

**CALIFORNIA COASTAL COMMISSION**

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



# Th 10b

## ADDENDUM

August 5, 2008

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th 10b**, COASTAL COMMISSION PERMIT APPLICATION #5-07-327-(Livoni) FOR THE COMMISSION MEETING OF **August 7, 2008**.

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### **Email Received on July 21, 2008 from Jan D. Vandersloot, M.D. (Attached as Exhibit A)**

On July 21, 2008, Jan D. Vandersloot, M.D. emailed his concerns regarding the proposed project. He states that approval of the proposed project will set a precedent for the surrounding properties to remove the bluff from the upper level to the lower level (i.e. the middle half of the bluff will be lost) resulting in a significant loss of vegetation along the bluff face and resulting in significant landform alteration. He also states that the bluff face is considered a significant public view resource since it is adjacent to Corona Del Mar State Beach. In addition, he provides pictures of residences along Ocean Boulevard to help support his concerns. He states that the properties on either side of the subject site (3329 Ocean Blvd.-[McNamee] upcoast and 3401 Ocean Blvd.-[Butterfield] downcoast) do not have decks or other development on the middle or lower portion of the bluff face. In addition, he states that the property two lots upcoast (3317-Ocean Blvd.-[Palermo]) does not have any development on the middle or lower portion of the bluff. However, he does state that the two residences further downcoast of the site (3415-Ocean Blvd.-[Circle] and 3425-Ocean Blvd.-[Halfacre]) have decks extending down the bluff face similar to Livoni's proposal.

The consistency of the proposed project with the surrounding development identified in the opposition letter is discussed in detail in the staff report. Dr. Vandersloot's statements about the two adjoining properties, McNamee and Butterfield, are accurate. There are no Commission approvals for decks on those properties like the one proposed on the subject site. However, when considering the pattern of development upcoast and downcoast of this site along the entire stretch of bluff adjacent to the beach from 3317-Ocean Boulevard (upcoast of the site) to 3431 Ocean Boulevard (downcoast of the site), approval of this project -without the proposed bluff face pathway- would be consistent with prior Commission actions and the pattern of development in this area. For instance, in recent proposals at the Tabak site (CDP No. 5-02-203-[Tabak]), which is downcoast of the project site, living space additions were landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. In addition, the Palermo (CDP No. 5-05-328-[Palermo]) and Halfacre projects (CDP No. 5-03-100-[Halfacre]), also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements.

Mr. Vandersloot states that the property two lots upcoast (3317-Ocean Blvd.-[Palermo]) does not have any development on the middle or lower portion of the bluff. However, that statement is misleading since development along the upper and middle bluff face has been approved and construction is anticipated to take place in the near future. Mr. Vandersloot's email also fails to identify the property located at the downcoast end of Ocean Blvd. (3431 Ocean Blvd.-[Tabak]) where development along the bluff face has been approved by the Commission. The existing residence has been demolished and construction of the new residence is anticipated soon. The Commission approved development along the upper and middle bluff face on this site as well.

## **Letter dated July 25, 2008 from Sherman L. Stacey (Attached as Exhibit B)**

Sherman L. Stacey submitted a letter dated July 25, 2008 discussing his concerns with the staff recommendation. His letter contains five (5) main points regarding his opposition to the staff report. His first point is that there is no basis to find possible prescriptive rights or that Livoni's access path would interfere with such nonexistent rights. Furthermore, he states: "*The staff recommendation concerning Section 30210 relies upon an unsupported postulation that there is a public right of access onto the Livoni property and that the private beach access path will somehow "intimidate" the public from using the Livoni property on which this unproven right of access is claimed to exist. No evidence supports either conclusion.*" The applicant asserts that the staff recommendation for denial is, in part, based on inconsistencies with Section 30210 of the Coastal Act. The applicant also suggests that the staff recommendation includes an effort to adjudicate the existence of prescriptive rights on the privately owned portion of the sandy beach. Neither statement is accurate. The staff report merely points out the likelihood of public use of the privately owned beach area given its location (although such use is likely reduced due to the existing visual deterrent caused by the existing stairway); and the fact that interference with such access (if the public has prescriptive rights, but not if members of the public are trespassing) would be inconsistent with Section 30210. The findings do not conclude the project is, in fact, inconsistent with Section 30210 as there is insufficient evidence before the Commission at this time to support such a conclusion.

Mr. Stacey's second point is that the homes adjoining Corona Del Mar State Beach all have access paths to the beach and the access paths do not "significantly" degrade the public recreational use of the beach. He also states that the staff report claims that the sandy beach of the Livoni property is used by the public despite the claimed "deterred effect" of the existing and prior stairways. He then concludes by stating that the staff report denies exactly what was speculated by claiming that the existence of the stairway or path itself deters precisely the public use which the staff report claims had been taking place. Staff's comments regarding public use of the private beach are discussed above. However, the deterrent effect would affect both the privately and publicly held beach areas. Commission staff disagrees with his argument since the psychological impact to public access will not only exist because of the new pathway, but that it has always existed onsite due to the pre-coastal and existing unpermitted stairways. New development, like the proposed pathway, shouldn't be allowed to perpetuate an impact when such impacts are clearly inconsistent with Section 30240(b) of the Coastal Act. Segments of the general public will be dissuaded from using the public beach due to the privatized development located along the bluff and beach; while other segments of the general public will not be affected by the privatized development and would continue to use the beach area adjacent to the development. The segment of the public that is adversely impacted would continue to avoid use of the beach adjacent to the privatized development with the construction

of the new pathway. As stated in the staff report, the presence of development establishes a privacy zone that tends to thwart members of the public from using the sandy beach adjacent to that development, even if the sandy beach is public. There is a high potential for development on the subject site to have this effect due to the small distance between the private pathway that is proposed on the bluff face and the publicly owned beach. That tendency may be exacerbated here where the boundary between private and public areas is not well defined.

Mr. Stacey's third point is that the Livoni path would not detract from the visual quality of the area. He claims that while the staff report states that the path will be visually intrusive, the staff recommended approval of, and the Commission approved, the path at 3415 Ocean Avenue (Ensign-Circle). Also, he states that the staff report fails to give any credit for the fact that a stairway had existed on the subject property since 1972. The agent's claim that Commission Staff recommended approval of the pathway at 3415 Ocean Avenue is incorrect as staff's recommendation was denial for the after-the-fact pathway. The staff recommendation of denial was overturned by the Commission at the August 2002 Hearing. The fact that a stairway has existed on the Livoni's property since 1972 is irrelevant since the stairway has been and continues to be visually intrusive, and the proposed pathway would also be visually intrusive. The pre-existing demolished stairway and the existing unpermitted stairway are nonconforming to current standards of the City's certified LUP regarding bluff face development and the protection of visual quality along the coastline. In addition, the demolition of the previous stairway and construction of the existing stairway took place without a permit. The previous stairway could have been allowed to be repaired and maintained (some of which would require a coastal permit due to its location on a bluff face), but not demolished and rebuilt without a coastal development permit. Currently, the stairway is unpermitted, constructed after the passage of the Coastal Act and highly visible. The applicant has no right for access since the existing stairway is unpermitted development.

Mr. Stacey's fourth point is that there are no detrimental cumulative impacts as every lot is developed and every home has an access to the beach. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the lower bluff face and sandy beach remain largely undisturbed and natural. Thus, the overall appearance on the lower bluff in this area is natural and undeveloped. By allowing construction of the private beach pathway down the bluff face, a precedent would be set for the construction of new development along the lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward, inconsistent with the Chapter 3 policies of the Coastal Act.

Mr. Stacey's fifth point is that Livoni is not obligated to dedicate his property to public use and the Commission cannot require him to do so. He further states that at the property located at 3415 Ocean Boulevard (Ensign-Circle) an offer to dedicate was made and thereafter the Commission approved an access path for Ensign in CDP No. 5-01-112. Furthermore, he states that Commission staff requested that if the applicants make a similar "voluntary" offer to dedicate, and if they did so, Commission staff would recommend approval of the access path. Mr. Stacey has misconstrued the facts. Staff had a meeting with the applicants at which time the applicants claimed that their proposed project was basically identical to that proposed by the Ensigns. Following the meeting, staff researched the Ensign project and determined that one significant difference between the applicants' project and the Ensign project was that the Ensign project included an offer-to-dedicate lateral access. Commission staff called the applicants to inform them that their representation in the meeting with staff that their proposal was identical to that submitted by the Ensigns was inaccurate, due to the fact that there was no lateral access included in their proposal. Staff never suggested to the applicants that had they included a

lateral accessway as part of their proposal that staff would have recommended approval of their proposed beach pathway. Staff was simply calling the applicants to inform them of the differences between their project and their neighbors' project as approved by the Commission.

**Ex Parte Form from Commissioner Kruer dated August 1, 2008  
(Attached as Exhibit C)**

**Fernie Sy**

**From:** JonV3@aol.com  
**Sent:** Monday, July 21, 2008 12:21 AM  
**To:** Sheryllyn Sarb; Teresa Henry; Karl Schwing; Fernie Sy  
**Subject:** Application No. 5-07-327, Livoni, August CCC Agenda Thurs 10b

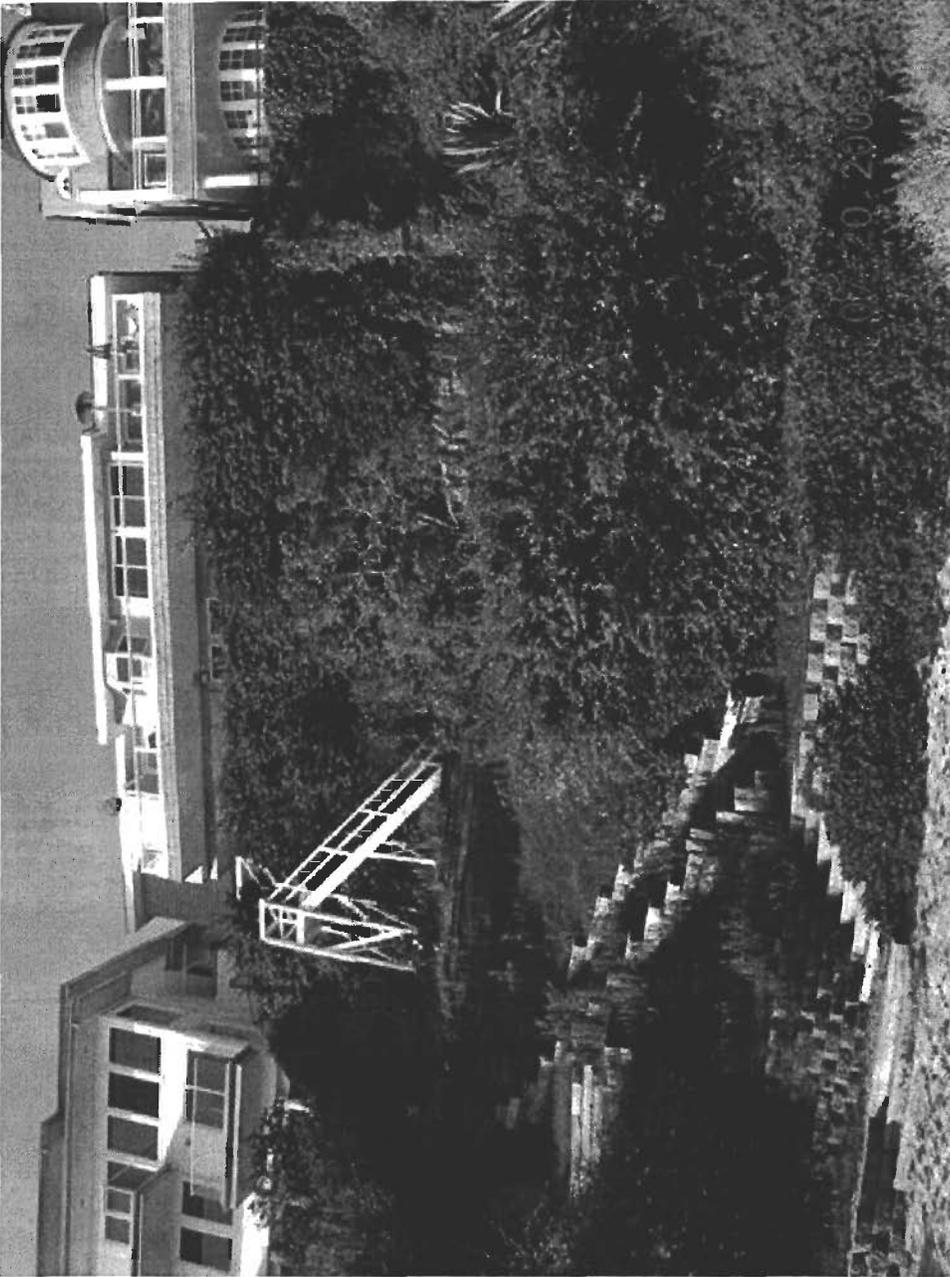
Dear Coastal Commission staff:

I went to the Corona del Mar State Beach today to photograph the coastal bluff above the beach and correct some statements in the staff report for this project issued for the June 11-13 Coastal Commission hearing, item Th 8a, which was postponed to the August hearing, now scheduled for Thursday, August 7, 2008, item 10b. The staff report recommends approval of "construction of a new deck that would be in alignment with surrounding approved decks" (page 1 of the staff report"). The staff reports states "However, since the proposed deck would conform to the predominant line of development, it would not affect public views of the vegetated lower bluff face from the adjacent public beach..." (page 2 of staff report). This bluff face is considered a significant public view resource, being adjacent to the Corona del Mar State Beach.

The photographs below show how the surrounding properties do not have decks extending down to the level of the proposed new deck, which will be approximately at the level of the base of the white staircase halfway down the bluff face. If the new deck is approved, about half of the vegetated bluff will be removed (see Exhibit #4, page 2 of 2). The bluff face vegetation will be removed down to the level of the new deck. If this project is approved, it will set a precedent for the surrounding properties to remove the bluff from the upper level to the lower level, i.e. the middle half of the bluff will be lost, constituting a significant loss of vegetated bluff and a significant landform alteration.

