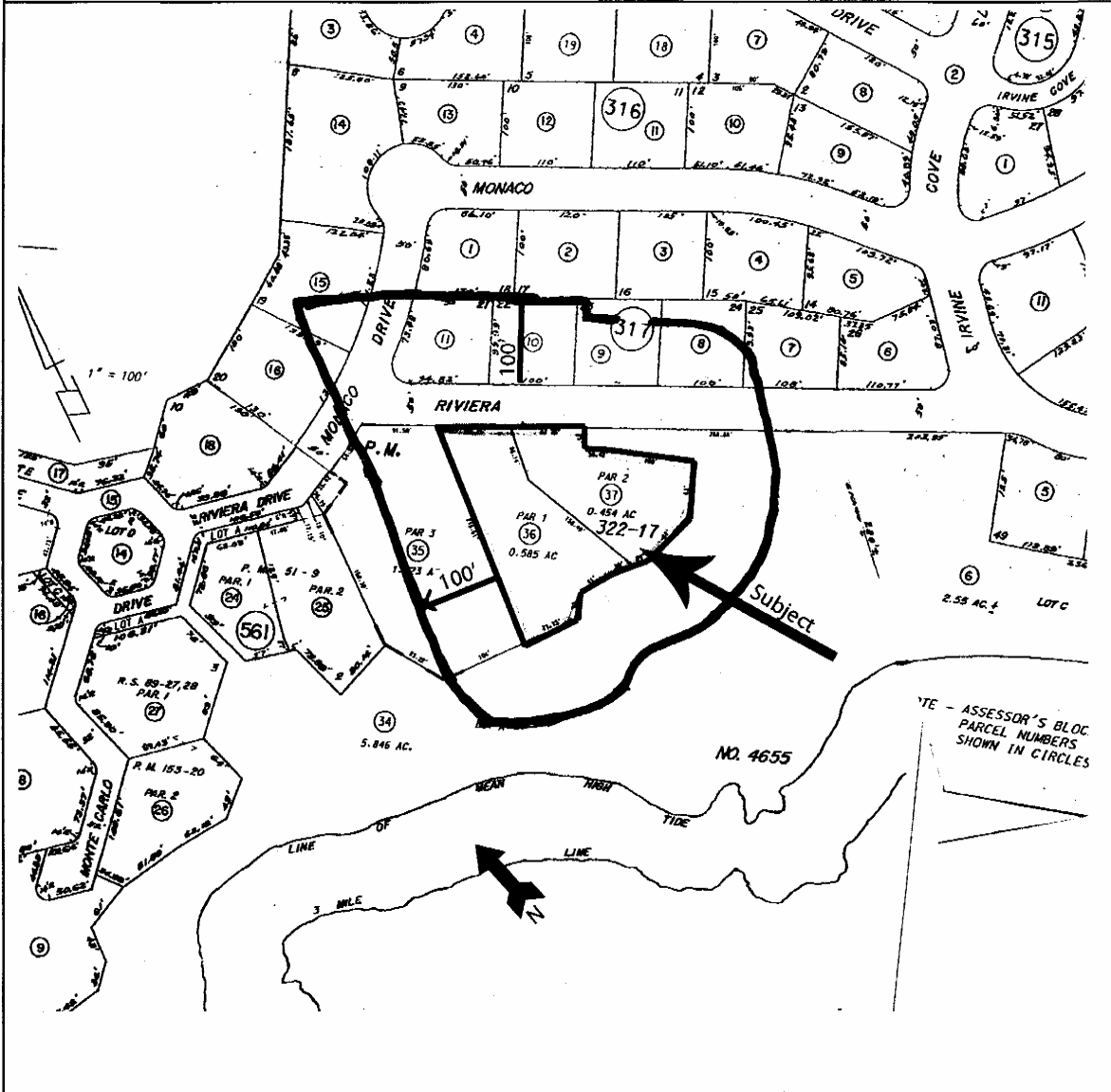


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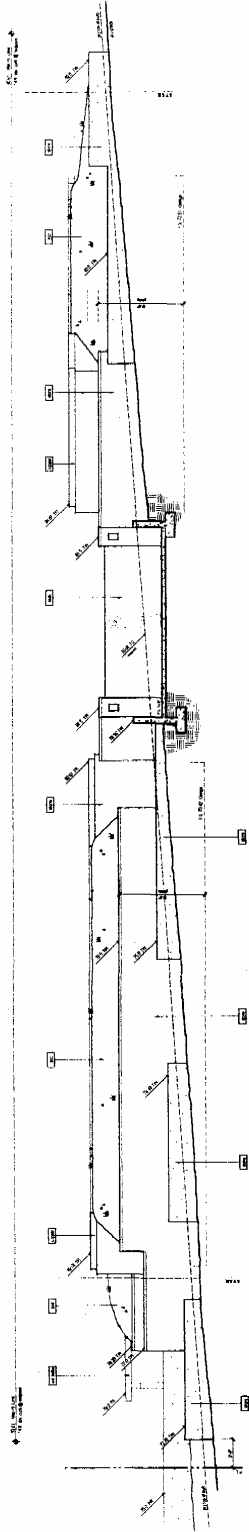
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100' Radius (excluding Roads)

Address: 2565 Riviera Drive
Laguna Beach CA 92651

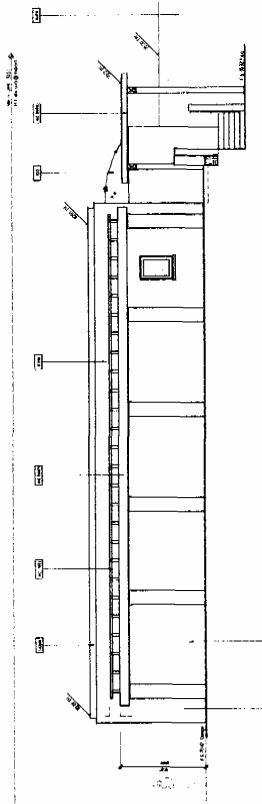


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California Coastal
Commission

