

CALIFORNIA COASTAL COMMISSION

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Staff: Karl Schwing-LB
Staff Report: January 17, 2008
Hearing Date: February 6-8, 2008
Commission Action:

**Item F9a****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-07-042

APPLICANTS: Philip A. Butterfield and Lynne M. Butterfield, as Co-Trustees of the Butterfield Living Trust, established April 30, 1996

AGENT: Ronald A. Zumbrun

PROJECT LOCATION: 3401 Ocean Blvd., City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Removal of a "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls and restoration of the toe of the bluff, and after-the-fact approval of gate, lattice panels and landing on the existing bluff face stairway on a beachfront lot developed with an existing residence adjacent to Corona del Mar State Beach.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed development subject to regular and special conditions. The major issue of this staff report is development on a bluff face, bluff toe and sandy beach.

Development at the subject site was last considered by the Commission in December 2001 under Coastal Development Permit application 5-01-199. The proposal at that time requested after-the-fact approval of the decorative gate, lattice panels, expanded landing and the "sand pit" area described above. The Commission approved the decorative gate and some of the lattice panels, but conditioned the approval on submission of plans showing removal of the side landing and its lattice paneling and removal of the sand pit. The applicants filed a lawsuit challenging the Commission's action. Subsequently, the parties entered into a settlement agreement to resolve the matter. The current application was submitted as a condition of the settlement agreement.

The current proposal is substantially the same as the previous proposal, except that the current application requests removal of the "sand pit" described above. The proposal relative to the decorative gate, various lattice panels, and expanded landing remain unchanged from the prior application.

Staff recommends that the Commission **APPROVE** the proposed development with three (3) special conditions requiring 1) a future development restriction, 2) compliance with a

requirement that the development proposed for removal be removed within 30 days of issuance of the coastal development permit; and 3) recordation of a generic deed restriction.

LOCAL APPROVALS RECEIVED: Approval in Concept from the City of Newport Beach and correspondence from Building Department dated May 8, 2001.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Coastal Development Permit File No.s 5-93-030 (Butterfield), 5-93-024 (Parker), and 5-89-1086 (Parker); *Geotechnical Evaluation of Removal of Existing Modular Block Wall on Stability of Existing Natural Bluff, 3401 Ocean Boulevard, Corona del Mar, California* dated January 8, 2007 by Petra Geotechnical, Inc.; *Geotechnical Investigation for Proposed Addition and Remodel to Existing Residence...* dated September 3, 1992 by Petra Geotechnical, Inc.; *Geotechnical Investigation, Proposed Residence...Revision 1*, dated February 3, 1993 by Petra Geotechnical, Inc.; *Geotechnical Report of Rough Grading...* dated September 2, 1993 by Petra Geotechnical, Inc.; and *Final Soils Report...* dated November 28, 1994 by Petra Geotechnical, Inc.

EXHIBITS:

1. Vicinity Map
2. AP Map
3. Project Plans
4. Settlement Agreement
5. Photograph

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-07-042 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. Standard Conditions:

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

III. Special Conditions:

1. Future Development Restriction

This permit is only for the development described in the permit. Because the development is located within 50 feet of a coastal bluff, the exemptions otherwise provided in Public Resources Code section 30610(b) regarding improvements to existing structures shall not apply to the development sought by Permit Application No. 5-07-042. Any future improvements to the development, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and section 13252(a)-(b) of Title 14 of the California Code of Regulations (i.e., repair or maintenance activities involving the placement or removal of solid materials or the presence of mechanized equipment or construction materials) shall require an amendment to the permit or an additional permit from the Commission or the applicable certified local government.

2. Removal of Development

Within thirty (30) days of issuance of the coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicants shall complete removal of the development identified for removal in Permit Application No. 5-07-042 and Permit No. 5-07-042. The applicants shall provide documentation for the Executive Director's review and approval demonstrating that the development has been removed.

3. Generic Deed Restriction

Within twenty (20) days of the Commission's issuance of the Notice of Intent to Issue Coastal Development Permit, or within such additional time as the Commission's Executive Director or his designee may grant for good cause, the applicants shall execute and record a deed restriction in a form and content acceptable to the Executive Director reflecting the above

restrictions on development of the property. The deed restriction shall be in substantially the form of Exhibit 4, pages 15-18 attached to the staff report dated January 17, 2008.

IV. Findings and Declarations:

The Commission hereby finds and declares as follows:

A. *Project Description, Location and Background*

1. Project Location

The proposed project is located between the first public road and the sea at 3401 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits 1 & 2). The subject site is an ocean front lot adjacent to Corona del Mar State Beach. The subject property cascades down a coastal bluff face. At the top of the coastal bluff is Ocean Boulevard and at the toe of the bluff is the sandy beach. The site is currently developed with a three-story single-family residence, attached two-car garage and decks located at the top of the bluff. The bluff face below the residence remains relatively undisturbed and vegetated, with the exception of an existing wooden stairway located along the southwestern property line. Except for the development proposed to be removed under this application, the existing development at the subject site is consistent with the pattern of development along this segment of Ocean Boulevard, with structural development sited at the top of the bluff and lesser disturbance of the bluff face (i.e. stairways only).

The subject lot is approximately 7,800 square feet in size and is designated RL (Residential - Low Density) under the City's certified Coastal Land Use Plan.

2. Project Description

The applicant is requesting approval to remove a "sand pit" cut-out, consisting of three (3) 32" high, 15' long retaining walls at the toe of the bluff. This "sand pit" area had been enclosed on the seaward side by a nautical rope attached to four (4) wooden pier posts installed in the sand. Those wooden pier posts and nautical rope have since been removed and are no longer present. As characterized by the applicant, the retaining walls located along the toe of the bluff are "*decorative, interlocking, stacking blocks*" that serve aesthetic purposes only. The walls are not designed to function as a bluff retention device. Also, as noted by the City of Newport Beach Building Department in a letter to the applicant dated May 8, 2001, the wall is "*short enough that a building permit is not required.*" The applicant is proposing to remove those walls and backfill the toe of the bluff with soil to restore the area to pre-existing contours.

The project also involves an after-the-fact request for approval of the following: 1) at the lower landing of the existing bluff face stairway (identified as "Gate A" on the applicant's plans attached as Exhibit 3 to this staff report) installation of a decorative gate (approximately 5'-3" high by 3'-3 1/2" wide) with adjacent lattice panel (5'-3" high by 3' wide) on each side of the gate to span the width of the stairway and landing; expansion of the lower landing area through installation of a side landing on the right-hand (downcoast) side of the stairway that extends over a storm drain easement located on the adjacent property (resulting in a landing that is approximately 6' 9-1/2" wide by 4' wide); and installation of additional lattice panels that enclose all sides of the expanded landing; 2) at the upper landing (identified as "Gate¹ B" on the applicant's plans

¹ The term 'gate' used in this instance by the applicant on their plans is a misnomer. There is no existing or proposed 'gate' at this location along the stairway. Only lattice panels along each side of the stairway are proposed at location "B".

attached as Exhibit 3 to this staff report) install 3' 6" long by 4' 3" tall lattice panels on each side of the stairway landing; and 3) on the uppermost portion of the stairway, install a 5' 2-1/2" tall by 10' 2" long lattice panel along the righthand (downcoast) side of the stairway (identified as "Detail C" on the applicant's plans attached as Exhibit 3 to this staff report).

3. Prior Commission Action at Subject Site

On March 18, 1993, the Commission approved CDP No. 5-93-030 (Butterfield) for the demolition of an existing single-family residence and construction of a 3231 square foot, 34 foot high at maximum point from finished grade, three-story single family residence with an attached two-car garage. Grading of 150 cubic yards of cut and 50 cubic yards of fill was also approved. This development was undertaken in 1993/1994.

Based on analysis of historical aerial photographs of the site, staff has determined that a stairway existed on the bluff slope along the eastern property line of the subject site prior to the Coastal Zone Conservation Act of 1972.