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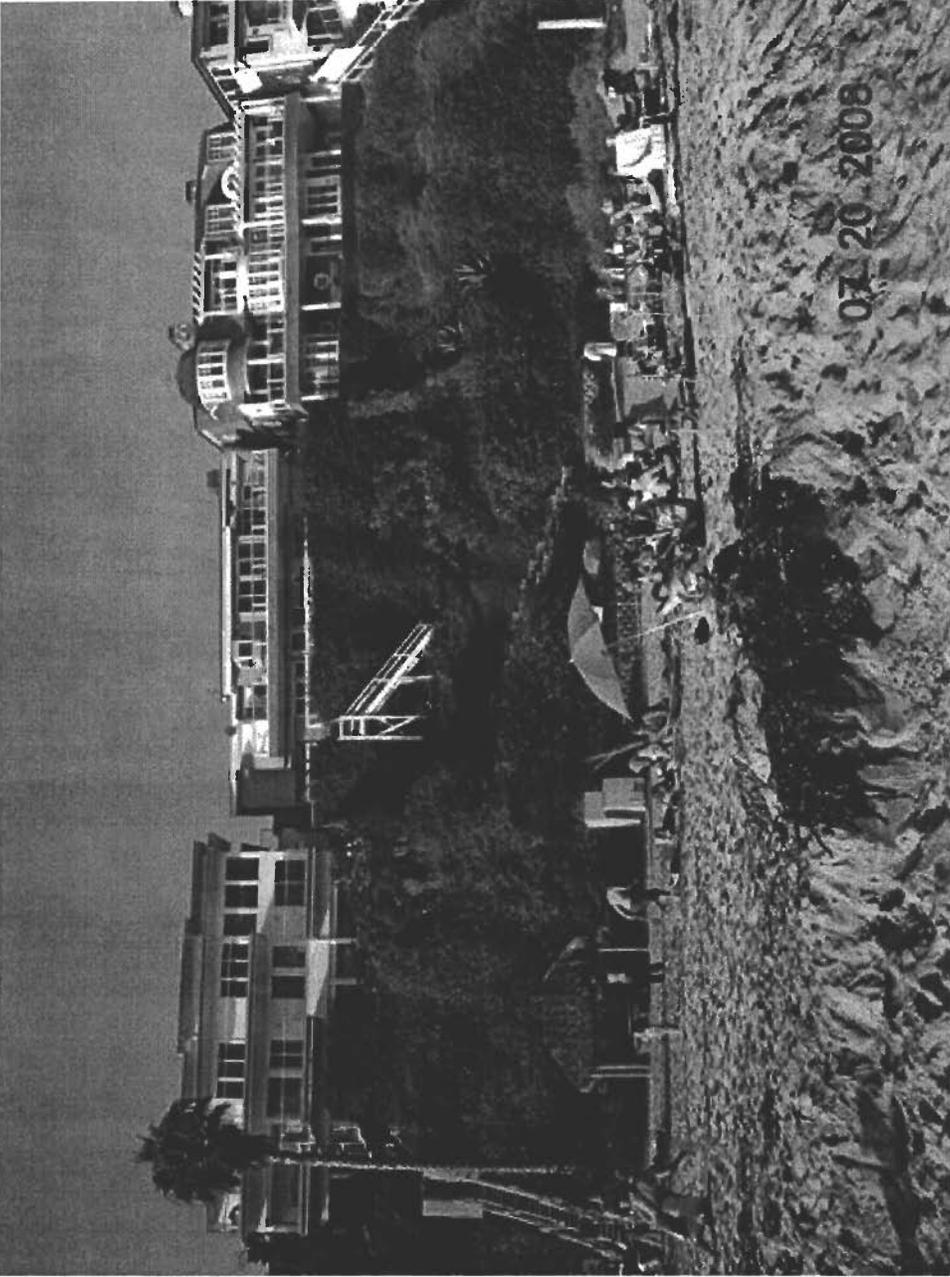


The Livoni House today. The new deck will be built at the bottom of the white staircase, obliterating about half of the existing bluff vegetation.

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Note that the two properties on either side of Livoni do not have decks or other development on the middle and lower two-thirds of the bluff face. If a new deck is permitted at the bottom of the white staircase, the surrounding properties will want them too.

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Livoni is on the right. The two houses to the left do not have development down to the level of the proposed new deck at Livoni (base of white staircase).

**COASTAL COMMISSION**

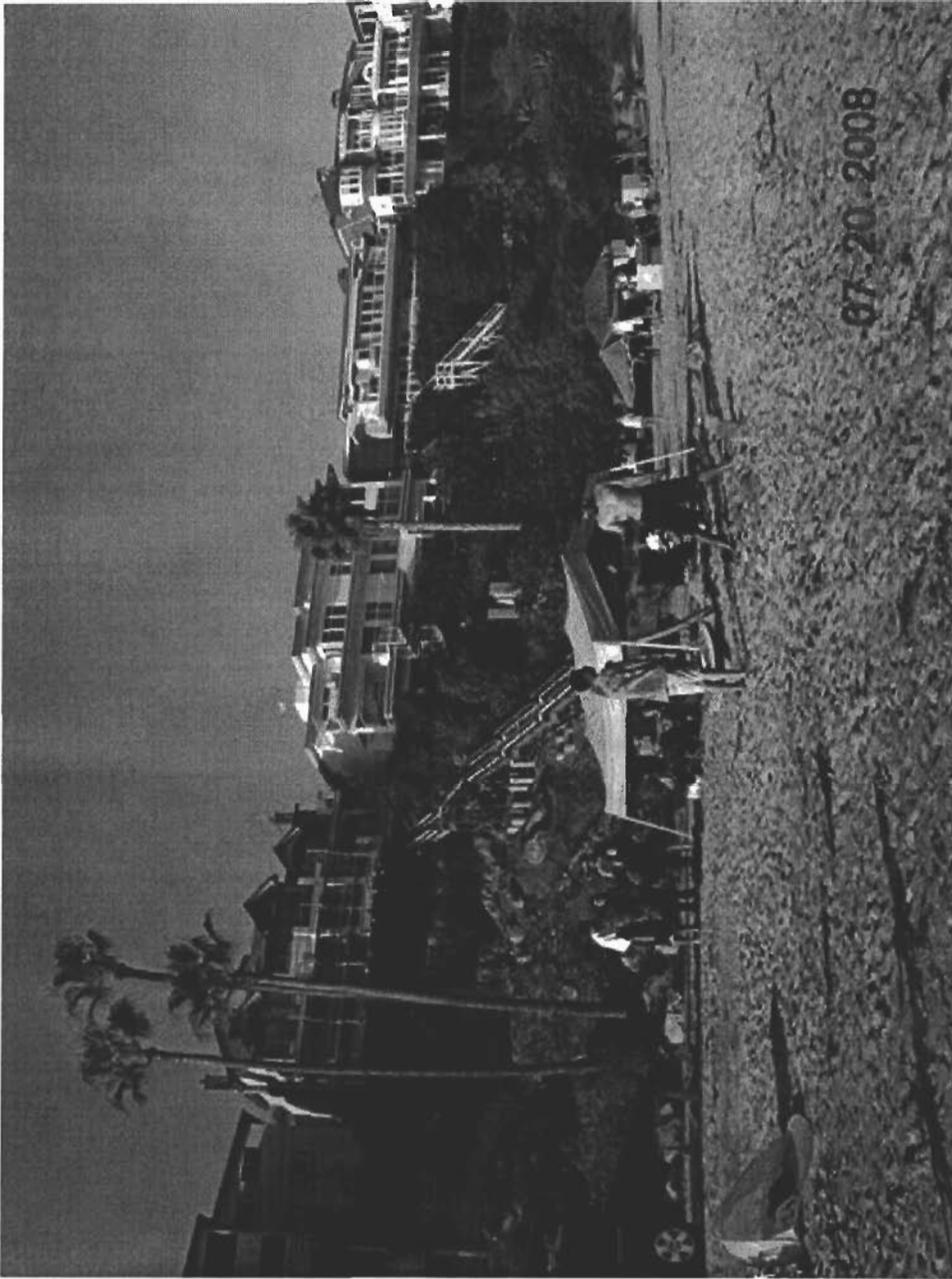
EXHIBIT # A  
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The houses at the left end of this coastal bluff do not have decks or development at the proposed new deck at Livoni.

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These 5 contiguous houses including the Livoni house (white staircase) do not have decks or development at the level of the proposed new deck at Livoni. The new deck at Livoni, if approved, will set a precedent for destruction of half of the remaining bluff face above Corona del Mar State Beach.

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Only the far two houses on the right now extend to the level of the new deck at Livoni. Approval of the new deck at Livoni assures the destruction of the rest of the bluff.

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LAW OFFICES OF  
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**Th10b**

July 25, 2008

Commissioners  
California Coastal Commission  
45 Fremont Street, #2000  
San Francisco, CA 94105

Re: Application No. A-5-07-327  
Livoni Second Family Limited Partnership  
3335 Ocean Boulevard, Newport Beach

Dear Commissioners:

On Thursday, August 7, 2008, I will appear before you on behalf of the Livoni Second Family Limited Partnership with regard to Application No. A-5-07-327 for the construction of a deck and the removal of unpermitted stairway and retaining walls, regrading of slopes to natural contours and placement of an at grade path to beach at the single family home at 3335 Ocean Boulevard in the Corona del Mar area of Newport Beach. The staff has recommended approval of the deck and removal of the stairway and regrading but denial on the placement of the at grade path to the beach. The Applicant asks the Commission to approve the at grade path as well as the other development.

Enclosed with this letter is a booklet of photographs and drawings prepared by the project architect, Brion Jeannette. These photographs and drawings illustrate the facts which are set forth in this letter. The photographs and drawings are referenced by page number and labeled to explain their significance.

The Applicant's home was previously owned by Kenneth Battram. Mr. Battram had a stairway to the beach which had existed prior to 1972. However, without obtaining a permit, Mr. Battram demolished those stairs and constructed the stairs which are presently existing as well as other beach improvements. The Commission pursued a violation against Mr. Battram and an agreement was made under which the beach improvements were removed and Mr. Battram had the opportunity to seek a permit for stairs to the beach.

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Mr. Battram filed Application No. 5-04-214 with the Commission which asked for the existing stairs with some modifications. The matter was heard on October 13, 2005. At the conclusion of the hearing, but prior to the vote, the Application was withdrawn with the suggestions by Commissioners that a modified stair or path of some sort be worked out between Mr. Battram and the Staff.

After withdrawing his application, Mr. Battram passed away. His heirs sold the property to the Livoni Second Family Limited Partnership who are the Applicant today. Livoni hired Brion Jeannette Architecture to design improvements to the house as well as a revised access to the beach. Brion Jeannette had designed a deck and access stair for Circle at 3415 Ocean Boulevard (two doors away) which were approved on October 13, 2005, by the Commission in Application No. 5-05-095 (originally approved for Circle's predecessor in Application No. 5-01-112 (Ensign)). The path which Jeannette has designed for Livoni is based upon the design of forest trails in the John Muir Wilderness (see booklet photograph 12). Although the Staff recommended approval of the Circle access stair, the Staff has recommended denial for the Livoni access path.

The enclosed booklet of photographs and drawings which demonstrate the following facts:

- Every house in the neighborhood where the Livoni property is located has a visible access path from the home at the top of the bluff to the beach. (See booklet cover and pages 3 - 9.)
- The Livoni property had a stairway from the house to the beach prior to the enactment of the Coastal Act in 1972. (See booklet pages 1, 2.)
- The Commission approved an access path for Circle two doors away at 3415 Ocean Boulevard. (See booklet pages 8, 11.)
- The proposed access path for Livoni is less visually obvious and less of an alteration of natural landforms than the Commission approved in Circle. (See booklet pages 8, 11, 12.)

The Staff bases its recommendation for denial on three provisions of Chapter 3. First, the Staff relies on Section 30210 concerning public access. Second, the Staff relies on Section 30240(b) concerning development adjoining public recreation areas. Third, the Staff relies on Section 30251 concerning visual quality. The Findings proposed in support of denial are found at pages 30-36 of the Staff Report. On each of these statutory provisions, the Staff Report and the Commission reached the opposite conclusion when approving the access path for Circle. There is no material difference between the two proposals.

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1. **There is No Basis for the Commission to Find Possible Prescriptive Rights or that Livoni's Access Path would Interfere with Such Nonexistent Rights.**

The Staff recommendation concerning Section 30210 relies upon an unsupported postulation that there is a public right of access onto the Livoni property and that the private beach access path will somehow "intimidate" the public from using the Livoni property on which this unproven right of access is claimed to exist. No evidence supports either conclusion.

First, the Livoni property includes about 25 feet of sandy beach from the toe of the bluff. There is no evidence of public use of the Livoni property. The Staff Report postulates, without evidence, that

"... the privately owned sandy beach is likely used by the public in the same fashion it uses the publicly owned beach area. Thus, there may be a right of access acquired through use of the privately owned sandy beach area on the lot; although there has been no judicial determination regarding the presence of such rights. Interference with public access rights acquired through use would be inconsistent with Section 30211 [sic] of the Coastal Act." Staff Report, page 31.

The Coastal Commission cannot base the denial of a permit on the unproven possibility that public rights "may exist". When the Commission denied a gate on a road based upon the possibility of public rights in *LT-WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770; 60 Cal.Rptr.3d 417, modified, 152 Cal.App.4th 427, the Court of Appeal overturned the denial of a permit based upon speculation of "public rights". The Court wrote as follows:

"Inherent in one's ownership of real property is the right to exclude uninvited visitors. (See Black's Law Dict. (5th ed. 1979) p. 1095 [definition of property]; *General Dynamics Corp. v. County of L. A.* (1958) 51 Cal.2d 59, 71 [330 P.2d 794] (conc. opn. of McComb, J.)) The Commission's decision would deny LT-WR that right. In precluding LT-WR from barring the public from traversing its property on the theory that potential exists to establish prescriptive rights for public use of this road," the Commission in effect decreed the existence of such prescriptive rights.