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1 NORTH ELEV.



2 SOUTH ELEV.

EXHIBIT # 4
 Page 1 of 3
 Application Number:
5-99-206-A5
 California Coastal
 Commission

DATE FILED: 05/11/09
 SCALE: 1/8" = 1'-0"
 DATE: 03/10/09
 SHEET NUMBER: **A7**

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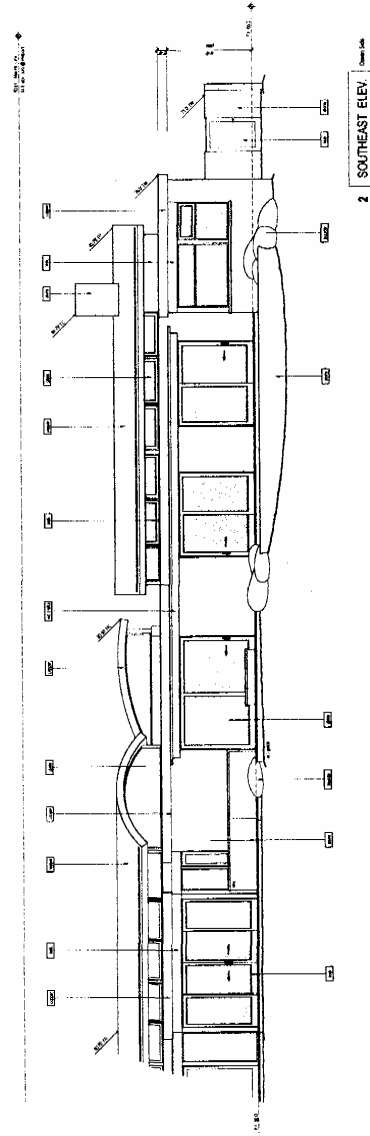
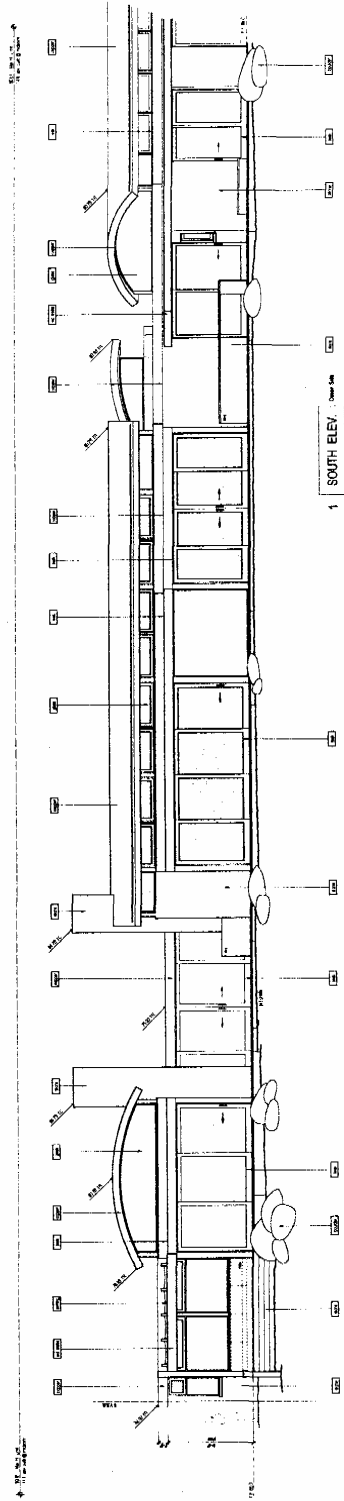