On December 11, 2001, the Commission approved Coastal Development Permit No. 5-01-199, requested by Philip A. and Lynne M. Butterfield for a decorative gate and lattice work panels on the main portion of the bluff face stairway, but conditioned its approval on submission of plans showing removal of the side landing and its lattice paneling and removal of the "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand.

The Butterfields filed an action in the Orange County Superior Court, Case No. 02CC01408, challenging the Commission's decision. The Commission and the Butterfields subsequently entered into a settlement agreement (attached as Exhibit 4) resulting in the submission of the current application (No. 5-07-042).

4. Related Commission Action in Project Vicinity

See Appendix A (Beginning on Page 12)

B. Scenic Resources

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

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

The proposed project is located along a bluff face immediately adjacent to Corona del Mar State Beach. The site is highly visible from the sandy beach. The pattern of development along this segment of Ocean Boulevard is such that structures are sited at the top of the bluff, while the bluff face remains largely undisturbed and vegetated, except for various stairways that descend the bluff face. Although several lots have stairways traversing the bluff face and some have unpermitted development on the bluff face and at the base of the bluff (currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. Development at this site must be sited and designed to be visually compatible with the undisturbed character of the surrounding area. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms.

Over the last few years there have been several development proposals the Commission has acted on along this segment of Ocean Boulevard which are detailed in Appendix A.(beginning on page 12). In general, the Commission has required that additions to homes and new homes, along with patio areas, be sited upon the upper bluff face so as to preserve the lower bluff face, bluff toe and beach and limit the line of development in order to minimize encroachment upon the beach area. In a few instances, the Commission has allowed improvements to existing stairways and pathways that descend the bluff face to the beach (e.g. approval of applications 5-01-112 (Ensign), 5-02-203 (Tabak). However, the Commission has not approved other development upon the lower bluff face, bluff toe or upon the beach (e.g. denial of applications 5-01-080 (Palermo), 5-04-339 (Palermo), 5-04-482 (McNamee), 5-01-191 (Tabak),

The applicant is requesting after-the-fact approval to carry out a minor expansion of and aesthetic improvements to the existing stairway landings and stairway, including gate replacement and lattice panel installation. The lattice design is shown in Exhibit 3. These enhancements/additions to the existing stairway don't result in disturbance to the bluff face, bluff toe or beach. The proposed stairway enhancements/additions are in keeping with other stairway/pathway improvements the Commission has authorized recently as described in the paragraph above. The Commission finds the minor expansion of the lower stairway landing, gate replacement, and lattice enclosures, and lattice paneling along the upper landing and uppermost segment of the stairway to be consistent with the scenic and visual resources policies of the Coastal Act, as they will not obstruct views to or along the shoreline and are in keeping with the pattern of development in the area.

The applicant is also requesting to remove a "sand pit" cut-out at the toe of the slope and backfill the toe of the slope to restore it to pre-existing conditions. The proposed removal of the "sand pit" cut-out will improve public views of the vegetated bluff from the adjacent public beach. Removal of that development is in keeping with the pattern of Commission approvals described above where the Commission has sought to limit development located on the lower bluff face, bluff toe and beach. The Commission finds that the proposed removal of the sand pit cut-out minimizes alteration of natural landforms, is visually compatible with the character of surrounding development and will improve the scenic and visual qualities of the subject area. As such, the proposed project is consistent with Section 30251 of the Coastal Act.

To protect the scenic and visual qualities of the coastal bluff at the location, the Commission imposes Special Condition 1. Special Condition No. 1 is a future development restriction which states that because the development is located within 50 feet of a coastal bluff, the exemptions otherwise provided in Public Resources Code section 30610(b) regarding improvements to existing structures shall not apply to the development approved by Permit No. 5-07-042. Any future improvements to the development, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and section 13252(a)-(b) of Title 14 of the California Code of Regulations (i.e., repair or maintenance activities involving the placement or removal of solid materials or the presence of mechanized equipment or construction materials) shall require an amendment to the permit or an additional permit from the Commission or the applicable certified local government. This condition ensures that development on the coastal bluff which may affect the stability or appearance of the bluff or may contribute to an adverse cumulative effect on community character, requires a coastal development permit.

Therefore, the Commission finds that, as conditioned, the development is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

C. PUBLIC ACCESS

Sections 30211 and 30212 (a) of the Coastal Act contain policies regarding public access to the shoreline. Section 30240 addresses appropriate development adjacent to a recreation area.

Section 30211 states:

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

Section 30212 (a) states, in pertinent part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected.

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.

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 project site is located on the seaward side of Ocean Boulevard, which is the first public road immediately inland of Corona del Mar State Beach. The nearest vertical public access is available at Orchid Avenue to the southeast and via the Corona del Mar State Beach parking lot to the northwest. The nearest lateral access is available directly seaward of the toe of the slope at Corona del Mar State Beach. Corona Del Mar State Beach is a public beach, which serves as a very popular visitor destination point for recreational uses. Further southeast of the project site is a bluff park known as Inspiration Point. There is also a public access way from Inspiration Point to the beach below.

As described previously, the applicant is proposing to remove a "sand pit" cut-out at the base of the bluff on private property directly adjacent to Corona del Mar State Beach. The sand-pit consists of three low block walls along the toe of the slope that prior to their removal were enclosed by a nautical rope supported by wooden pier pilings in the sand. The presence of the sand pit area discourages public use of the sandy beach directly adjacent to the enclosed area by giving the appearance of a private beach. Beach-goers are less likely to utilize a segment of the beach that is adjacent to an area that is physically restricted by private property owners. In addition, adjoining property owners may wish to construct similar private enclosures at the toe of the slope, thereby contributing to a cumulative adverse impact.

Removal of the sand pit cut-out will restore public accessibility to the beach, consistent with the public access policies of the Coastal Act. As proposed, the project is consistent with the public access and recreation provisions of the Coastal Act, specifically Sections 30211, 30212 and 30240.

D. HAZARDS

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

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

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

The proposed project involves development in two general areas: 1) upon the existing stairway that descends the bluff face from the residence to the beach; and 2) removal of the sand pit cut out at the toe of the bluff and restoration of the area to pre-existing contours.

Several geologic reports have been submitted by the applicant which provide information about geological conditions at the site (see Substantive File Documents). A report from 1993 (*Geotechnical Investigation, Proposed Residence...Revision 1*, dated February 3, 1993 by Petra Geotechnical, Inc.) describes the site as having an approximately 50-foot high slope that descends from a flat pad developed with a residence down to the sandy beach. The slope inclines at gradients ranging from 0.5:1 to 2:1 with an overall gradient of 1.5:1. That same report indicates that the geologic conditions at the site are "...favorable with respect to the overall gross stability of the site and descending slope." The 1993 report also states "...that the base of the slope is protected from wave erosion by the presence of a buffering beach and by talus deposits at the base of the slope."

The work upon the existing stairway involves the minor expansion of a walkway landing and the attachment of other wood structures (e.g. gate, lattice panels) to the existing stairway. That development will not involve any disturbance to the soils on the bluff face.

The applicant submitted a geologic letter report (*Geotechnical Evaluation of Removal of Existing Modular Block Wall on Stability of Existing Natural Bluff, 3401 Ocean Boulevard, Corona del Mar, California* dated January 8, 2007 by Petra Geotechnical, Inc.) which describes the applicant's proposal with respect to the removal of the "sand pit" cut out at the toe of the slope and provides certain recommendations. The letter report states that the block wall system will be removed by hand. Upon removal of the stacked blocks the report indicates that a 3-foot high vertical cut will be exposed along the toe of the natural bluff. The letter report recommends restoring the bluff to its natural condition by placing soil against the vertical cut at a 1.5:1 slope ratio to match adjacent topography and then allow the existing vegetation to grow over and cover the restored slope. The report concludes that "provided that the stacked block walls are

removed and the resultant vertical eliminated as described above, the natural bluff is expected to be both grossly and surficially stable and is expected to remain so provided that it is properly landscaped and maintained with time."