We recognize one of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas. Public Resources Code section 30210 provides: "In carrying out the requirement of Section 4 of Article X of the California Constitution [access to navigable waters], *maximum access*, which shall be

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conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (*Italics added.*) However, the Commission is not vested with the authority to adjudicate the existence of prescriptive rights for public use of privately owned property. In denying LT-WR a permit for the gates and no trespassing signs due to the possibility of "potential" prescriptive rights, was speculative and properly was overturned by the trial court." 151 Cal.App.4th at 806.

In Livoni's case, the Staff Report again engages in speculation about the possibility of public rights which "the Commission is not vested with the authority to adjudicate the existence of" such rights. Therefore, the Commission must operate under the legal presumption that Livoni, as the owner of the property, has the right to exclude the public from his property.

Livoni, however, is not proposing any improvements on the sandy beach. The improvement to which the Staff Report objects is a path from his home to the beach. There is no evidence that anything which Livoni proposes would interfere with any public rights. The Staff Report goes on to speculate that the grade level path would deter the public from using Livoni's property, a right whose existence the Commission has no legal authority to declare. Even this speculation of a deterrent effect is not supported by any evidence.

Indeed, the Staff Report effectively denies its own conclusion. There has been a stair on the Livoni property continuously since before 1972. The Staff Report claims that the sandy beach portion of the Livoni property is used by the public anyway, despite the claimed "deterrent effect" of the existing and prior stairways. Then the Staff Report denies exactly what was speculated by claiming that the existence of the stairway or path itself deters precisely the public use which the Staff Report claims had been taking place.

**2. The Homes Adjoining Corona Del Mar State Beach All Have Access Paths to the Beach and the Access Paths Do Not "Significantly" Degrade the Public Recreational Use of the Beach.**

The second rationale for denial is alleged inconsistency with Public Resources Code §30240(b) which requires that development adjoining recreation areas be sited and designed to prevent impacts which would "significantly" degrade those areas. The Staff Report claims that the grade level path would "significantly" degrade Corona del Mar State Beach. There have been homes, stairs and paths adjoining Corona del Mar State Beach at every house for almost 40 years (see booklet pages 1, 2, 3). The Staff Report agrees that there was a stairway at Livoni's home since before 1972. Yet

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Corona del Mar State Beach remains one of the most popular beaches in Orange County. Nothing in the private development of private property adjoining the beach has "significantly" degraded the public recreational use of Corona del Mar State Beach.

Booklet pages 4-10 show each house described at pages 37 to 43 of the Staff Report in detail. The path approved by the Commission for Circle is shown at booklet page 8.

3. **The Livoni Path would not Detract from the Visual Quality of the Area.**

The third rationale for denial is alleged inconsistency with Public Resources Code §30251 concerning visual quality. The Staff Report claims that the grade level path will be visually intrusive. But the Staff recommended approval and the Commission approved the path at 3415 Ocean Boulevard, closer to Inspiration Point and more visually prominent than proposed by Livoni. The Staff Report also fails to give any credit for the fact that a stairway had existed on the Livoni property since before 1972. Thus, the Livoni property has a pre-Coastal right to gain access from the house to the beach. Livoni is prepared to modify the access path in a manner which is the least alteration to the bluff and the least visually prominent of any access stair or path in the neighborhood.

4. **There are No Detrimental Cumulate Impacts as Every Lot is Developed and Every Home Has an Access to the Beach.**

The Staff Report claims that approval of the access path would have detrimental cumulative effects. There can be no cumulative effects when every other house already has an access path or stairs. Livoni would be the only house along Ocean Boulevard between Inspiration Point and the beach parking lot which has no access to the sandy beach.

5. **Livoni is Not Obligated to Dedicate His Property to Public Use and the Commission Cannot Require Him to do So.**

There is one difference between the Circle decision and Livoni. On Circle's property, the prior owner, Ensign, made an offer to dedicate the sandy beach area to the State. Thereafter, the Commission approved an access path for Ensign in Permit No. 5-01-112. On April 21, 2008, Teresa Henry telephoned Brion Jeannette and stated that if Livoni would make a similar "voluntary" offer of the sandy beach on his property, that the Staff would recommend approval of the access path. Livoni declined to make the suggested offer and the Staff Report thereafter recommended denial.

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The suggestion that a "voluntary" offer of dedication would garner a favorable treatment on the Livoni application is a back door violation of the decision of the United States Supreme Court in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 97 L.Ed.2d 677, 107 S.Ct. 3141. *Nollan* prohibits exacting interests in property from persons seeking to build unless there is a burden imposed on the public which the exaction would relieve. No such burden arises from Livoni's home or path.

Therefore, the fact that there is an offer of a public access easement going to the toe of the slope on Circle's property and no such offer on Livoni's property is not a distinction that justifies approval of access for Circle and denial for Livoni. The Commission cannot find that the alleged public access impacts, public recreational impacts and visual impacts do not arise for Circle and then find that they do arise for Livoni.

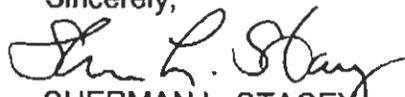
**6. Modifications to Special Conditions.**

Other than Special Conditions 2A and 10, the Special Conditions recommended for approval of the remainder of the development would not need to be modified. The Special Conditions would apply equally to the access path. Special Condition No. 2A should be modified to eliminate the language at pages 7-8 of the Staff Report which reads: "No new private pathway seaward of the line identified above is allowed." Special Condition No. 10 should be modified to allow the condition compliance for item (1) (removal of stairs) to be 60 days, and for items (2) and (3) grading and landscaping) and to be within 60 days of the completion of the deck. Construction of the deck will make the regrading of the slope and the landscaping difficult until the deck is completed.

**7. Conclusion.**

The Commission should approve the requested access path and should modify the motion set forth in the Staff Report for full approval subject to modified conditions as set forth above.

Sincerely,

  
SHERMAN L. STACEY

cc: All Commissioners and Alternates  
Commission Office - Long Beach  
Jerry Livoni  
Brion Jeannette

Th 10b



# REBUTTAL TO STAFF REPORT

AUGUST 7, 2008  
ITEM NO: Th 10b

BRIEFING BOOKLET FOR:  
LIVONI RESIDENCE  
3335 OCEAN BLVD, CORONA DEL MAR

CDP APPLICATION NO: 5-07-327

Brion Jeannette Architecture

470 Old Newport Boulevard • Newport Beach, CA • 92663 • Tel 949.645.5854 • Fax 949.645.5785

[www.customarchitecture.com](http://www.customarchitecture.com)

MEMBERS AIA & NCARB • ENERGY CONSCIOUS DESIGN

COASTAL COMMISSION

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- 1972 AERIAL PHOTO SHOWING THE PRE-COASTAL STAIR TO THE BEACH LOCATED ALONG THE SOUTHEASTERN SIDE OF THE PROPERTY

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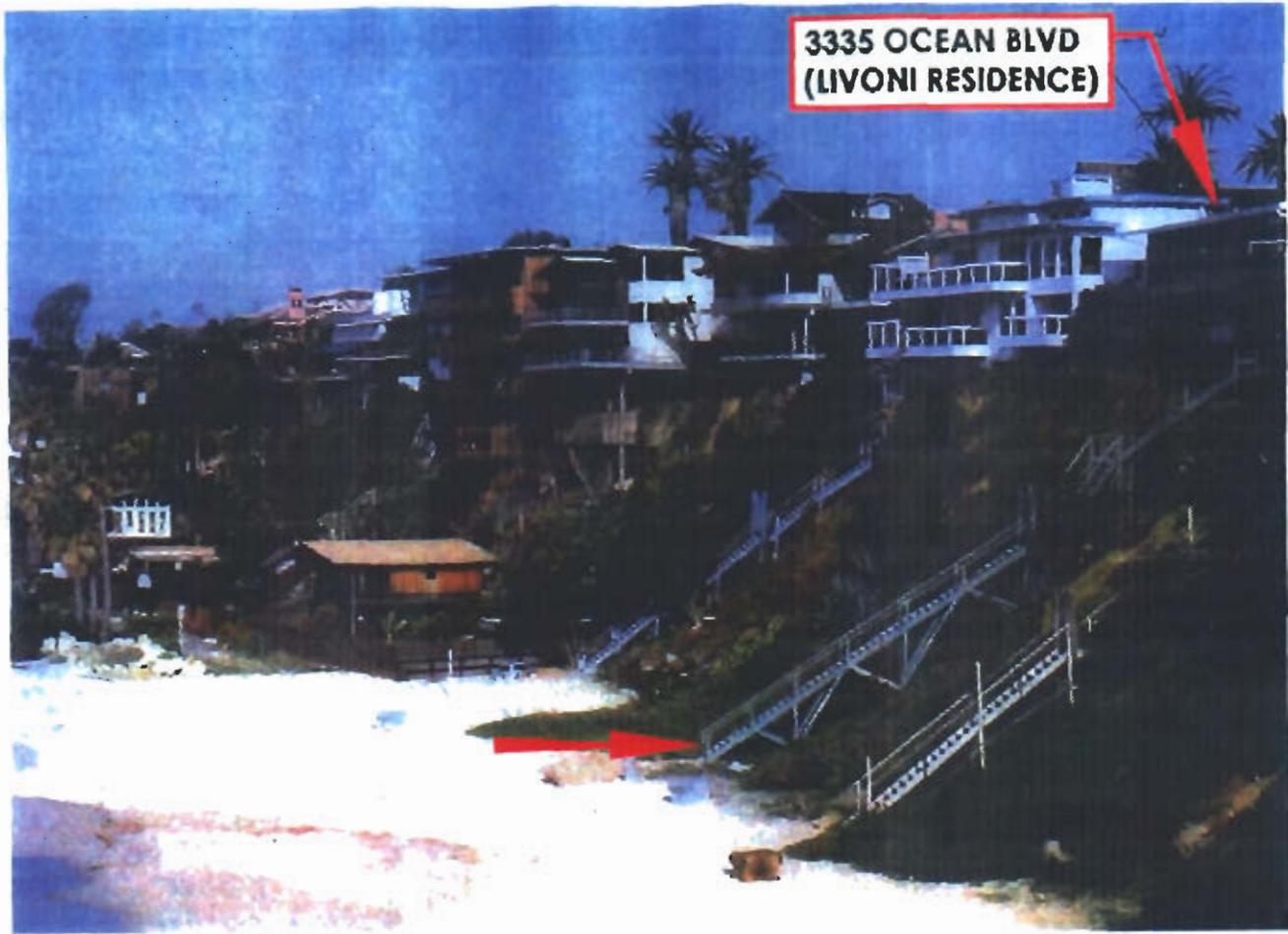
COPYRIGHT © 2002-2008 KENNETH & GABRIELLE ADLTMAN  
CALIFORNIA COASTAL RECORDS PROJECT  
WWW.CALIFORNIAOASISLINE.ORG

- 1972 COASTAL PHOTO SHOWING THE PRE-COASTAL STAIR TO THE BEACH LOCATED ALONG THE SOUTHEASTERN SIDE OF THE PROPERTY

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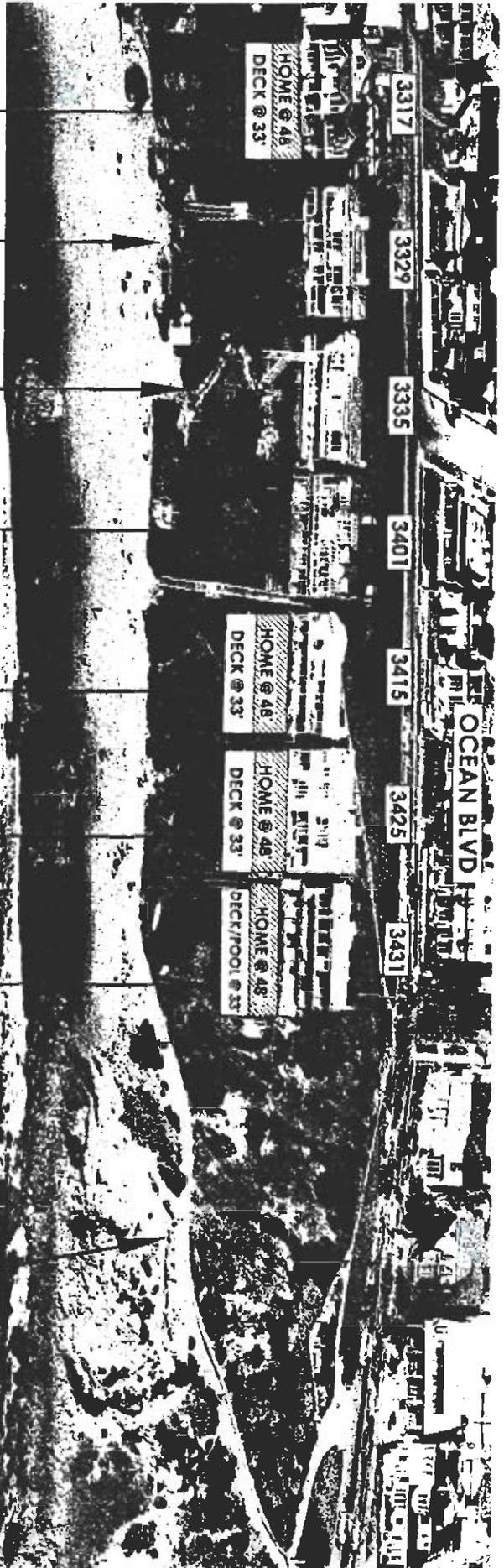
3335 OCEAN BLVD  
(LIVONI RESIDENCE)

*Photo Taken By Architectural Firm In 1985 Remodel.*

- HISTORICAL PHOTO SHOWING THE PRE-COASTAL STAIR TO THE BEACH PRIOR TO ITS RELOCATION c. 1985

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PALERMO RESIDENCE  
CDP #5-05-328  
APPROVED (5/06)