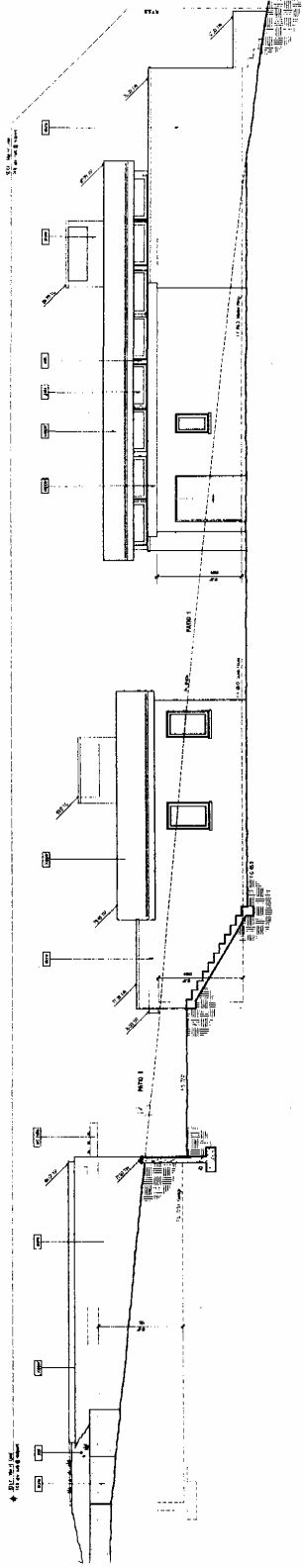
EXHIBIT # 4
 Page 2 of 3
 Application Number:
5-99-206-A5
 California Coastal
 Commission

DATE: 11/11/11
 SCALE: 1/8" = 1'-0"
 DATE: 11/11/11
 SHEET NUMBER: **A8**

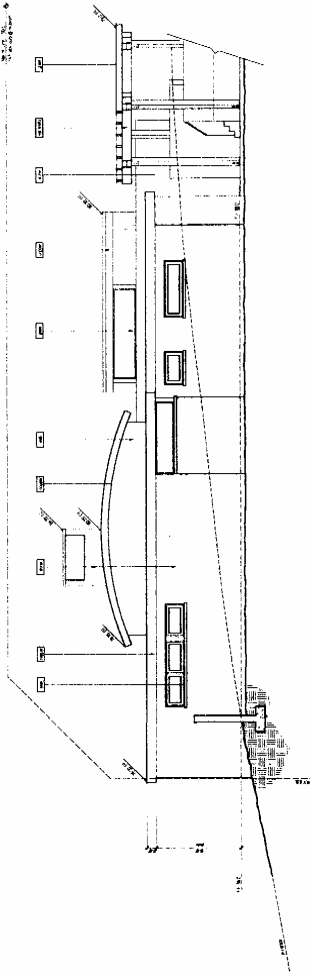
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1 WEST ELEV.



2 EAST ELEV.

EXHIBIT # 4
 Page 3 of 3
 Application Number:
5-99-206-A5
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 Commission

SHEET TITLE: Exterior Elevations
 SCALE: 1/4" = 1'-0"
 DATE: 11/17/11
 SHEET NUMBER: **A9**