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

E. GENERIC 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 an additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

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

Scenic and Visual Resources, Policy 4.4.1-1 states,

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

Scenic and Visual Resources, Policy 4.4.1-3 states,

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

Natural Landform Protection, Policy 4.4.3-8 states,

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

Natural Landform Protection, Policy 4.4.3-9 states,

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

Natural Landform Protection, Policy 4.4.3-15 states,

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

Natural Landform Protection, Policy 4.4.3-17 states,

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

Public Access and Recreation, Policy 3.1.2-1 states,

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

The 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.

G. UNPERMITTED DEVELOPMENT

Development has occurred on site without benefit of the required coastal development permit, including construction of a "sand pit" cut-out at the toe of the bluff, consisting of three (3) 32" high, 15' long retaining walls enclosed by a rope attached to four wooden posts in the sand, and replacement of a decorative gate and lattice panels on the existing bluff face stairway. All work occurred either on a beach or within 50 feet of the edge of a coastal bluff. Consequently, the work that was undertaken constitutes development that requires a coastal development permit application.

The applicant has removed the wooden posts and rope and is proposing to remove the 3 fifteen foot long retaining walls that outline the "sand pit" and backfill the portion of the toe of the bluff removed to install the retaining walls to restore the area to pre-existing conditions. To ensure that the unpermitted development is removed in a timely manner consistent with the applicant's proposal, Special Condition 2 requires that the applicants remove the development that is proposed to be removed within 30 days of issuance of the coastal development permit. In addition, Special Condition 3 requires the applicants to execute and record a deed restriction reflecting the restrictions on development imposed by the Commission within twenty (20) days of the Commission's issuance of the Notice of Intent to Issue Coastal Development Permit. The Executive Director may grant additional time for both deadlines identified in the preceding sentences above for good cause.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The

certified Newport Beach Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The portion of the proposed project including the replacement of a decorative gate and lattice panels on the previously approved bluff face stairway, has been conditioned as follows to assure that the project will not have a significant adverse impact on coastal resources: 1) submittal of revised project plans showing removal of the toe of slope cut-out and new lattice paneling on the unpermitted portion of the lower stairway landing, 2) recordation of a future improvements deed restriction and 3) timely compliance with conditions of approval. The portion of the proposed project including the replacement of a decorative gate and lattice panels on the existing bluff face stairway, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no other feasible alternatives or feasible mitigation measures which would substantially lessen any significant adverse effects the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

Appendix “A”

3317 Ocean Boulevard: CDP No. 5-01-080-(Palermo)

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

3317 Ocean Boulevard: CDP No. 5-04-339-(Palermo)

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

3317 Ocean Boulevard: CDP No. 5-05-328-[Palermo]

On May 10, 2006, the California Coastal Commission granted to Salvatore Palermo Coastal Development Permit 5-05-328, subject to the standard and special conditions, for development consisting of: Construction of a new two-story, 746 square foot pool house plus pool on the bluff face. The pool house consisted of an exterior stair linking the two floors, the upper level consisted of a recreation room and exercise room, and the lower level consisted of a sun deck and a pool. Grading consisted of 888 cubic yards of cut and export to a location outside of the coastal zone. Deepened footings or a caisson foundation system were proposed to support the proposed project. A connection to an existing unpermitted stairway to the beach and modification of an existing unpermitted beach bathroom were not approved.

3329 Ocean Boulevard: CDP No. 5-04-482-[McNamee]

At the July 2005 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-04-482-[McNamee] for the after-the-fact approval of existing storage lockers; built-in barbeque and cabinets; counter with sink and cabinets; shower at stair base; thatched shade palapa with four posts; two concrete tables and benches—all located on a sandy beach and, on the bluff face, a shed with refrigerator storage and toilet and floral garden

improvements. The primary issues before the Commission were whether the development preserved scenic resources, minimized landform alteration and avoided development in hazard prone locations. The applicant was seeking after-the-fact approval of development on the sandy beach and lower bluff face/bluff toe. Along this segment of Ocean Boulevard, there is no history of Commission approval of development on the sandy beach (associated with a single-family residence). The toe of the bluff and sandy beach area are immediately inland of Corona Del Mar State Beach, which is a public beach. Thus, the development is highly visible from the public beach and other public vantage points, such as Inspiration Point. In addition, the proposed project is not needed for full use and enjoyment of the property as they have a substantial improvement in the form of a single-family dwelling on site. In denying the proposed development, the Commission found that the project, as submitted, was primarily inconsistent with the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

3335 Ocean Boulevard: CDP No. 5-04-214-[Battram]

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

3401 Ocean Boulevard: CDP NO. 5-01-199-[Butterfield]

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

3415 Ocean Boulevard: CDP No. 5-01-112-[Ensign]

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

3415 Ocean Boulevard: CDP NO. 5-05-095-[Circle]

At the October 2005 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-05-095-[Circle] for the demolition of an existing approximately 2,100 square foot, two (2) story single family residence with an attached garage and construction of a new 4,488 square foot two (2) story single-family residence with a basement and an attached 388 square foot four (4) car garage. Associated construction consisted of: a 141 square foot basement deck, a 392 square foot 1st floor deck and a 383 square foot 2nd floor deck. The foundation for the residence consisted of a caisson and deepened conventional footings system. The primary concerns before the Commission on this matter were to assure that the project conformed to the predominant line of development such that scenic resources were preserved, landform alteration was minimized and development in hazard prone locations was avoided. The Commission found that the proposed development, as conditioned, conformed to the predominant line of development and would not affect public views and would be consistent with the hazard policies of the Coastal Act. The project's proposed livable area aligned approximately with the 56-foot elevation contour line, while the basement level deck did not extend seaward from approximately 46-foot contour to the east and the approximately 50-foot contour to the west, thus the project was landward of the Tabak and Halfacre projects.

3425 Ocean Boulevard: CDP No. 5-03-100-[Halfacre]

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

also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements. No other accessory improvements were allowed below the 33-foot elevation contour upon the lower bluff face or on the sandy beach.

3431 Ocean Boulevard: CDP No. 5-01-191-[Tabak]

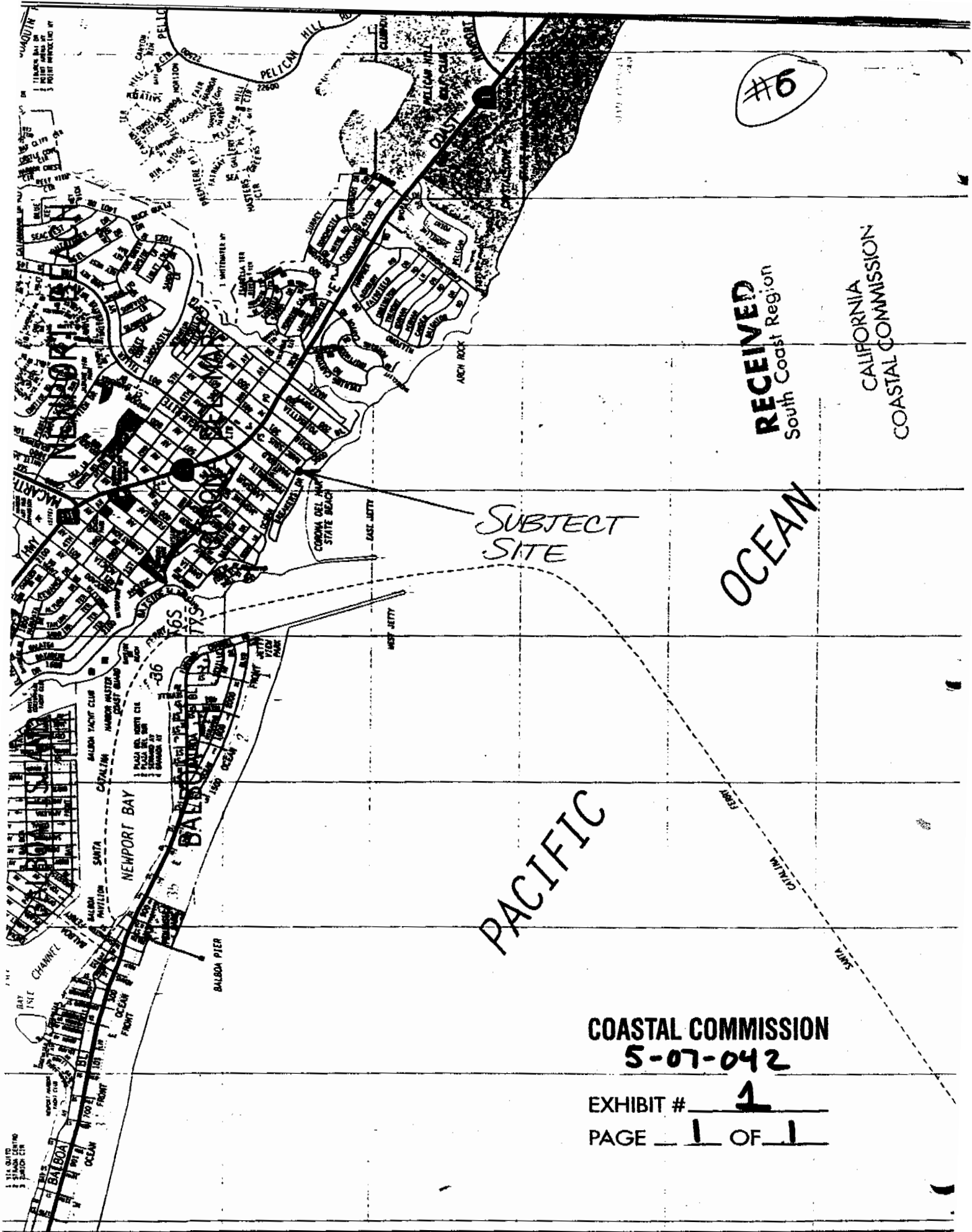
At the January 2002 Commission Hearing, the Commission denied Coastal Development Permit Application No. 5-01-191-[Tabak] for the demolition of an existing three (3) story single-family residence and construction of a new single-family residence. The proposed structure would have covered virtually the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