MGNAMÉE RESIDENCE  
PRE-COASTAL STAIR

**LIVONI**

BUTTERFIELD RESIDENCE  
CDP #5-01-199  
APPROVED (12/01)

CIRCLE RESIDENCE  
CDP #5-05-095-A1  
APPROVED (1/07)

HALFACRE RESIDENCE  
CDP #5-03-100  
APPROVED (1/05)

TABAK RESIDENCE  
CDP #5-02-203-A1  
APPROVED (3/05)

- RECENT APPROVALS HAVE THREE AND FOUR LEVELS WITH DECK BELOW
- ALL PROPERTIES ENJOY ACCESS TO THE BEACH FROM THEIR REAR DECKS

ALL THREE RESIDENCES  
ARE IN CONSTRUCTION  
OR RECENTLY  
COMPLETED

INSPIRATION  
POINT

COASTAL COMMISSION

EXHIBIT # B  
PAGE 11 OF 19



**CIRCLE RESIDENCE**  
**CDP NO. 5-05-095-A1**

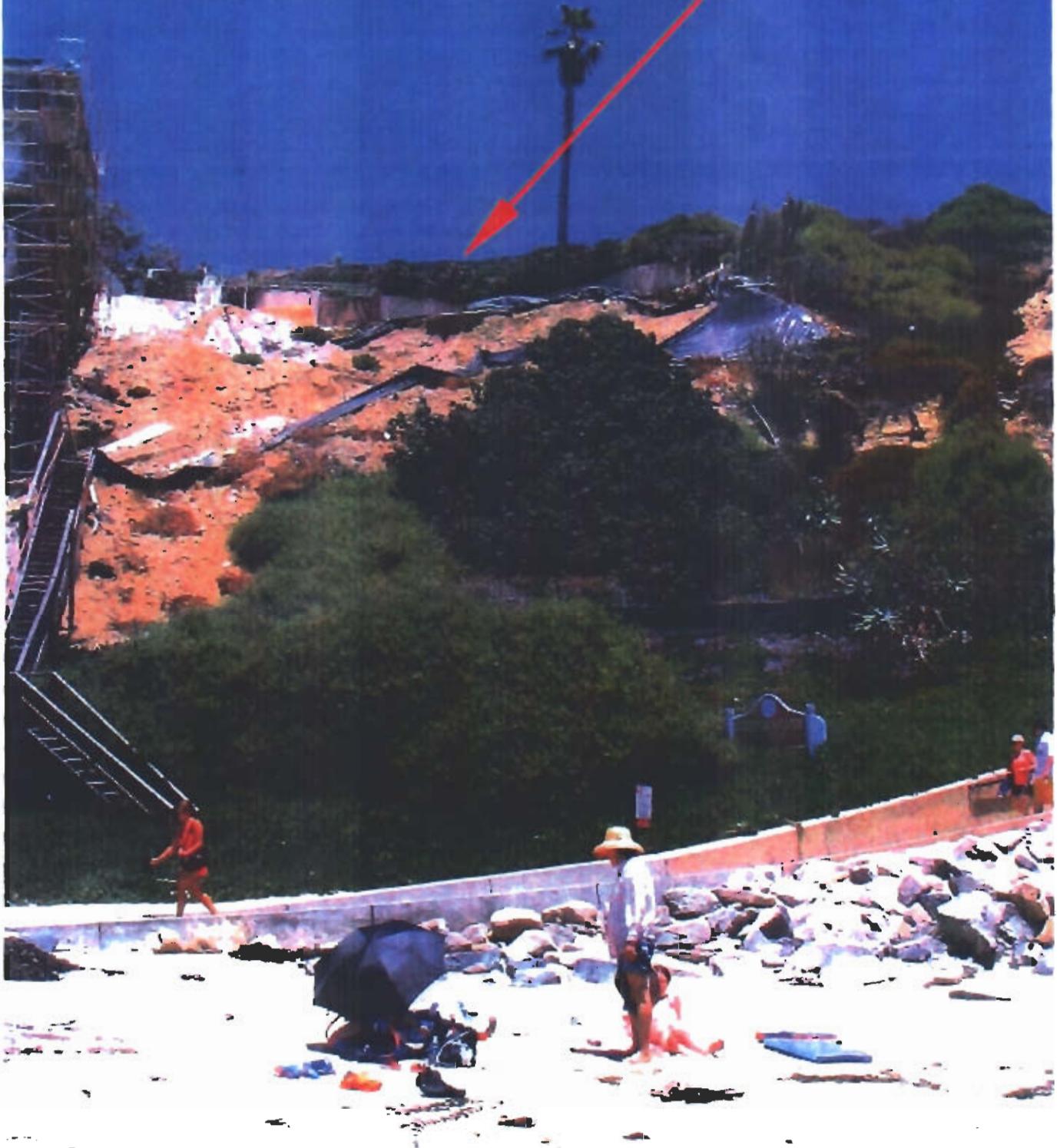
**LIVONI RESIDENCE**  
**CDP NO. 5-07-327**

**COASTAL COMMISSION**

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**VIEW FROM INSPIRATION POINT  
LOOKING TOWARDS THE NORTHWEST**

**RESIDENCE HAS BEEN DEMOLISHED;  
NEW RESIDENCE IS UNDER CONSTRUCTION**

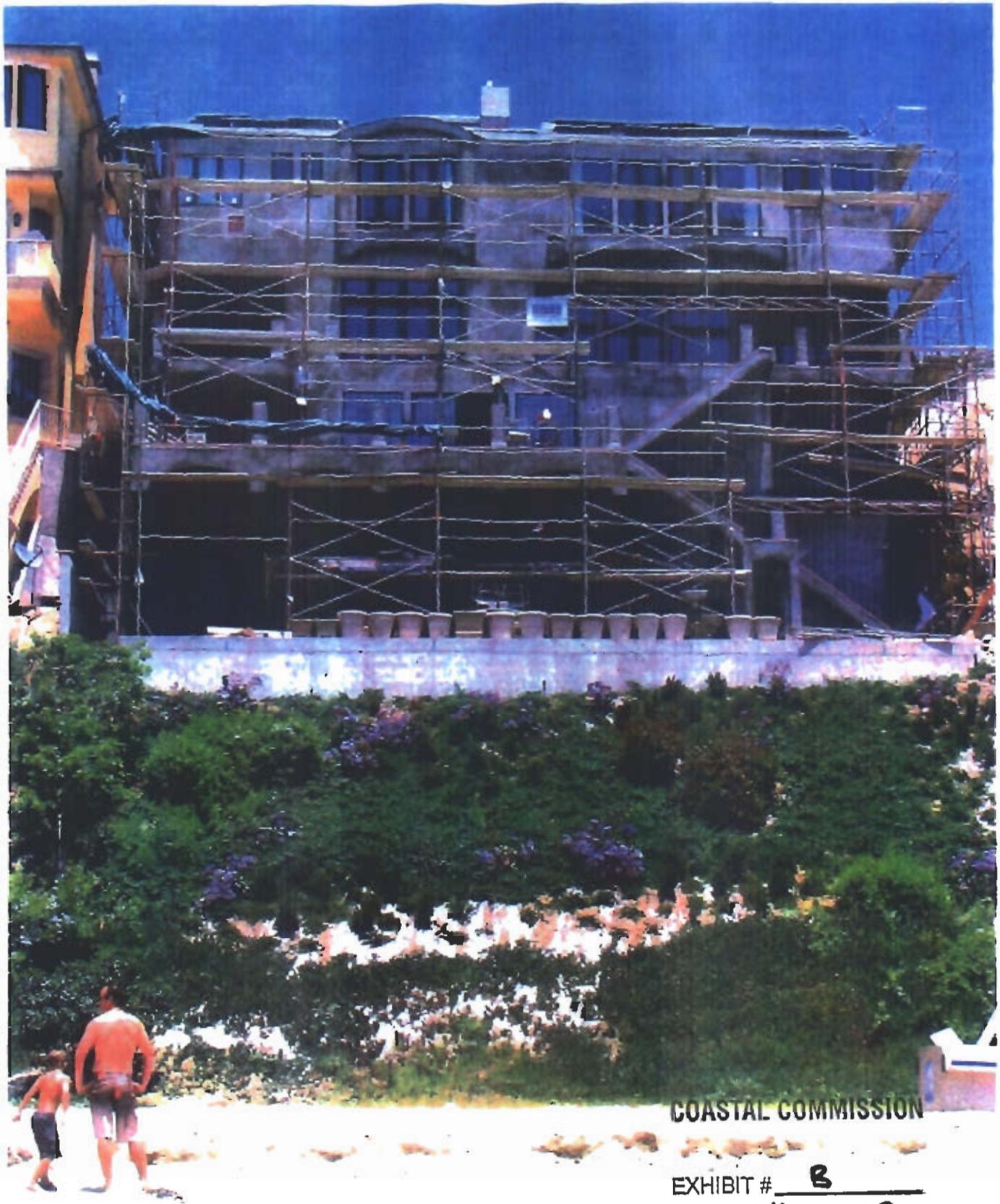


**TABAK - 3431 OCEAN BLVD**  
**STAIR TO BEACH**

**COASTAL COMMISSION**

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6



COASTAL COMMISSION

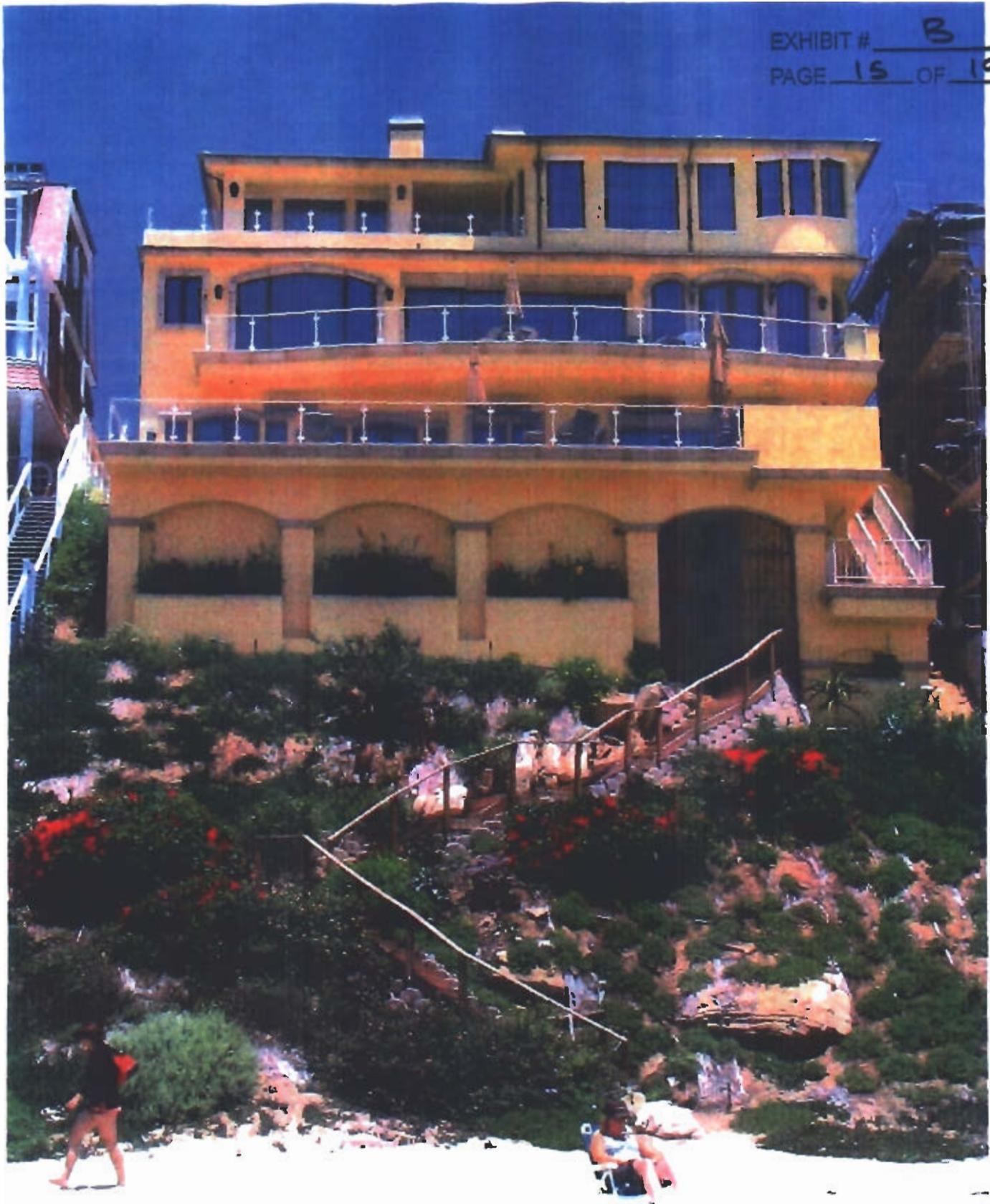
EXHIBIT # B

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**HALFACRE - 3425 OCEAN BLVD**