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TECOLOTE

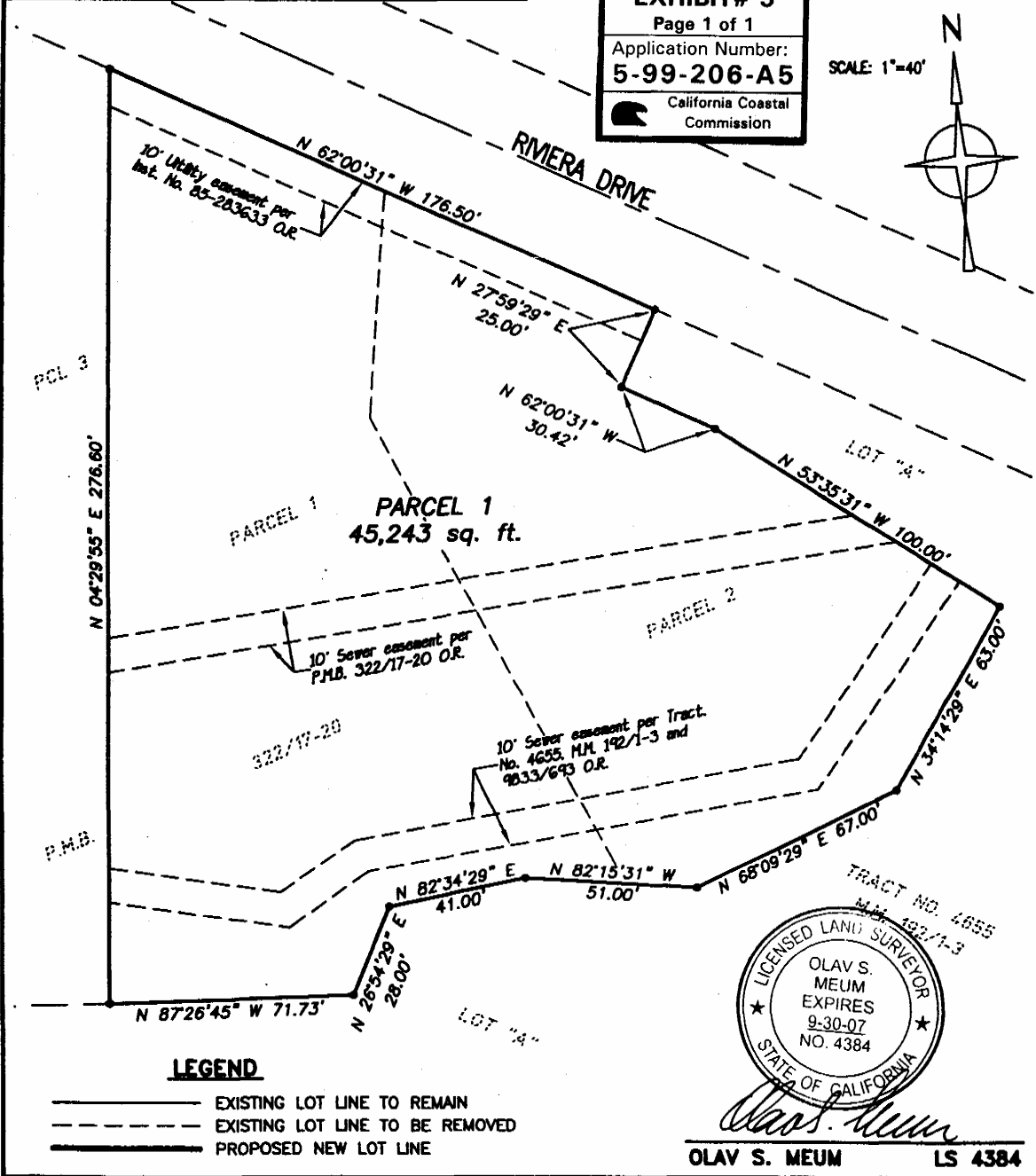
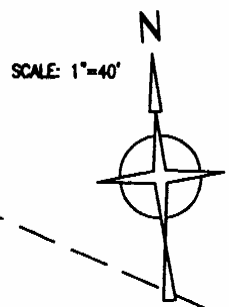
2565 Riviera Drive Laguna Beach California 92651

EXHIBIT B
LOT LINE ADJUSTMENT 06-12

(Map)

Owners	Existing Parcels AP Number	Proposed Parcels Reference Number
TECLOTE RESOURCES, INC.; GREGORY J. BURDEN, TRUSTEE OF BURDEN CHILDREN CORONA PURCHASE TRUST; CORRIDOR LAND COMPANY; GREGORY J. BURDEN, AN UNMARRIED MAN	120-561-36 & 37	PARCEL 1

EXHIBIT # 5
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 Application Number:
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 California Coastal
 Commission



Olav S. Meum
OLAV S. MEUM **LS 4384**