3431 Ocean Boulevard: CDP No. 5-02-203-[Tabak]

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

3431 Ocean Boulevard: CDP No. 5-02-203-A1-[Tabak]

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



#6

RECEIVED
South Coast Region

CALIFORNIA
COASTAL COMMISSION

SUBJECT
SITE

OCEAN

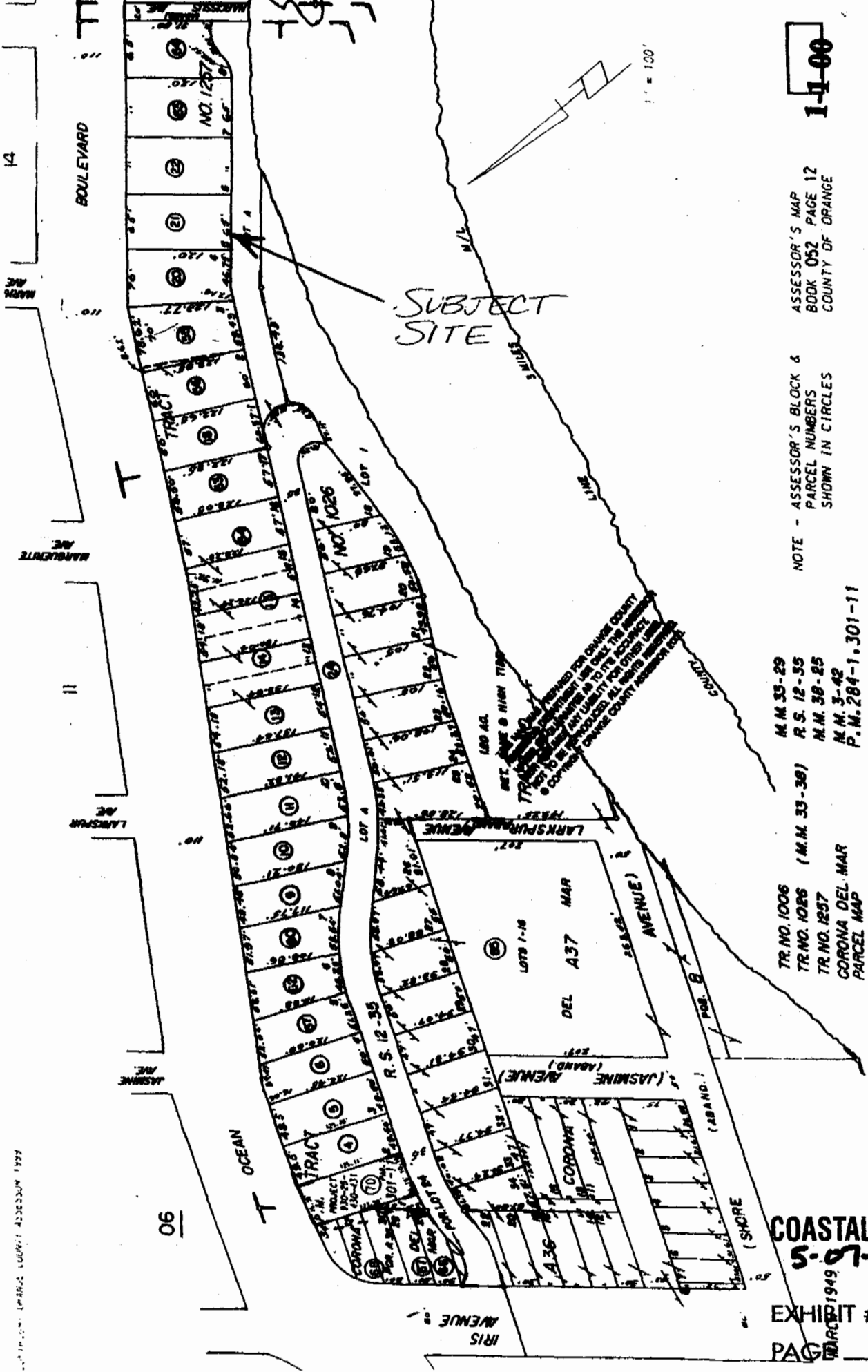
PACIFIC

COASTAL COMMISSION
5-07-042

EXHIBIT # 1

PAGE 1 OF 1

100' = 100'



COASTAL COMMIS
5-07-042
EXHIBIT # 2
PAGE 1 OF 1

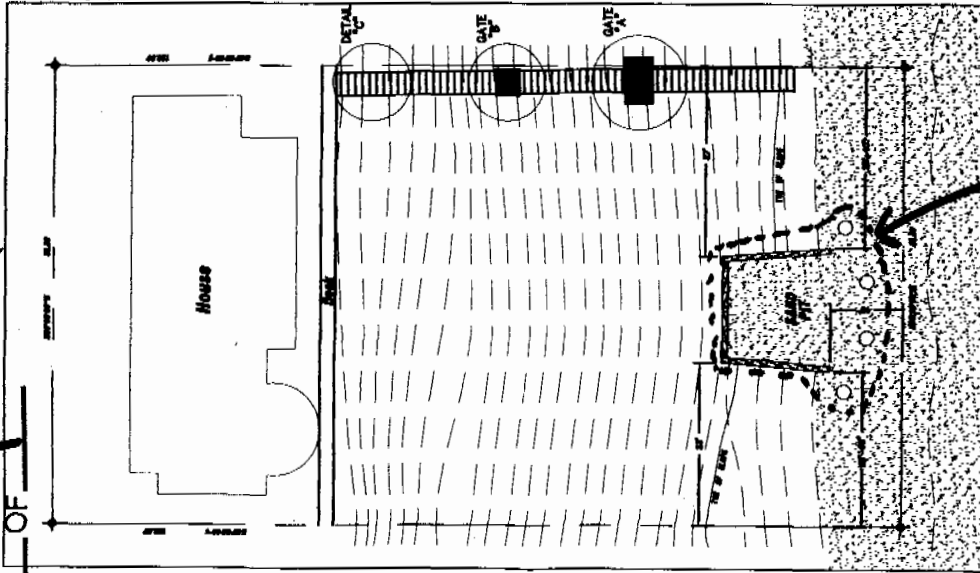
TR. NO. 1006
TR. NO. 1026
TR. NO. 1257
CORONA DEL MAR
PARCEL MAP