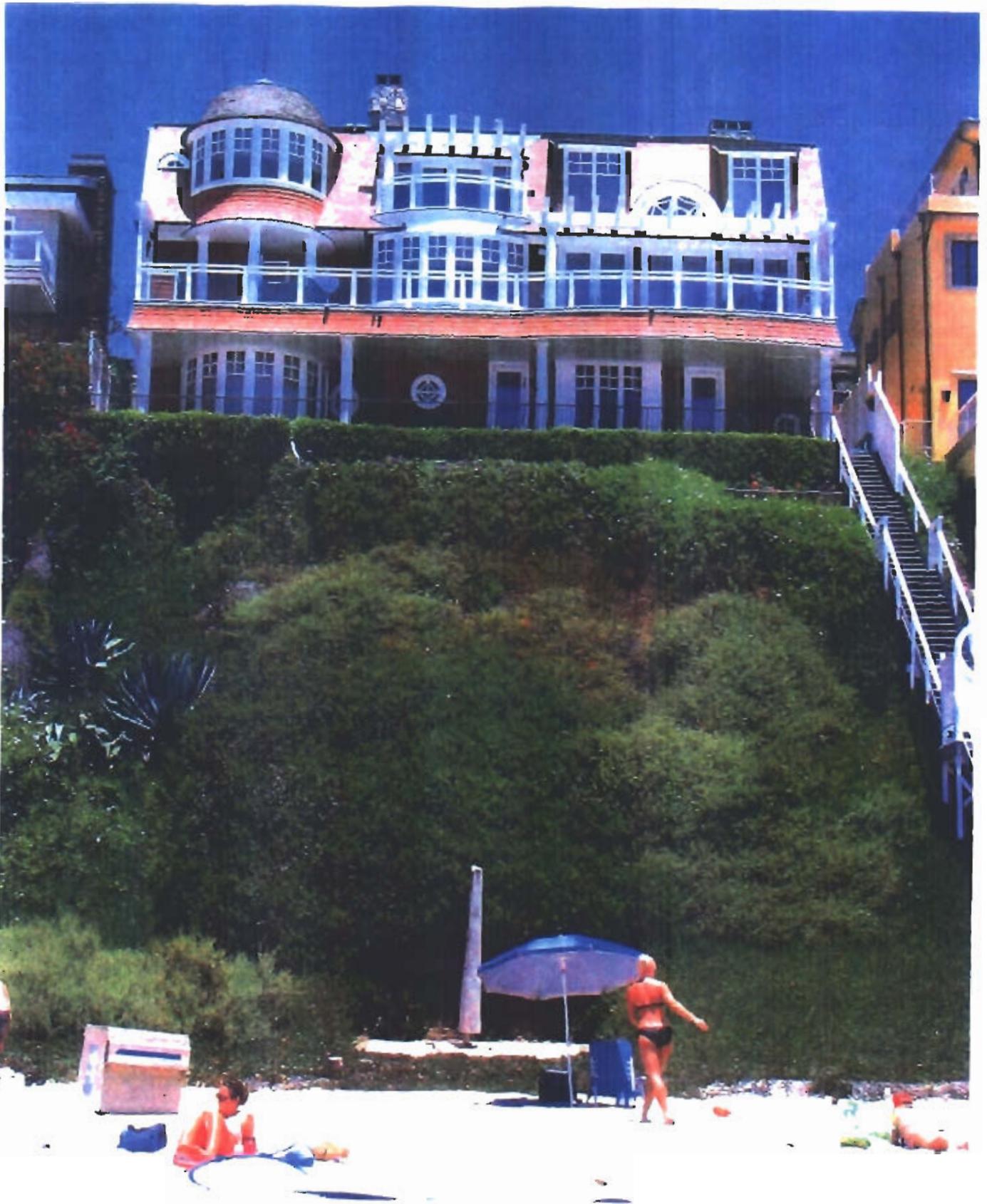
**HAS USE OF 3431 OCEAN BLVD's (TABAK) STAIR TO BEACH**

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**CIRCLE (FORMERLY ENSIGN) - 3415 OCEAN BLVD**

**STAFF RECOMMENDED APPROVAL OF SWITCHBACK  
BLUFF FACE STAIRWAY PER CDP NO. 5-05-095-A1**



**BUTTERFIELD - 3401 OCEAN BLVD** COASTAL COMMISSION  
**STAIR TO BEACH**

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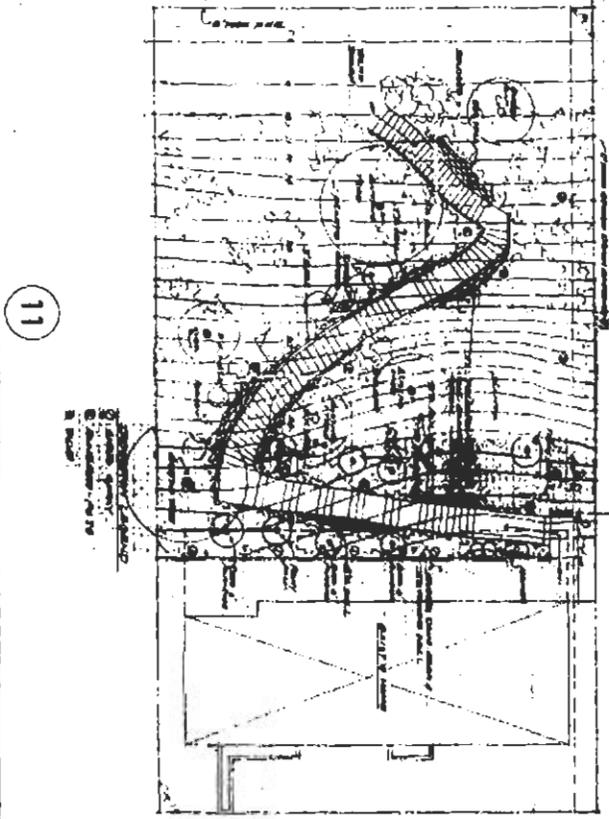
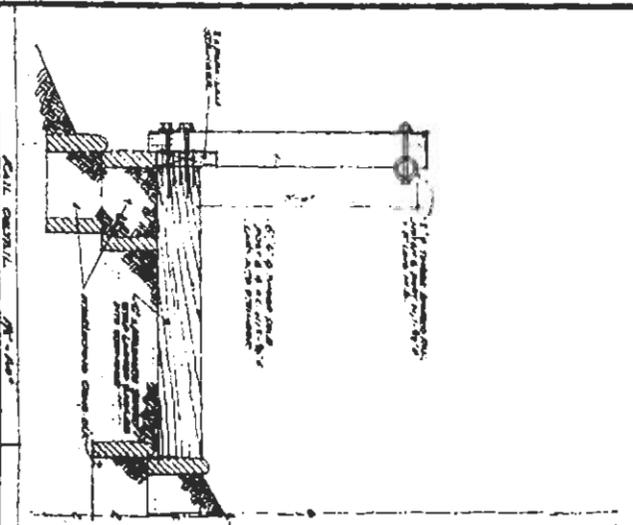
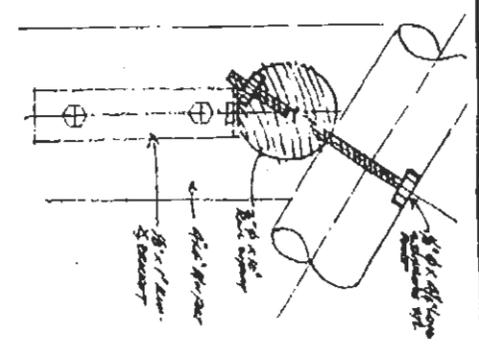
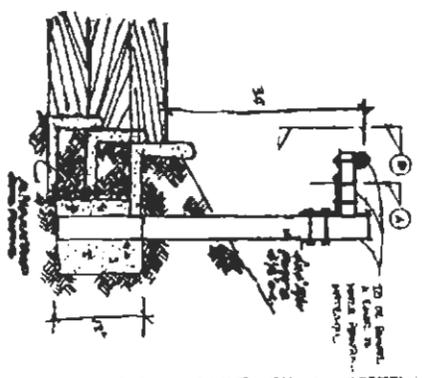
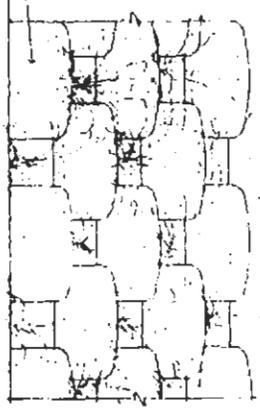
EXHIBIT # B  
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**LIVONI - 3335 OCEAN BLVD**

**PROPERTY IN QUESTION- ALL EXISTING BLUFF FACE  
IMPROVEMENTS TO BE REMOVED**

**ENSIGN/ CIRCLE -**  
3401 OCEAN BLVD. - SWITCHBACK BLUFF FACE  
STAIRWAY PER CDP NO. 5-01-112 (ENSIGN) &  
5-05-095-A1 (CIRCLE)



11

NOTES:  
1. SEE SHEET 11 FOR GENERAL NOTES.  
2. SEE SHEET 12 FOR FOUNDATION NOTES.  
3. SEE SHEET 13 FOR STRUCTURAL NOTES.  
4. SEE SHEET 14 FOR ELECTRICAL NOTES.  
5. SEE SHEET 15 FOR MECHANICAL NOTES.  
6. SEE SHEET 16 FOR FINISH NOTES.  
7. SEE SHEET 17 FOR LANDSCAPE NOTES.  
8. SEE SHEET 18 FOR UTILITY NOTES.  
9. SEE SHEET 19 FOR SPECIAL NOTES.  
10. SEE SHEET 20 FOR SCHEDULES.

NO.	DATE	REVISION
1	10/1/12	ISSUED FOR PERMIT

HILLSIDE TRAIL FOR  
CURT W. ENSIGN RESIDENCE



NO.	DATE	REVISION



- THE PROPOSED SCRATCH TRAIL IS BASED ON JOHN MUIR WILDERNESS TRAILS

COASTAL COMMISSION

EXHIBIT # B  
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**COASTAL COMMISSION**

**FORM FOR DISCLOSURE OF  
EX-PARTE COMMUNICATIONS**

EXHIBIT # C  
PAGE 1 OF 1

**Name or description of the project:** Thursday 10.b. Application No. 5-07-327 (Livoni Second Family Limited Partnership, Newport Beach)

**Time/Date of communication:** 10 am, August 1, 2008

**Location of communication:** San Diego

**Person(s) initiating communication:** Gabriel Solmer, Marco Gonzalez, Leslie Gaunt

**Person(s) receiving communication:** Pat Kruer

**Type of communication:** Meeting

Speakers urged approval of the staff recommendation to eliminate the lower pathway to the beach, but opposition to the staff recommendation to approve the third deck with restroom as being contrary to Section 30251 of the Coastal Act.

Date: August 1, 2008



Pat Kruer

**RECEIVED**  
South Coast Region  
AUG 4 2008  
CALIFORNIA  
COASTAL COMMISSION

**CALIFORNIA COASTAL COMMISSION**

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

**Th 10b**

Filed: December 21, 2007  
49th Day: February 8, 2008  
180th Day: June 18, 2008  
(Extended 90-Days)  
270<sup>th</sup> Day: September 16, 2008  
Staff: Fernie Sy-LB  
Staff Report: July 17, 2008  
Hearing Date: August 6-8, 2008  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 5-07-327

**APPLICANT:** Richard J. Livoni Second Family Limited Partnership

**AGENT:** Brion Jeannette & Associates

**PROJECT LOCATION:** 3335 Ocean Boulevard, Corona del Mar  
(Orange County)

**PROJECT DESCRIPTION:** Remove existing unpermitted retaining walls and beach access stairway from bluff face, regrade lower bluff to natural contours, add to residence a new caisson-supported deck with enclosed bathroom and spa equipment room on upper bluff face, extend an existing bluff face deck, and construct new at grade pathway from new deck to beach. Grading will consist of 163 cubic yards of cut, 10 cubic yards of fill, and 153 cubic yards of export to a location outside of the Coastal Zone. Landscaping is also proposed.

**SUMMARY OF STAFF RECOMMENDATION:**

The subject site is located between the first public road and the sea in Corona del Mar (Newport Beach) and is immediately inland of Corona del Mar State Beach, which is a public beach. The application seeks removal of existing development and construction of new development on a coastal bluff face within a lot currently developed with a single family residence. The primary issues before the Commission are the appropriateness of approving the project given the importance of preserving scenic resources and minimizing landform alteration, preventing adverse impacts to public use of the beach and avoiding development in hazard prone locations. Commission staff believe part of the development can be approved because that development is consistent with other development approved by the Commission in the surrounding area. However, part of the proposed project, a private pathway down the bluff face to the beach, is not being proposed consistent with other such pathways that have been approved by the Commission in the vicinity of the site. In this case, the stairway proposed for removal is unpermitted, and a new stairway on the bluff face is not consistent with the certified Land Use Plan or Chapter 3 policies.

Staff recommends that the Commission take one vote adopting a two-part resolution, which would **APPROVE** removal of the existing unpermitted bluff face stairway and walls, regrading the lower bluff to natural contours, landscaping, and construction of a new deck that would be in alignment with surrounding approved decks; and **DENY** the proposed new private pathway from the new deck, down the bluff face, to the beach.

The pattern of development along this segment of Ocean Boulevard consists of primary structures (i.e. houses) that are sited upon the upper bluff face, while the mid and lower bluff face remains largely undisturbed and vegetated. With some exceptions, the overall appearance of the bluff in this area is natural and undeveloped. The exceptions include 1) lots that have pre-coastal, Commission-approved, or unpermitted stairways traversing the bluff face, and 2) lots that have unpermitted development at the toe of the bluff (including projects that are currently subject to a Commission cease and desist order or are under investigation by the Commission's Enforcement staff). In addition, the toe of the bluff is immediately inland of Corona del Mar State Beach, which is a public beach. The project site is consequently highly visible from the public beach.

As currently submitted, part of the proposed project consists of the extension of an existing bluff deck and construction of a new bluff deck, which would encroach at most approximately 23-foot seaward from the existing accessory development located on-site. No habitable area is proposed with the project. However, since the proposed deck would conform to the predominant line of development, it would not affect public views of the vegetated lower bluff face from the adjacent public beach or other public vantage points, such as Inspiration Point, which is a public park and viewing area located on the bluff overlooking Corona del Mar State Beach and the Pacific Ocean. As proposed, the new deck is located at approximately the 35-foot contour to the south and the approximately 39-foot contour to the north, which is landward of other accessory/deck improvements along this segment of Ocean Boulevard.

In addition, approval of this project -without the proposed bluff face pathway- would be consistent with prior Commission action taken in this area. For instance, in recent proposals at the Tabak site (CDP No. 5-02-203-[Tabak]), which is downcoast of the project site, living space additions were landward of the 48-foot bluff elevation contour, and accessory improvements were limited to the 33-foot elevation contour. In addition, the Palermo (CDP No. 5-05-328-[Palermo]) and Halfacre project (CDP No. 5-03-100-[Halfacre]), also adhered to the 33-foot contour set by CDP No. 5-02-203-[Tabak] for accessory improvements.

The proposed project also consists of removal of an existing unpermitted beach access stairway (previously determined to be an unpermitted stairway) and site walls located on the bluff and regrading of the bluff to match the existing slope and landscaping.<sup>1</sup> These aspects of the project would be consistent with policies found within the Coastal Act and certified Land Use Plan since, visually, the character of the area would be maintained and compatible with the character of the surrounding area.

Though portions of the proposed project as discussed above would be consistent with the predominant line of development and consistent with the prior actions taken in this area, the proposed development does include as a component, the construction of a new private beach access pathway from the new deck down the bluff face to the beach, which is inconsistent with Sections 30251 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. This portion of the project also raises issues under Sections 30210, 30211 and 30240(b) of the Coastal Act. Approval of the new pathway would authorize development cascading down the bluff face and onto the beach and would authorize a significant --approximately 47-feet-- encroachment seaward beyond the predominant line of development.

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<sup>1</sup> On March 19, 2004, the Commission found, through its approval of Cease and Desist Order No. CCC-04-CD-01, that the beach access stairway currently existing on the subject property (among several other items of development) was unpermitted development. See pages 4-5, and 16-17 for a more detailed discussion of the Cease and Desist Order.

This proposal for a bluff face pathway is not comparable with a prior proposal for bluff face pathway that the Commission did approve. That other pathway is located at 3415 Ocean Boulevard, two lots downcoast of the subject site. That proposal, contained in application no. 5-01-112-[Ensign], included an irrevocable offer to dedicate (OTD) an easement for public lateral access over the sandy beach seaward of the toe of the bluff. This proposal contains no such offer to dedicate an easement. There are other private stairways that descend from the homes on the upper bluff face to the sandy beach on nearby lots, however, those stairways appear to be pre-Coastal Act (e.g. those at 3329 (McNamee) & 3401 Ocean Blvd. (Butterfield)) or are unpermitted (e.g. 3317 Ocean Blvd. (Palermo)). The only Commission-approved pathway that descends from a residence down the bluff face to the sandy beach along this segment of Ocean Boulevard is located at 3415 Ocean Boulevard - which also included the above-described OTD an easement.

Commission staff notes that there has been an increase in efforts to add amenities to existing single-family residences on the bluff or beach along this segment of Ocean Boulevard over the last several years. Denial of this project would be consistent with prior actions by the Commission where the Commission has prohibited significant encroachments upon the mid and lower bluff face and sandy beach. The Commission has denied proposals that included development upon the lower bluff face and sandy beach both up-coast and down-coast of this site (e.g., CDP No. 5-01-199-[Butterfield], CDP No. 5-04-339-[Palermo] and CDP No. 5-04-282-[McNamee]).

At the December 2001 Commission Hearing, the Commission denied in part Coastal Development Permit No. 5-01-199-[Butterfield] a request for the after-the-fact approval of a new "sand pit" cut-out at the toe of the bluff. 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 adversely affect the scenic and visual qualities of the subject area. That applicant ultimately applied for a coastal permit -and has since removed- the stone blocks that comprised the sand pit cut out. The development proposed to be removed in the subject application includes structures that are larger and more visually prominent than those elements of the Butterfield project that the Commission denied and have since been removed.

In addition, at the May 2005 Commission Hearing, the Commission denied Coastal Development Permit application No. 5-04-339-[Palermo] which included, among other elements, construction of a new 623 square foot pool house, pool, spa and patio area, retaining walls, landscape planters, and an outdoor barbeque area on the sandy beach and lower bluff face. The significant impacts to scenic resources and natural landforms resulted in denial of the project.

Also, in a more recent Commission action taken at the July 2005 hearing for the McNamee site (CDP No. 5-04-482-[McNamee]), the Commission denied a similar type of proposal. Coastal Development Permit Application No. 5-04-482-[McNamee] requested 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. Like the Palermo and Butterfield proposals, the significant impacts to scenic resources and natural landforms of the McNamee project resulted in its denial. The significant visual impact arguments made in the Commission's denial of the Palermo, Butterfield

and McNamee applications are equally applicable in the subject application as the type and impacts of the proposed development is similar.

In summary, staff is recommending **APPROVAL** of the proposed project subject to **ELEVEN (11) SPECIAL CONDITIONS** requiring: **1)** an assumption of risk; **2)** submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place; **3)** no future shoreline protective devices; **4)** future development; **5)** evidence of conformance with geotechnical recommendations; **6)** submittal of final drainage and run-off control plans; **7)** submittal of final spa protection plans; **8)** submittal of final landscape plans; **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report; **10)** condition compliance; and **11)** inspection.

Staff recommends that the Commission **DENY** the construction of a new private beach access pathway down the bluff to the beach.

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

#### **STAFF NOTE – SITE HISTORY AND ENFORCEMENT ACTION**

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). On May 8, 1985, the Commission issued Administrative Coastal Development Permit No. 5-85-218-[Schloessman] for additions to and remodeling of the original single-family residence on the subject property, including construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs. Although the property owners had a right under the Coastal Act, as noted in the 1985 CDP, to “maintenance and painting of the private beach stairs” in their original location, the demolition and reconstruction of the stairs in a different configuration and location on the bluff face (which was not authorized by that permit) resulted in significant new impacts to the bluff slope and constitutes new development.

The existing stairway from the residence to the beach was constructed without benefit of a coastal development permit and –as was established in the findings for Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram] which are incorporated herein by reference- is unpermitted development. Mr. Battram was the property owner at that time. The property is now under new ownership.

The Commission approved Consent Agreement and Cease and Desist Order CCC-04-CD-01 at its March 2004 hearing and found that development, including the unpermitted grading and landform alteration of a coastal bluff and beach, and the unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets. Through the Consent Order the property owner agreed to: 1) remove the unpermitted chain link fence, storage shed (with sink and toilet), storage cabinets and concrete patio located on the lower bluff face

and sandy beach, 2) Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development, 3) revegetate the bluff face with native chapparral plant species, and 4) apply for a coastal development permit application to retain the unpermitted stairway and retaining walls and grading (no assurances of approval were made). Furthermore, the Consent Order states that if the Commission denies a CDP application for the after-the-fact retention of unpermitted development on the subject property, the applicant shall remove the remaining unpermitted development on the subject property. The applicant was advised that his permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act, and through the signing of the Consent Order, the applicant acknowledged that the Commission may deny the application.

Thus as allowed by Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram], Mr. Battram submitted an application (Coastal Development Permit No. 5-04-214-[Battram]) for after-the-fact approval for the existing stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. In addition, the applicant also proposed landscaping, painting of a portion of the stairway a color to help blend into the background, removing the ice plant at the bottom of the lot and the grant 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 this application since the proposed development was inconsistent with Sections 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The project also raised issues under Sections 30210 and 30240(b) of the Coastal Act. The project was scheduled for the October 2005 Commission Hearing, but the applicant then withdrew his application. Since then Mr. Battram has sold the property. Mr. Livoni is now the new owner. The currently proposed project (Coastal Development Permit No. 5-07-327-[Livoni]) does not request after-the-fact approval for the existing unpermitted development found on site. Instead, the current applicant has submitted an entirely new project.

**LOCAL APPROVALS RECEIVED:** Approval in Concept (#0854-2007) from the City of Newport Beach Planning Department dated August 16, 2007.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; Coastal Development Permit No. 5-07-042-[Butterfield]; Coastal Development Permit No. 5-04-214-[Battram]; Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]; Coastal Development Permit No. 5-05-328-[Palermo]; Coastal Development Permit No. 5-01-112-[Ensign]; *Geotechnical Investigation (Job No. 4325-1)* prepared by Kenneth G. Osborne & Associates dated June 21, 1985; *Coastal hazard & Wave-Runup Study, 3335 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. dated September 2007; Letter to Brion Jeannette Associates from Commission staff dated October 19, 2007; and *Geotechnical Foundation Investigation for Proposed Deck and Pool/Spa, 3335 Ocean Boulevard, Corona Del Mar (Project No. 71758-00/Report No. 07-61469)* prepared by Geofirm dated December 18, 2007.

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## EXHIBITS

1. Vicinity Map
2. Site Plans
3. Floor Plans
4. Elevation Plans
5. Foundation Plan
6. Aerial Photo of the Project Site and Surrounding Pattern of Development
7. Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]

## **STAFF RECOMMENDATION:**

### **I. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART**

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present

#### **A. Motion**

***“I move that the Commission adopt the staff recommendation to approve in part and deny in part Coastal Development Permit No. 5-07-327, by adopting the two part resolution set forth in the staff report.”***

#### **B. Resolution**

##### **Part 1: Approval with Conditions of a Portion of the Development**

The Commission hereby **APPROVES**, as conditioned, a coastal development permit for the portion of the proposed development regarding the extension of an existing bluff deck; construction of a new bluff deck; removal of an existing beach access stairway and site walls located on the bluff; regrading of the bluff to match the existing slope and landscaping, and adopts the findings set forth below on grounds 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 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

##### **Part 2: Denial of the Remainder of the Development**

The Commission hereby **DENIES** the portion of the proposed application for coastal development permit for construction of a new beach access pathway that descends the bluff face from the proposed deck to the beach, and adopts the findings set forth below, on the grounds that the development would not conform with the policies of Chapter 3 of the Coastal Act and would 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 of the Coastal Act. Approval of this portion of the application would not comply with the California Environmental Quality Act because there are feasible mitigation measures or

alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

## **II. STANDARD CONDITIONS**

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

## **III. SPECIAL CONDITONS**

### **1. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides and wave uprush; (ii) to assume the risks to the 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.

### **2. FINAL PROJECT PLANS**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans (i.e. site plan, floor plans, elevations, cross-sections, grading, foundation, etc.) revised to be consistent with the conditions of this permit. As proposed in the preliminary plans, these final project plans shall show that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway

seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping (consistent with Special Condition 8), no development seaward of the line identified above shall take place.

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

### **3. NO FUTURE SHORELINE PROTECTIVE DEVICE**

- A.** By acceptance of this Permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-07-327 including, but not limited to, the extended deck, new deck, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, bluff and slope instability, landslides, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself 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 himself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the extended deck, and new deck, 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 portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

### **4. FUTURE DEVELOPMENT**

This permit is only for the development described in Coastal Development Permit No. 5-07-327. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-07-327. Accordingly, any future improvements to the development authorized by this permit, including but not limited to improvements to the extended deck, and new deck and any future improvements, and repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-327 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

### **5. CONFORMANCE WITH GEOTECHNICAL RECOMMENDATIONS**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the setback requirements identified in Special Condition 2 of this permit and all recommendations contained in the geologic engineering investigations: *Geotechnical Foundation Investigation for Proposed Deck and Pool/Spa, 3335 Ocean Boulevard, Corona Del Mar (Project No. 71758-00/Report No. 07-61469)* prepared by Geofirm dated December 18, 2007. If conformance with the geotechnical recommendations requires use of any foundation elements (e.g. caissons) seaward of maximum 60-foot linear distance measured from the Ocean Boulevard property line for the new bluff deck or any stabilization, soil compaction or other grading (other than the proposed and described grading in the project description), an amendment to this permit of a new permit shall be required in order to implement such recommendations. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the above report.
  - B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
  - C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.
6. **FINAL DRAINAGE AND RUN-OFF CONTROL PLAN**
- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of drainage and run-off control plans that substantially conform with the preliminary plans submitted by the applicant and conform with the requirements identified herein. The drainage and run-off control plan shall show that all roof drainage, including roof gutters and collection drains, and sub-drain systems for all landscape and hardscape improvements for the decks and all areas landward of the decks, shall be collected on site for discharge to Ocean Boulevard. In addition, sewage from the new proposed bathroom located on the new proposed deck will be directed to an existing sewer lateral that leads under the bluff into an existing City sewer line at the bottom of the bluff. The connection point to that existing sewer lateral shall conform with the requirements identified in Special Condition No. 2.
  - B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

**7. FINAL SPA PROTECTION PLAN**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, two (2) full size sets of spa protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed spa. The spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a spa leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the spa which is separate from the water meter for the house to allow for the monitoring of water usage for the spa, and 2) use of materials and spa 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 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 spa that conveys any water leakage to an appropriate drainage outlet. The applicant shall comply with the final spa plan approved by the Executive Director.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

**8. FINAL LANDSCAPE PLAN**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of landscaping plans prepared by an appropriately licensed professional which demonstrates the following:
  - (1) The plans shall demonstrate that:
    - (a) Goals and Performance Standards. Section A of the Plan shall present the following goals of the landscaping activities.
      - 1) Landscaping of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of landscaping activities;

- 2) Eradication of non-native vegetation within the areas subject to landscaping and those areas that are identified as being subject to disturbance as a result of the restoration and landscaping activities. No invasive plants are permitted for landscaping;
- 3) Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the landscaping of the impacted areas. The Plan will not be successful until the landscaped areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal;
- 4). Section A of the Plan shall also include specific ecological performance standards that relate logically to the landscaping goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species); and
- 5) Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent vegetated areas vegetated undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture.

If the comparison between the landscaping area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

- (b) Landscaping Methodology. Section B of the Plan shall describe the methods to be used to landscape the impacted areas. Section B shall be prepared in accordance with the following directions:
- 1) The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances than those areas subject to landscaping activities, the areas of the site and surrounding areas currently vegetated shall not be disturbed by activities related to the Plan;
  - 2) Specify that the landscaping of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation; and
  - 3) Describe the methods for landscaping of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using local native drought resistant plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the landscaped area. Invasive plants are not permitted for the landscaped of the site.
- (c) Monitoring and Maintenance. Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
- 1) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration professional, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional landscaping activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of landscaping at the site; and
  - 2) At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive

Director. If this report indicates that the landscaping project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP or amendment to CDP 5-07-327.