(M.M. 33-39)
(M.M. 33-29)
R.S. 12-35
M.M. 38-25
M.M. 3-42
P.M. 284-1,301-11

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 052 PAGE 12 COUNTY OF ORANGE

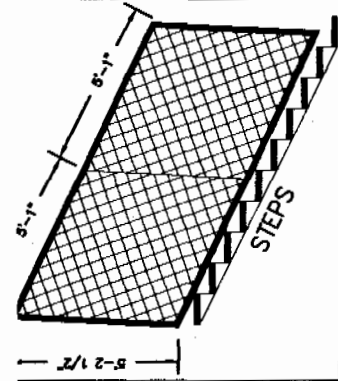
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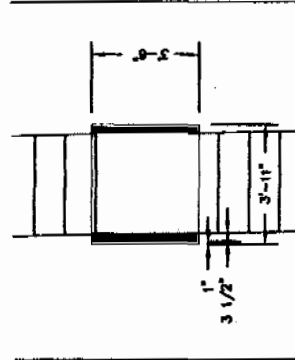
SITE PLAN
SCALE 1/4"=1'-0"

NOTICE:

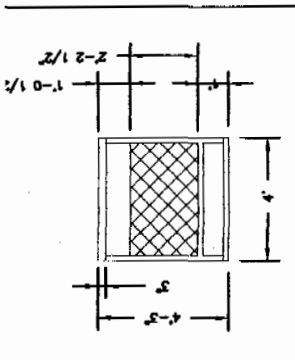
THIS DRAWING IS A REPRESENTATION OF THE BUTTERFIELD RESIDENCE. ALL DIMENSIONS AND GRAPHICS ARE APPROXIMATE LENGTH AND WIDTH. THIS DRAWING IS FOR THE SOLE PURPOSE OF THE COASTAL COMMISSIONS USE TOWARDS GRANTING AN APPROVED COASTAL DEVELOPMENT PERMIT TO



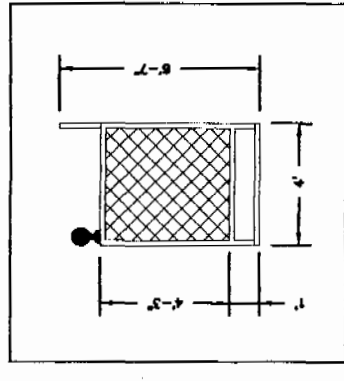
SIDE VIEW DETAIL "C"
SCALE 1/4"=1'-0"



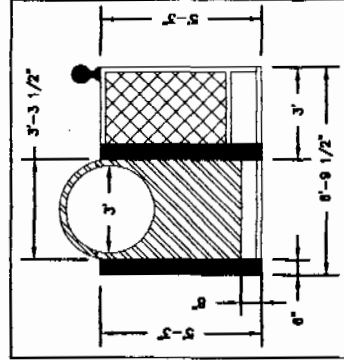
PLAN VIEW GATE "B" DETAIL
SCALE 1/4"=1'-0"



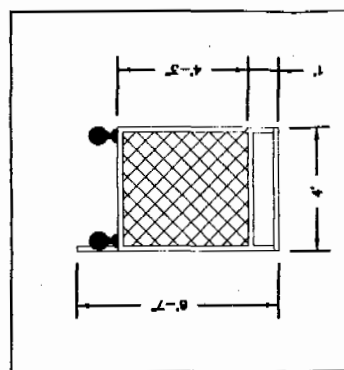
LI & RI SIDE VIEW GATE "B" DETAIL
SCALE 1/4"=1'-0"



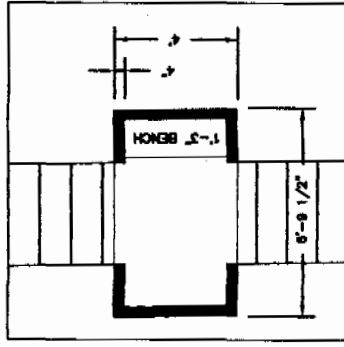
LI SIDE VIEW GATE "A" DETAIL
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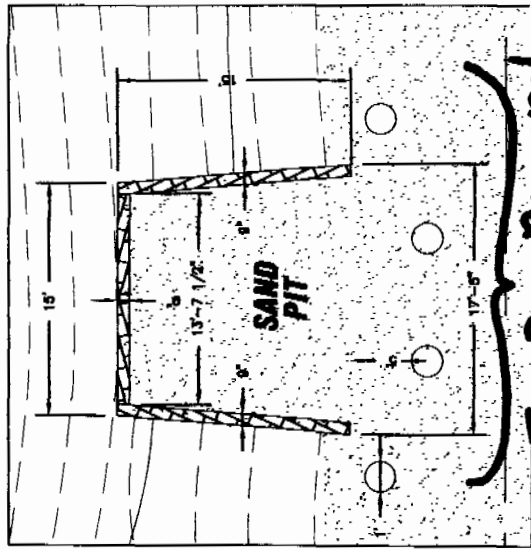
FRONT VIEW GATE "A" DETAIL
SCALE 1/4"=1'-0"



RI SIDE VIEW GATE "A" DETAIL
SCALE 1/4"=1'-0"



PLAN VIEW GATE "A" DETAIL
SCALE 1/4"=1'-0"



To Be Removed

RECEIVED

South Coast Register

NO. 456 P004

5 07 - 0 4 2
SETTLEMENT AGREEMENTCALIFORNIA
COASTAL COMMISSION

Philip and Lynne Butterfield (the Butterfields) and the California Coastal Commission (Commission) enter into this Settlement Agreement (Agreement). The Butterfields and the Commission are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party." The Butterfields and the Commission enter into this Agreement in light of the following recited facts (Recitals).

RECITALS

- A. The Butterfields own and occupy the real property located at 3401 Ocean Boulevard, Corona del Mar, California 92625 (Property).
- B. On or about May 25, 2001, the Butterfields submitted an application for a coastal development permit seeking after-the-fact approval of a "sandpit" and "stairway improvements" on the Property. The sandpit consisted of a fifteen-foot back wall that was 32 inches above grade and two, fifteen-foot sidewalls. The front of the sandpit was blocked off by four wooden posts located in the sand and connected by nautical rope. Iceplant has been removed from the sandpit. The stairway improvements consisted of a decorative gate, four lattice work panels on a lower side landing and two lattice work panels on an upper landing. The upper landing is located on the main portion of the stairway and does not extend to the side. Though not expressly mentioned in the application, the stairway improvements also included the portion of the lower landing that extended to the side of the main stairway.
- C. The Commission approved the decorative gate and lattice work panels on the main portion of the stairway, but conditioned its approval on submission of plans showing removal of the side landing and its lattice paneling and the sandpit and recording of a deed restriction.

EXHIBIT#4

Page 1 of 21

Application Number:

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Commission

D. The Butterfields filed an action in the Orange County Superior Court, Case No. 02CC01408, challenging the Commission's decision on their after-the-fact application for a coastal development permit (the action).

E. The parties to this Agreement desire to settle and resolve their differences relating to the action.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth below and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. Recitals A through E above are incorporated herein by this reference and acknowledged by all parties as accurate.

2. Permit Application. Within thirty days of the signing of the Agreement by all Parties, or within such additional time as the Commission's Executive Director or his designee may grant for good cause, the Butterfields shall submit to the Commission a permit application (Permit Application), including the required attachments, seeking to retain certain development and to remove other development currently in place on the Property.

2.1. Development to Remain. The Permit Application shall include a request for after-the-fact approval of the decorative gate, the side landing, and the lattice work panels on the upper and lower landings of the bluff face stairway.

2.2. Development to Be Removed. The Permit Application shall include a request to remove within thirty days of issuance of the coastal development permit the sandpit development at the toe of the slope consisting of three, fifteen-foot walls; the four posts; and the nautical rope.



3. Vegetation. The Parties acknowledge iceplant currently exists at the toe of the slope on the Butterfields' property delineating an area used by the Butterfields for sunbathing. The Butterfields may continue to maintain the iceplant in its current configuration and may continue to use the area for sunbathing.