- (d) Appendix A shall include a description of the education, training and experience of the qualified restoration professional who shall prepare the Plan. A qualified restoration professional for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or landscaping of coastal bluff habitats.
- (e) Interim erosion control plans shall be included in the Plan. Interim erosion control measures shall be prepared by a qualified restoration professional and shall include the following:
  - 1) The following temporary erosion control measures shall be used: hay bales, wattles, silt fences. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
  - 2) Interim erosion control measures shall include, at a minimum, the following components:
    - a) A narrative describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control;
    - b) A detailed site plan showing the location of all temporary erosion control measures; and
    - c) A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term landscape and monitoring plan.

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

## **9. DEED RESTRICTION**

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

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

#### **10. CONDITION COMPLIANCE**

**WITHIN 30 DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall complete the following actions, in compliance with the plans approved by this permit.

- (1) Remove the unpermitted stairway, retaining walls and all other unpermitted development from the bluff face.
- (2) Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development.
- (3) Landscape the bluff face as described in Special Condition No. 8
- (4) Submit to the Executive Director a report documenting the landscaping of the bluff face. The report shall include photographs that clearly show all portions of the bluff face on the subject property.

#### **11. INSPECTION**

The permittee shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the requirements of the permit, subject to twenty-four hours advance notice.

## **IV. FINDINGS AND DECLARATIONS<sup>2</sup>:**

The Commission hereby finds and declares as follows:

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

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

The proposed project is located at 3335 Ocean Boulevard in Corona del Mar, City of Newport Beach, County of Orange (Exhibits #1 and 6). The lot size is 8,053 square feet, and the City of Newport Beach Land Use Plan (LUP) designates the site as low density residential and the proposed project adheres to this designation. The subject property, immediately inland of Corona del Mar State Beach, contains a single-family residence on the upper bluff face portion of the bluff face lot, and the bluff face descends down to the sandy beach. The rectangular shaped bluff face property fronts approximately 70-feet on the Ocean Boulevard right-of-way and extends southwesterly approximately 120 to 124-feet to the rear property boundary located along Corona del Mar State Beach. The lot consists of the middle and lower portions of a generally natural sea bluff and a portion of the beach. The overall height of the bluff slope is approximately 80-feet, while maximum relief across the property is approximately 64-feet. The slope ratio is variable, between 1:1 and 2:1. To the north of the site, at the top of the bluff, is Ocean Boulevard. To the west (up-coast) is existing residential development. To the east (down-coast) are existing single-family homes, and further beyond is a natural vegetated bluff, a bluff park known as Inspiration Point and a public access way from Inspiration Point to the public beach (Corona del Mar State Beach). To the south of the bluff, at the toe of the slope, is a privately owned (by the applicant) sandy beach immediately fronting a normally 200-foot wide sandy public beach. The pattern of development along Ocean Boulevard primarily consists of structural development sited at the upper portion of the bluff face with minimal disturbance of the mid and lower bluff face and the sandy beach.

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

The application consists of an extension (390 square feet) of an existing bluff face deck and construction of a new deck (800 square feet) with an enclosed bathroom and spa equipment room on the bluff face in association with an existing single-family residence (Exhibits #2-6) In addition, existing unpermitted site walls and beach access stairway located on the bluff-face will be removed. The portion of the bluff face below the proposed deck will be regraded to match the existing slope and a new at grade pathway from the proposed deck, down the bluff face, to the beach is proposed (Exhibits #2-6). No structural improvements are proposed with the new at grade pathway. Grading will consist of 163 cubic yards of cut, 10 cubic yards of fill, and 153 cubic yards of export to a location outside of the Coastal Zone. Landscaping is also proposed. A caisson foundation system is proposed to support the expanded and new decks.

The proposed project would also remove the remaining unpermitted development (i.e. stairway, retaining walls, etc.) on site as discussed below.

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<sup>2</sup> These findings also hereby incorporate by reference the introductory sections of the May 28, 2008 staff report ("Staff Report: Regular Calendar") in which these findings appear, which sections are entitled "Summary of Staff Recommendation" and "Staff Note."

### **3. Prior Commission Action at the Subject Site**

#### **Administrative Coastal Development Permit No. 5-85-218-[Schloessman]**

The original single-family residence on the subject property was constructed in 1957, prior to the enactment of the Coastal Act, and so did not require a Coastal Development Permit (CDP). On May 8, 1985, the Commission issued Administrative Coastal Development Permit No. 5-85-218 for additions to and remodeling of the original single-family residence on the subject property, including construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs.

Aerial photographs of the subject property indicate that a stairway existed on the down coast (eastern) portion of the subject property in 1972 and 1978. However, additional aerial photographs of the subject property indicate that the stairway present in 1972 and 1978 was in fact demolished and removed from the subject property, and a new stairway was constructed in a different location as of 1987. The 1985 Administrative Coastal Development Permit contained no provisions for demolition and construction of a new stairway in a different location on the property. The new stairway was constructed without benefit of a coastal development permit and –as was established in the findings for Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram] which are incorporated herein by reference- is unpermitted new development.

None of the other development on the subject property, including unpermitted development (stairway down the bluff face, retaining walls located on the upper and lower bluff face and sandy beach, concrete patio, chain link fence, storage shed (with sink and toilet) and storage cabinets located on the lower bluff face and sandy beach), was listed as part of the proposed project description in the application submitted for Administrative Coastal Development Permit No. 5-85-218, shown on the proposed or approved plans, or authorized by the Commission pursuant to its issuance of that permit.

Commission staff has obtained a copy of a site plan from the City of Newport Beach in reference to CDP No. 5-85-218. Those plans show and state that a portion of the stairway located on the upper bluff was to be new and a section was to attach to the existing stairway located on the lower bluff. In addition, the existing lower bluff portion of the stairway was to receive maintenance repairs and new paint. CDP No. 5-85-218 is referenced on the site plan; however, no stamp or sign off from Commission staff is included on the plans, and the plans on record with the City are inconsistent with the plans submitted as part of the application for CDP No. 5-85-218. CDP No. 5-85-218 only authorized construction of a new roof, limited seaward extensions of decks, and limited maintenance and painting of the private beach stairs. The Commission never permitted construction of a new stairway.

#### **Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram]**

The Commission approved Consent Agreement and Cease and Desist Order CCC-04-CD-01 at its March 2004 hearing and found that development, including the unpermitted grading and landform alteration of a coastal bluff and beach, and the unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets (Exhibit #8). Through the Consent Order the property owner agreed to: 1) remove the unpermitted chain link fence, storage shed (with sink and toilet), storage cabinets and concrete patio located on the

lower bluff face and sandy beach, 2) Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development, 3) revegetate the bluff face with native chaparral plant species, and 4) apply for a coastal development permit application to retain the unpermitted stairway and retaining walls and grading (no assurances of approval were made). Furthermore, the Consent Order states that if the Commission denies a CDP application for the after-the-fact retention of unpermitted development on the subject property, the applicant shall remove the remaining unpermitted development on the subject property. The applicant was advised that his permit application may be denied by the Commission based on its application of Chapter 3 policies of the Coastal Act, and through the signing of the Consent Order, the applicant acknowledged that the Commission may deny the application.

#### Coastal Development Permit Application No. 5-04-214-[Battram]

As allowed by Consent Agreement and Cease and Desist Order CCC-04-CD-01-[Battram], Mr. Battram submitted an application (Coastal Development Permit No. 5-04-214-[Battram]) for after-the-fact approval for the stairway down the bluff face, retaining walls located on the bluff face and sandy beach and grading. In addition, the applicant also proposed landscaping, painting of a portion of the stairway a color to help blend into the background, removing the ice plant at the bottom of the lot and the grant 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 this application since the proposed development was inconsistent with Sections 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding development on coastal bluffs. The project also raised issues under Sections 30210 and 30240(b) of the Coastal Act. The project was scheduled for the October 2005 Commission Hearing, but the applicant then withdraw his application. Since then Mr. Battram has sold the property. Mr. Livoni is now the new owner. The proposed project that is the subject of this coastal development permit application (Coastal Development Permit No. 5-07-327-[Livoni]) does not request after-the-fact approval for the existing unpermitted development found on site. Instead, the current applicant has submitted an entirely new project. Many of the improvements (i.e. fence, shed, etc.) required by the Consent Agreement to be removed have already been removed. The only unpermitted development that remains on the subject property and has not been removed are the stairway and associated development (i.e. retaining walls, etc.) of a path to the beach. The proposed project includes the removal of the remaining unpermitted development.

#### 4. Prior Commission Action in Subject Area

See Appendix "A"

## **B. APPROVAL FINDINGS AND DECLARATIONS**

### 1. Scenic Resources

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

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

Section 30251 of the Coastal Act states that scenic and visual qualities of coastal areas shall be protected. The proposed project is located upon a coastal bluff face and sandy beach immediately inland of Corona del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural (Exhibit #6). Although several lots have pre-coastal, Commission-approved, or unpermitted stairways traversing the bluff face and unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, and this is especially true if one does not consider the unpermitted development. Development at this site, if approved, 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, minimize the alteration of existing landforms, and limit the seaward encroachment of development. The applicant is seeking development consisting of removal of existing unpermitted retaining walls and beach access stairway from the bluff face, regrading of the lower bluff to natural contours, adding a new caisson-supported deck with enclosed bathroom and spa equipment room on upper bluff face, extension of an existing bluff face deck, and construction of a new at grade pathway from new deck to beach (this new pathway is being denied due to its adverse impacts and is more thoroughly discussed in the denial section of this staff report). The extension of an existing bluff deck and construction of a new bluff deck would encroach at most approximately 23-feet seaward from the existing accessory development located on-site. No habitable area is proposed with the project. These decks would conform to the predominant line of development in the area and would thus not affect public views of the vegetated mid and lower bluff face from the adjacent public beach or other public vantage points, such as Inspiration Point. In addition, approval of the project (without the proposed bluff face pathway) would be consistent with prior action taken in this area (i.e. CDP No. 5-02-203-[Tabak], CDP No. 5-05-328-[Palermo] and CDP No. 5-03-100-[Halfacre]). Additionally, the proposed project will also regrade the existing bluff to match the existing slope and also landscape the bluff to make it appear natural. Thus, that component of the project would assist in making it additionally more consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural.

a. Scenic View, Landform Alteration and Community Character

(1) Scenic Views

The proposed extension of an existing bluff deck and construction of a new bluff deck, will be located along the mid bluff and the removal of an existing beach access stairway (previously determined to be an unpermitted stairway) and site walls (i.e. garden/retaining walls) located on the bluff and regrading of the bluff to match the existing slope and landscaping will take place along the lower bluff face and the sandy beach. The bluff face and sandy beach are natural landforms visible from public vantage points such as the beach (Corona del Mar State Beach) and Inspiration Point and any alteration of this landform would adversely affect the scenic views of the coastline when viewed from these sites. These new decks would conform to the pattern of development found in the area. In addition, approval of this project would be consistent with prior action taken in this area (i.e.

CDP No. 5-02-203-[Tabak], CDP No. 5-05-328-[Palermo] and CDP No. 5-03-100-[Halfacre]. These developments only allowed accessory improvements limited to a predominant line of development established at approximately the 33-foot elevation contour. The new decks would conform to this line as well. Additionally, the regrading and landscaping of the lower bluff to match the existing slope will result in the bluff appearing natural and undeveloped, similar to the surrounding development. However, the proposed project also includes construction of a new private beach access pathway that would descend from the proposed new deck, down the bluff face, to the beach. This would be inconsistent with the pattern of development in this area and is being denied as part of the proposed project and will be discussed later in the staff report in the denial findings. Thus, in order to make sure that this proposed new private pathway is not part of the approved portions of the project, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place. Limiting the development to a maximum of 60-foot linear distance measured from the Ocean Boulevard property line, will result in development landward of the 33-foot contour line. Thus, as conditioned, the proposed development would be consistent with the pattern of development in the area and the recent Commission approvals along this section of Ocean Boulevard.

(2) Landform Alteration

As discussed earlier, the proposed project includes regrading of the existing bluff to match the existing slope and also landscaping the bluff to bring it back to its natural appearance. Doing so would make the lower bluff face consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural.

(3) Cumulative Impacts

As conditioned, approval of the proposed project would not set a precedent for the construction of new development along the beach and the mid and lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward. Therefore, the Commission can approve the proposed project.

CONCLUSION

As conditioned, the proposed project is sited and designed to protect scenic and visual qualities of coastal areas. The Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place. Approval of

the proposed project, as conditioned, would preserve existing scenic resources and would be consistent with preserving the existing community character where structures are sited at the upper bluff face, while the lower bluff face remains largely undisturbed and vegetated. Furthermore, the development (without the private bluff face pathway to the beach) would be consistent with the pattern of development recently approved by the Commission (i.e. CDP No. 5-02-203-[Tabak], CDP No. 5-05-328-[Palermo] and CDP No. 5-03-100-[Halfacre]). Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

## **2. Public Recreation**

Section 30210 of the Coastal Act states:

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

Section 30211 Development not to interfere with access

*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 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.*

Public access is available on the sandy public beach (Corona del Mar State Beach) that is located directly seaward of the toe of the bluff. Development at this site must be sited and designed to be compatible with Sections 30210, 30211 and 30240(b) of the Coastal Act. Section 30210 of the Coastal Act states that maximum access and recreational opportunities shall be provided for the public. Section 30211 states that development shall not interfere with the public's right of access to the sea. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to recreational coastal resources. As proposed, the project consists of a new private beach pathway leading from the new bluff deck, down the bluff to the beach below. This new private pathway would adversely impact public access since the pathway would only serve the owners and occupants of the lot, the pathway would establish a presence that would effectively privatize the beach, and would degrade the adjacent publicly owned beach. These points will be discussed further in the denial section of this staff report. However, as conditioned to limit the new bluff deck to extend a maximum 60-foot linear distance measured from the Ocean Boulevard property line and that no development seaward of that line is allowed including a new private pathway seaward of this line, except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping; the development

will be kept far off the beach and at the same elevation on the bluff face as other nearby development approved by the Commission. Thus, the development would not adversely impact public use of the beach.