4. Conditions of Approval. To support approval of the Permit Application, the Butterfields agree the following shall be imposed as conditions of approval of the Permit Application:

4.1. Future Development Restriction. The permit is only for the development described in the permit. Because the development is located within 50 feet of a coastal bluff, the exemptions otherwise provided in Public Resources Code section 30610(b) regarding improvements to existing structures shall not apply to the development sought by the Permit Application. Any future improvements to the development, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and section 13252(a)-(b) of Title 14 of the California Code of Regulations (i.e., repair or maintenance activities involving the placement or removal of solid materials or the presence of mechanized equipment or construction materials) shall require an amendment to the permit or an additional permit from the Commission or the applicable certified local government.

4.2. Removal of Development. Within thirty days of issuance of the coastal development permit, or within such additional time as the Executive Director may grant for good cause, the Butterfields shall complete removal of the development identified for removal in the Permit Application and permit. The Butterfields shall provide documentation for the Executive Director's review and approval demonstrating that the development has been removed.



4.3. Generic Deed Restriction. Within twenty days of the Commission's issuance of the notice of intent to issue the coastal development permit, or within such additional time as the Commission's Executive Director or his designee may grant for good cause, the Butterfields shall execute and record a deed restriction in a form and content acceptable to the Executive Director reflecting the above restrictions on development of the Property. The deed restriction shall be in substantially the form of Exhibit A attached hereto.

5. Proof of Applicant's Interest in the Property. The Commission typically requires applicants to provide proof of ownership of the property. In this case, the side landing extends over a storm drain easement on real property owned by the Butterfields' neighbor. The Butterfields contend that they have a right to retain the landing through adverse possession or prescriptive rights. By entering into this Agreement or issuing a coastal development permit, the Commission does not intend to grant or create any interests in real property the Butterfields do not currently have nor take any position on the extent of the Butterfields' property rights.

6. Commission's Discretion. The Commission retains full discretion as allowed by law to grant, condition or deny the application after full public hearing.

7. Commission's Denial of Permit. In the event the Commission denies the Permit Application or imposes conditions (other than the conditions contained in Paragraph 4 of this Agreement) unacceptable to the Butterfields and the Butterfields do not accept the permit, the parties may return to litigation of the Action. In such event, this Agreement shall be null and void.

8. Commission's Approval of Permit. If the Commission approves the Permit Application with terms consistent with this Agreement, the Butterfields shall accept the permit



and shall comply with all terms and conditions of such permit. Failure to comply with the terms and conditions shall constitute a violation of this Agreement as well as the permit.

9. Stipulation to Entry of Judgment and Retention of Jurisdiction. In accordance with section 664.6 of the California Code of Civil Procedure, the parties agree as follows:

9.1. The Court should enter judgment in the Action pursuant to the terms of this Agreement. The Parties shall within seven days of the signing of the Agreement by all Parties file a written stipulation and proposed order in the form attached hereto as Exhibit B requesting the Court to order the entry of judgment in accordance with this Agreement. A signed copy of this Agreement shall be attached as an exhibit to both the stipulation and to the judgment. The Commission agrees to file the stipulation and proposed judgment with the Court for approval. Should the Court require a noticed motion for entry of judgment, the Commission will prepare the motion consistent with the terms hereof, and the Butterfields shall notify the Court that they join in the motion.

9.2. The Parties agree, and the stipulation provides, that the Court should retain jurisdiction over the Parties to enforce this Agreement until performance in full of its terms, and this Agreement when in effect shall toll any and all applicable statutes, rules, or court orders affecting the timely prosecution of the Action, including without limitation California Code of Civil Procedure, section 583.10.

10. Release. The Parties, and each of them, their agents, representatives, successors and attorneys, release and discharge each other Party, its members, directors, officers, employees, agents, representatives, parent organizations, subsidiaries, affiliates, predecessors, successors and attorneys, from any and all claims, losses, debts, liabilities, demands, obligations, costs,



expenses, damages, attorneys' fees, actions or causes of action, whether known or unknown, suspected or unsuspected, accrued, or contingent relating to the Action.

11. Civil Code Section 1542. With respect to the releases described in Paragraph 10 of this Agreement, the Parties, and each of them, expressly waive (except as provided in Paragraph 10) all rights under California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Parties, and each of them, acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the release of claims and agree that this Agreement shall remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

12. Other Violations. Notwithstanding Paragraphs 10 and 11 of this Agreement, the Commission does not waive any rights to pursue any Coastal Act violations on the Property, if any, that are not the subject of the Permit Application or this Agreement.

13. Fees and Costs. The Parties shall assume and pay for their respective attorneys' fees and legal costs and expenses related to the coastal development permit, this Agreement, and the Action.

14. Counsel. The Parties represent that they have consulted or have had the opportunity to consult legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.



15. Binding. The Parties agree that the terms, conditions and provisions of this Agreement are binding upon, and shall inure to the benefit of, all assigns and successors-in-interest of each of the Parties hereto.

16. Additional Acts. The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Agreement which may be needed, desired or required to effectuate the terms, conditions, and provisions hereof.

17. Entire Agreement. Except as otherwise provided for herein, this Agreement constitutes the entire and only agreement between the Parties with reference to the subject matter hereof and supersedes any prior representation or agreement, oral or written, with respect thereto. The Parties further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited herein and that in entering into this Agreement, no party is relying upon any representation, warranty, agreement or covenant not expressly set forth herein.

18. No Admissions. Each Party agrees that this settlement is made in compromise of disputed claims, and that by entering into and performing the obligations of this Agreement, no party concedes or admits the truth of any claim or any fact and the execution and performance of this Agreement shall not be construed as an admission by any party.

19. Governing Law. This Agreement shall be construed, enforced and governed by the laws of the State of California, and shall constitute a binding settlement by the Parties which may be enforced under the provisions of the California Code of Civil Procedure.

20. Mutual Drafting. The Parties agree that this Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or his counsel participated in the drafting of this Agreement.



21. Amendment. This Agreement can be amended only by a writing signed by each of the Parties hereto.

22. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same Agreement. Facsimile signatures will have the same force and effect as original signatures.

23. Authority. The Parties represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntarily or by operation of law), to any person or entity, any right, title or interest in any claim released and discharged herein.

THE BUTTERFIELDS

Dated: _____

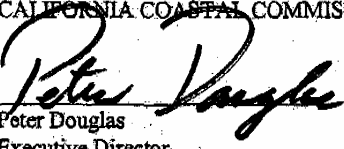
Philip Butterfield

Dated: _____

Lynne Butterfield

CALIFORNIA COASTAL COMMISSION

Dated: 1/23/07


Peter Douglas
Executive Director

APPROVED AS TO FORM:

THE ZUMBRUN LAW FIRM

Dated: _____

Ronald A. Zumbrun
Attorneys for Plaintiffs and Petitioners
Philip Butterfield and Lynne Butterfield



01/23/2007 14:19 DEPT OF JUSTICE -> 85395235

NO.456 0012

OFFICE OF THE ATTORNEY GENERAL

Dated: _____

Hayley Peterson, Deputy Attorney General
Attorneys for Defendant and Respondent
California Coastal Commission

EXHIBIT#4

Page 9 of 21

Application Number:

5 - 0 7 - 0 4 2



California Coastal
Commission

01/23/2007 14:19 DEPT OF JUSTICE - 85395235

NO. 456 0013

EXHIBIT A

EXHIBIT#4

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Application Number:

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California Coastal
Commission

01/23/2007 14:19 DEPT OF JUSTICE -> 85395235

NO.456 0014

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

District Office
[Address Line 1]
[Address Line 2]
[Address Line 3]
[Phone number]

TO: Permit Applicants/Agents

Permit No.: _____

FROM: _____ District Office of the California Coastal Commission

RE: Instructions for the Completion of Enclosed Deed Restriction

NOTE: THE FOLLOWING INSTRUCTIONS MUST BE ADHERED TO AS CLOSELY AS POSSIBLE. FAILURE TO COMPLETE EACH ITEM PROPERLY MAY NECESSITATE RETURN OF THE DOCUMENT FOR RE-RECORDATION, WHICH WILL DELAY ISSUANCE OF THE PERMIT. IF YOU HAVE ANY QUESTIONS REGARDING THESE INSTRUCTIONS PLEASE DISCUSS THE QUESTIONS WITH THE COASTAL COMMISSION STAFF ANALYST ASSIGNED TO YOUR PERMIT.

This packet is designed to assist you with a requirement you must satisfy in order to obtain your permit. In order to satisfy this requirement, you must do the following six things (some of which are described in greater detail below):

- Make sure you know the exact name(s) of each of the true owner(s) of the property covered by the permit (including the correct name of the trust if the property is held in trust)
- Fill in all the blank spaces on the attached Deed Restriction form as indicated in the line-by-line instructions on pages 3 and 4 of this packet. Do not alter the form (unless explicitly instructed to do so, pursuant to the second instruction on page 3).
- Have the signature page notarized
- Attach the two necessary exhibits
- Take the document to the County Recorder's Office for the county in which the property is located and ask to have it "recorded"
- *After* the document has been recorded at the County Recorder's Office, obtain the following two items from a licensed title insurance company and submit them to the Coastal Commission district office from which you received this document: (1) a preliminary title report (or other title analysis that satisfies the criteria listed below) that identifies the deed restriction and (2) a certified copy of the recorded Deed Restriction. If you submitted the deed restriction to the County Recorder's Office yourself, you should wait until it has had time to get into the system before obtaining the preliminary title report; otherwise, the title report will not identify the deed restriction.

EXHIBIT#4

Page 11 of 21

Application Number:

5 - 0 7 - 0 4 2California Coastal
Commission

The first five steps are necessary to record the Deed Restriction correctly. More detailed instructions for the first four steps are provided on pages three and four herein. Again, if you have any questions regarding these instructions, please contact the Coastal Commission staff analyst assigned to your permit. If the Deed Restriction is recorded incorrectly, it may require further processing on your part and may substantially delay the issuance of your permit.

The final step is necessary in order to demonstrate that the first five steps were completed correctly. You must obtain either a preliminary title report or another title analysis regularly issued by a title insurance company that (1) discloses both the ownership status and the legal description of the property and (2) reflects the presence of the recorded Deed Restriction on the title. The preliminary title report or similar document must be prepared by a licensed title insurance company and dated after the date (or time) of recordation of the Deed Restriction. Again, if you submitted the deed restriction to the County Recorder's Office yourself, you should wait until it has had time to get into the system before obtaining the preliminary title report; otherwise, the deed restriction will not show up on the report and you will have to obtain a second or supplemental report. You must also have the title insurance company obtain a certified copy of the Deed Restriction as it was recorded. Submit both documents to the Coastal Commission district office from which you received this document. Any discrepancy between the ownership status (as set forth in Recital I of the Deed Restriction and on the signature line) and/or the property description (as set forth in Exhibit A of the Deed Restriction), on the one hand, and the information contained in the preliminary title report (or other satisfactory title analysis), on the other, may result in our requiring you to re-record the Deed Restriction or to record an amendment to the Deed Restriction to correct the discrepancy before your permit can be issued.

When the above steps have been satisfactorily completed and all other prior-to-issuance conditions have been satisfied, the District Office will issue the permit.



INSTRUCTIONS FOR COMPLETING THE DEED RESTRICTION**PAGE 1**

Lines 11-12: List the full name(s) of all the property owners in their correct capacity of ownership. The ownership information must appear on the deed restriction exactly as it appears on the title report. For example, if a hyphenated last name is used on the deed, the same hyphenated last name should be used on this Deed Restriction. Similarly, if the ownership is held under a trust name, then list all of the trustees and the proper title of the trust, for example: Don W. Smith and Gloria Smith, Trustees of the Don W. and Gloria Smith Trust, dated August 8, 1974. (NOTE: This information can be obtained from your grant deed or title report.)

Line 21: If the property owner was not the applicant for the permit, identify the permit applicant in Recital IV (followed by the parenthetical phrase "(hereinafter referred to as the 'Applicant')") in place of the term "Owner(s)" (just cross out the word "Owner(s)" and replace it), and then use the term "Applicant" in place of: 1) the second reference to "Owner(s)" in Recital VII (page 2, line 11) and 2) the first reference to "Owner(s)" in the "NOW, THEREFORE" clause (page 2, line 12).

Lines 24: Insert the date of the public hearing at which the Commission approved the permit application. This information can be obtained from the "NOTICE OF INTENT TO ISSUE PERMIT."

Line 25: Insert the Coastal Development Permit Number (e.g., 5-04-0xx)

Line 27: Insert the date the "NOTICE OF INTENT TO ISSUE PERMIT" was issued.

PAGE 3

Line 22: Insert the date that the Deed Restriction is executed.

Line 25: All legal owners must sign. If the property is held by one or more persons in his/her/their capacity as trustee(s) of a living or family trust, the trustee(s)'s name(s) must be listed at the beginning of the document and the trustee(s) must sign, but the trust status must be listed along with the trustee(s)'s name(s) at the beginning and printed or typed below the signature line at the end (i.e., John Smith, Trustee of the Smith Family Trust dated 0/0/00.) If the property is owned by a company/business organization (i.e., corporation, partnership, limited liability company (LLC), etc.), the company/business name must be listed and the Deed Restriction must indicate clearly that the person executing it is doing so on behalf of the business that owns the property, and in his/her capacity as an officer, partner, or other authorized representative of the company/business (e.g., JONES DEVELOPMENT, INC., By:



John Jones, President). Additional signature lines should be added if multiple signatures are required. For example, if the owner is a corporation, several officers may be required to sign. The name of the owner listed here must match the name listed on page 1 and on the preliminary title report (which shows how title is legally held) exactly. If you have any questions about this, please contact the Commission's district office from which you received this document. Mistakes in the ownership information are the most common errors and frequently lead to the need to re-record.

PAGE 4 All signatures must be notarized.

EXHIBIT(S)

Exhibit A: A formal legal description of every parcel of property on which any of the development authorized by the permit will occur. This information can be obtained from your grant deed or title policy. (NOTE: The assessor's parcel number or a street address is NOT a valid legal description.) Insert this description(s) behind the page labeled "Exhibit A (Legal Description of Property)."

Exhibit B: A complete copy of the Notice of Intent to Issue Permit ("NOI"), signed by the permit applicant(s) and including any exhibits that are required by any conditions of the permit to be attached to the NOI. (NOTE: There will occasionally be a need to make corrections to a NOI. In such a case the Commission staff will issue a "Corrected" or "Second Corrected" NOI to supersede and replace the previous NOI. Only the current NOI should be attached to the Deed Restriction.) Insert the signed NOI behind the page labeled "Exhibit B (Notice of Intent to Issue Permit)."



01/23/2007 14:19 DEPT OF JUSTICE -> 85395235

NO. 456 0018

1 RECORDING REQUESTED BY:

2 WHEN RECORDED MAIL TO:
3 California Coastal Commission
4 725 Front Street, Suite 300
5 Santa Cruz, CA 95060-4508
6 Attn: Legal Division
7
8
9

10 **DEED RESTRICTION**

11 I. WHEREAS, _____

12 _____ (hereinafter referred to as "Owner(s)") is/are the record owner(s) of
13 the real property described in Exhibit A, attached hereto and incorporated herein by reference
14 (hereinafter referred to as the "Property"); and

15 II. WHEREAS, the California Coastal Commission (hereinafter referred to as the
16 "Commission") is a public agency created and existing under the authority of section 30300 of the
17 California Public Resources Code (hereinafter referred to as the "PRC"), a section of the California
18 Coastal Act of 1976 (Division 20 of the PRC; hereinafter referred to as the "Act"); and

19 III. WHEREAS, the Property is located within the coastal zone as defined in the Act (PRC
20 § 30103); and

21 IV. WHEREAS, pursuant to section 30600(a) of the PRC, Owner(s) applied to the
22 Commission for a coastal development permit to undertake development, as defined in the Act (PRC
23 § 30106), on the Property; and

24 V. WHEREAS, on _____, 20____, the Commission conditionally approved
25 coastal development permit number _____ (hereinafter referred to as the "Permit"),
26 subject to, among other conditions, the conditions listed under the heading "Special Conditions" in the
27 Notice of Intent to Issue Permit dated _____, 20____, attached hereto as EXHIBIT B



1 and incorporated herein by reference (hereinafter referred to as the "Special Conditions"), for the
2 reasons stated in the "Findings and Declarations" adopted by the Commission in support of its action,
3 which findings and declarations (along with any other documents that the Permit required to be
4 submitted to the Commission and with which the Permit requires compliance) are available from the
5 Commission upon request; and

6 VI. WHEREAS, the Commission found that, but for the imposition of the Special
7 Conditions, the proposed development could not be found consistent with the provisions of the Act and
8 that a permit could therefore not have been granted; and

9 VII. WHEREAS, Owner(s) has/ve elected to comply with the Special Conditions, which
10 require, among other things, execution and recordation of this Deed Restriction, so as to enable
11 Owner(s) to undertake the development authorized by the Permit;

12 NOW, THEREFORE, in consideration of the issuance of the Permit to Owner(s) by the
13 Commission, the undersigned Owner(s), for himself/herself/themselves and for his/her/their heirs,
14 assigns, and successors-in-interest, hereby irrevocably covenant(s) with the Commission that the Special
15 Conditions (shown in Exhibit B hereto) shall at all times on and after the date on which this Deed
16 Restriction is recorded constitute for all purposes covenants, conditions and restrictions on the use and
17 enjoyment of the Property that are hereby attached to the deed to the Property as fully effective
18 components thereof.

19 1. DURATION. (a) This Deed Restriction shall remain in full force and effect and shall
20 bind Owner(s) and all his/her/their assigns or successors-in-interest during the period that either the
21 development authorized by the Permit, or any part or modification thereof, or the Permit, or any
22 modification or amendment thereof, remains in existence on or with respect to, and thereby confers
23 benefit upon, the Property.

24 (b) Furthermore, in the event of a termination or extinguishment of this Deed Restriction
25 other than pursuant to a Commission-approved amendment to the Permit, the Special Conditions shall,
26 notwithstanding any such termination or extinguishment, continue to restrict the use and enjoyment of
27 the Property as they did prior to that termination or extinguishment and to bind Owner(s) and



1 his/her/their successors-in-interest, so long as either or both of the conditions described in paragraph (a)
2 continue to exist on or with respect to the Property.

3 2. TAXES AND ASSESSMENTS. It is intended that this Deed Restriction is irrevocable
4 and shall constitute an enforceable restriction within the meaning of a) Article XIII, section 8, of the
5 California Constitution; and b) section 402.1 of the California Revenue and Taxation Code or successor
6 statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to
7 the Property within the meaning of section 3712(d) of the California Revenue and Taxation Code, or
8 successor statute, which survives a sale of tax-deeded property.

9 3. RIGHT OF ENTRY. The Commission or its agent may enter onto the Property at times
10 reasonably acceptable to Owner(s) to ascertain whether the use restrictions set forth above are being
11 observed.

12 4. REMEDIES. Any act, conveyance, contract, or authorization by Owner(s) whether
13 written or oral which uses or would cause to be used or would permit use of the Property contrary to the
14 terms of this Deed Restriction will be deemed a violation and a breach hereof. The Commission and
15 Owner(s) may pursue any and all available legal and/or equitable remedies to enforce the terms and
16 conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party
17 to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding
18 any subsequent breach.

19 5. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any
20 reason becomes unenforceable, no other provision shall be affected or impaired.

21
22 Dated: _____, 20__

23
24 Business Name (if property is owned by a business): _____

25 Signed: _____ Signed: _____

26
27 PRINT/TYPE NAME & CAPACITY OF ABOVE

PRINT/TYPE NAME & CAPACITY OF ABOVE

*** NOTARY ACKNOWLEDGMENT ON THE NEXT PAGE ***



1 STATE OF CALIFORNIA

2
3 COUNTY OF _____

4 On _____, before me, _____, a Notary Public
5 personally appeared _____, personally known to me (or
6 proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed
7 to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
8 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
9 entity upon behalf of which the person(s) acted, executed the instrument.
10

11
12 WITNESS my hand and official seal.

13
14 Signature _____

15
16 STATE OF CALIFORNIA

17 COUNTY OF _____

18 On _____, before me, _____, a Notary Public
19 personally appeared _____, personally known to me (or
20 proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed
21 to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
22 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
23 entity upon behalf of which the person(s) acted, executed the instrument.
24

25
26 WITNESS my hand and official seal.

27
Signature _____

EXHIBIT B

EXHIBIT#4

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Application Number:

5 - 0 7 - 0 4 2



California Coastal
Commission

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 7 San Diego, CA 92186-5266
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 8 Fax: (619) 645-2012
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9 Attorneys for Respondent/Defendant
 10 CALIFORNIA COASTAL COMMISSION

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ORANGE

13 **PHILLIP BUTTERFIELD AND LYNNE**
 14 **BUTTERFIELD, individuals,**
 15 **Petitioners/Plaintiffs,**
 16 **v.**
 17 **CALIFORNIA COSTAL COMMISSION, a**
 18 **state agency, et al.,**
 19 **Respondents/Defendants.**

Case No. 02CC01408

**STIPULATION TO ENTRY OF
 JUDGMENT PURSUANT TO TERMS
 OF SETTLEMENT AGREEMENT
 (CODE OF CIV. PROC., § 664.6);
 [PROPOSED] ORDER**

**ASSIGNED FOR ALL PURPOSES TO
 HON. MICHAEL BRENNER**

Dept: C20
 Action Filed: January 9, 2002
 Writ hearing date: December 18, 2006

20
 21
 22
 23
 24
 25
 26
 27
 28
 STIPULATION TO ENTRY OF JUDGMENT PURSUANT TO SETTLEMENT AGREEMENT; ORDER

EXHIBIT#4

Page 20 of 21

Application Number:

5 - 0 7 - 0 4 2



California Coastal
 Commission

1 Plaintiffs and Petitioners Philip Butterfield and Lynne Butterfield (the Butterfields) and
2 Defendant and Respondent California Coastal Commission (the Commission) hereby consent to
3 entry of judgment pursuant to the terms of the Settlement Agreement attached hereto as Exhibit

4 A. The Butterfields and the Commission request that this Court retain jurisdiction over the
5 parties hereto to enforce the Settlement Agreement until performance in full with the terms of the
6 Settlement Agreement.

7
8 Dated: _____, 2007

PHILIP BUTTERFIELD

9
10 Dated: _____, 2007

LYNNE BUTTERFIELD

11
12
13 Dated: 1/23/07, 2007

CALIFORNIA COASTAL COMMISSION

14
15 
16 By: Peter Douglas
17 Its: Executive Director

18 **Order**

19 Pursuant to the stipulation of the parties and good cause appearing, the Clerk is hereby
20 directed to enter final judgment forthwith pursuant to the terms of the Settlement Agreement.

21 This Court shall retain jurisdiction over the parties hereto to enforce the Settlement Agreement
22 until performance in full with the terms of the Settlement Agreement.

23 IT IS SO ORDERED.

24 Dated: _____

25
26 JUDGE OF THE SUPERIOR COURT
27
28



SUBJECT SITE AND VICINITY

Copyright 2002-2006 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.californiacoastline.org
Photograph taken 2006

Note: Full Color Versions of Photographs Available on-line at
www.coastal.ca.gov/mtgcurr.html

EXHIBIT# 5

Page 1 of 3

Application Number:

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California Coastal
Commission



VIEW OF PROJECT SITE FROM INSPIRATION POINT
(Photograph Taken July 3, 2007)

Note: Full Color Versions of Photographs Available on-line at
www.coastal.ca.gov/mtgcurr.html



VIEW OF PROJECT SITE FROM CORONA DEL MAR STATE BEACH
(Photograph Taken July 3, 2007)

Note: Full Color Versions of Photographs Available on-line at
www.coastal.ca.gov/mtgcurr.html