### CONCLUSION

As conditioned, the proposed project is sited and designed to protect public recreation areas. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30210, 30211 and 30240(b) of the Coastal Act.

### **3. 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 run-off, use of water-dependent vegetation, and breaks in water or sewage lines.

#### **a. Site Specific Bluff Information**

To address site-specific geotechnical issues with the proposed development the applicant has submitted the following investigation: *Geotechnical Foundation Investigation for Proposed Deck and Pool/Spa, 3335 Ocean Boulevard, Corona Del Mar (Project No. 71758-00/Report No. 07-61469)* prepared by Geofirm dated December 18, 2007. The investigations state that the site is underlain locally at the surface and at depth by bedrock strata of the Monterey Formation which is overlain by marine terrace deposits along the upper bluff and by a slopewash which mantels the middle and lower bluff. Furthermore, the investigation also states: *"The bedrock materials backing the bluff are anticipated to remain grossly stable following construction of the caisson foundation system. The slopewash mantling the lower bluff face, below elevation 45 +/- feet, is considered potentially unstable, and may not be relied upon for foundation support."* With construction of a caisson foundation system for the proposed new deck with an enclosed bathroom and spa equipment room, the investigation concludes that these proposed improvements are considered feasible and safe from a geotechnical viewpoint provided

the recommendations of the report are followed. However, the applicant's geologist has also concluded that the area below the location of the caisson foundation system and where the proposed pathway would have been located were it approved will still be subject to surficial slope instability.

The Commission finds that in order to be consistent with Section 30253 of the Coastal Act, development must be sited such that it will be located in an area with a minimum factor of safety against sliding of greater than 1.5 throughout its useful economic life, assumed to be 75 years; however, this is not the case here. Currently, the site is not considered to be stable given that standard, but construction of the caisson foundation system is anticipated to make the portion of the development located above the caissons, where the proposed new bluff deck will be located, grossly stable and consistent with these standards. The caisson foundation system would not be for the proposed beach access pathway along the bluff. As stated in the geotechnical investigation, the lower bluff face where the proposed private pathway would have been located is considered to be "potentially unstable".

As stated previously, the proposed caisson foundation system is anticipated to make the area where the proposed new bluff deck will be located, grossly stable, but will not have an affect on the lower bluff face where the proposed private pathway will be located. However, since the Commission is denying the proposed private pathway (see denial findings), the Commission is imposing **SPECIAL CONDITION NO.2**, which requires submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place.

The Commission's staff geologist has reviewed the project and agrees with the investigations' conclusions. The slope will be subject to surficial instabilities, but the geotechnical report makes recommendations that should assure safety of the development located landward of the proposed caissons. The project can be built, but only with the support of a significant engineering effort.

b. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

The applicants have since submitted a *Coastal hazard & Wave-Runup Study, 3335 Ocean Boulevard, Corona Del Mar, California* prepared by Geosoils Inc. dated September 2007. Ultimately, this study concludes: "*In conclusion, coastal hazards will not significantly impact this property over the life of the proposed improvements. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations*

*necessary for wave or wave runup protection. No shore protection is proposed or should be necessary in the next 75 years. The improvements minimize risks from flooding.”*

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes. For example, the study states that there is no general overall shoreline retreat in the area due to the sheltering effect of the Newport Harbor jetty and rocky headlands. As long as this jetty and rocky headlands are present the study concludes that the beach should be fairly stable. However, if something were to happen that would cause damage to the jetty and rocky headlands, then shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development.

c. Conclusions and Special Conditions

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

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

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

The Commission has imposed many of these same recommendations, including requiring the consulting geologist to review foundation and drainage plans in order to confirm that the project conforms to the policies of the Coastal Act. The findings in this staff report regarding the general causes of bluff erosion and the specific findings from the geotechnical investigation confirm that the coastal bluff at this location is eroding and that measures to minimize bluff erosion are necessary. The following Special Conditions will

mitigate the impacts of the proposed development on bluff erosion and instability, and will prohibit future bluff protective structures, as required by Section 30253 of the Coastal Act.

(1) Assumption of Risk

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

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not entirely eliminated. The findings in section "a" above, including site-specific geologic information, support the contention that development on coastal bluffs involves risks and that structural engineering can minimize some of the risk but cannot eliminate it entirely. Therefore, although, as conditioned, the project will sufficiently reduce the risks to make it approvable, the applicant must be aware of the remaining risks and must assume responsibility for the project should he decide to proceed. Accordingly, an assumption of risk condition has been attached via **SPECIAL CONDITION NO. 1**.

By this means, and by the recordation of this condition against the title to the property pursuant to **SPECIAL CONDITION NO. 9** (discussed more later), the applicant and future buyers are notified that the proposed development is located in an area that is potentially subject to bluff erosion that can damage the applicant's property. In addition, the condition insures that the Commission does not incur damages as a result of its approval of the Coastal Development Permit.

(2) Final Project Plans

The proposed project consists of the removal of existing unpermitted retaining walls and beach access stairway from the bluff face, regrading of the lower bluff below the proposed deck to natural contours, addition to the residence consisting of a new caisson-supported deck with enclosed bathroom and spa equipment room on the upper bluff face, and extending an existing bluff face deck. In addition, the project includes constructing a new at grade pathway from the new deck to beach. Staff is recommending that the Commission approve the removal of unpermitted development, the extension of an existing bluff deck; construction of a new bluff deck; and regrading of the bluff to match the existing slope and landscaping. However, staff is recommending denial (to be discussed later in the staff report) of the construction of a new beach access pathway along the bluff, as it would have adverse impacts on the naturally appearing landform and the cumulative adverse impact of such projects on visual resources would be significant. Plans will need to be revised accordingly. To accomplish this, the Commission imposes **SPECIAL CONDITION NO. 2**, which requires submittal of final revised project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face below the proposed deck to natural contours, and landscaping, no development seaward of the line identified above shall take place. Limiting the proposed development to this line serves to prevent the placement of development

upon the lower bluff face and beach, which are areas that are more prone to coastal hazards.

(3) Shoreline Protective Devices

Although the applicant's report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach and a revetment at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those, which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

No shoreline protection device is proposed. However, because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device is not expected to be needed in the future. The applicant's geotechnical consultant has indicated that the site would be stable if development is undertaken consistent with their recommendations and that no shoreline protection devices will be needed. If not for the information provided by the applicants 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 previously, 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 applicants to, their information, which states that the site is safe for development without the need for protective devices. If the Commission were forced, in the future, to approve a shoreline protection device to protect the structures being approved now, it would mean that the project approved now is not consistent with Section 30253's prohibition on new development requiring shoreline protective devices. Therefore, the Commission imposes **SPECIAL CONDITION NO. 3** which states that no shoreline protective devices shall be permitted to protect the proposed development and that the applicants waive, on behalf of themselves and all successors and assigns on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

(4) Future Development

The development is located within an existing developed area and, as conditioned, is compatible with the character and scale of the surrounding area. However, without controls on future development, the applicant could construct future improvements to the single-family house, including, but not limited to, improvements to the extended deck permitted through this permit, that could have

negative impacts on coastal resources, and could do so without first acquiring a coastal development permit, due to exemption for improvements to existing single-family residences in Coastal Act Section 30610 (a). Unpermitted improvements could lead to negative geologic impacts such as slope instability. In order to prevent the current authorization from allowing such future negative effects, it is necessary to ensure that any future development -- including the development of amenities that would otherwise normally be exempt -- will require a permit. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 4**, a future improvements special condition. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act relating to geologic hazards.

(5) Conformance with Geologic Recommendations

The geotechnical consultant has found that development is feasible provided the recommendations contained in the geotechnical investigation prepared by the consultant are implemented in regards to the design and construction of the project. The geotechnical recommendations address things such as foundations and run-off on site. In order to assure that risks of development are minimized, as per Section 30253, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicants to submit final revised plans that have been revised to conform to the geotechnical recommendations and have been reviewed and certified by an appropriately licensed professional that such plans do conform to the geotechnical recommendations. If conformance with the geotechnical recommendations requires use of any foundation elements (e.g. caissons) seaward of maximum 60-foot linear distance measured from the Ocean Boulevard property line for the new bluff deck or any stabilization, soil compaction or other grading (other than the proposed and described grading in the project description), an amendment to this permit or a new permit shall be required in order to implement such recommendations.

(6) Drainage and Run-Off Control and Landscaping

The applicants previously submitted a drainage and run-off control plan and it shows that drainage on site will be directed up the bluff to the street (Ocean Boulevard) with piping. Therefore, adverse impacts caused by possible infiltration of the bluff are avoided. In addition, sewage from the new proposed bathroom located on the new proposed deck will be directed to an existing sewer lateral that leads under the bluff into an existing City sewer line at the bottom of the bluff. However, revisions to project plans will need to be made to conform to all the conditions imposed through this action. Thus, updated drainage and run-off control plans have been submitted. Therefore, the Commission is imposing **SPECIAL CONDITION NO. 6**, which requires that the applicants shall prepare prior to issuance of this permit a final drainage and run-off control plan that substantially conform with the preliminary plan and demonstrate compliance with the requirements identified in the condition.

The proposed project consists of a new spa on the bluff face. If water from the proposed 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 spa double lined and installing a spa leak detection system to prevent the infiltration of water into the bluff due to any possible pool or spa problems. The applicants have provided a plan and a narrative stating that they propose a double lined shell and a matte drain system. However, these are preliminary plans which will need to be finalized. Therefore, the Commission imposes **SPECIAL CONDITION NO. 7**, which requires the applicants to submit final plans for the spa that conform with leak detection and control requirements.

Because of the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The applicant has submitted preliminary landscape plans. However, project plans will need to be revised to eliminate development that is not being approved by the Commission, as well as to conform to the requirements of the conditions. Thus, revised final landscape plans will need to be submitted. Any proposed vegetated landscaped areas located on site should only consist of native drought tolerant plants, which are non-invasive. Native plant species are required (as opposed to non-native, non-invasive species) in this case because the site is a coastal bluff and must be planted with species appropriate to that habitat type. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. In addition, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. Existing landscaping that does not comply with the requirements identified above must be removed.

Due to the potential impacts to the bluff from infiltration of water into the bluff, the Commission imposes **SPECIAL CONDITION NO. 8**, which requires that the applicant shall prepare prior to issuance of this permit a final revised landscape plan, which shall be submitted for the review and approval of the Executive Director. To minimize the potential for the introduction of non-native invasive species and to minimize the potential for future bluff failure, a final landscaping plan shall be prepared by a licensed landscape architect and shall incorporate the following criteria: 1) minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the landscaping of the impacted area; and 2) submittal of temporary erosion control measures, among other requirements identified in the condition.

(7) Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **SPECIAL CONDITION NO. 9** requiring that the property owners record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owners will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

(8) Condition Compliance and Inspection

To ensure that special conditions are complied with, the Commission imposes **SPECIAL CONDITION NO. 10** requiring condition compliance within 30 days of issuance of the coastal development permit.

To additionally ensure that the special conditions are complied with, the Commission imposes **SPECIAL CONDITION NO. 11** allowing inspection by Commission staff subject to twenty-four notice.

CONCLUSION

The Commission has required **ELEVEN (11) SPECIAL CONDITIONS**, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These special conditions include: **1)** assumption of risk; **2)** submittal of final project plans showing that the new bluff deck will extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. No new private pathway seaward of the line identified above is allowed. Except for the proposed removal of existing unpermitted development, grading the lower bluff face to natural contours, and landscaping, no development seaward of the line identified above shall take place; **3)** no future shoreline protective device; **4)** additional approvals for any future development; **5)** evidence of conformance with geotechnical recommendations; **6)** submittal of final drainage and run-off control plans; **7)** submittal of final spa protection plans ; **8)** submittal of final landscaping plan; **9)** a deed restriction against the property, referencing all of the special conditions contained in this staff report; **10)** condition compliance; and **11)** inspection. Only as conditioned to comply with the provisions of these special conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

**4. Local Coastal Program (LCP)**

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

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. 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 4.4.3-12 H. states,

*Employ site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible, such as:*

*H. requiring any altered slopes to blend into the natural contours of the site*

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.

## **5. California Environmental Quality Act (CEQA)**

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

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

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

## **C. DENIAL FINDINGS AND DECLARATIONS**

### **1. Public Recreation**

Section 30210 of the Coastal Act states:

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

Section 30211 Development not to interfere with access

*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 30240 (b) of the Coastal Act states:

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

The proposed bluff face stairway is located upon a privately owned lot developed with a single family residence that is located between the sea and the first public road paralleling the sea. The subject lot is mostly bluff face; however, there is sandy beach area within the boundaries of the subject lot at the toe of the bluff. The sandy area is about 13-feet deep (between the toe of the bluff and the seaward property line) and extends the entire width of the lot (64-feet). This privately owned sandy beach area is adjacent to and contiguous with the sandy beaches that are part of Corona del Mar State Beach, a public recreation area.

Public access from Ocean Boulevard, through the subject lot, to the sandy beach does not currently exist. Any stairs or pathway on the lot would only serve the owners/occupants of the lot and their visitors. However, there is public access available to Corona del Mar State Beach via the main entrance to the State Beach, located north of the subject site, and Inspiration Point, to the south. Thus, the subject beaches are very popular, heavily used recreation areas. As stated in Section 30210 of the Coastal Act and the California Constitution, the public has a right to maximum access and recreational use of shoreline areas, such as Corona del Mar State Beach. Development that interferes with such access would be inconsistent with Section 30210.

There is no physical demarcation which defines the boundary between the privately owned sandy beach on the subject lot and the public sandy beach located seaward of it. Due to the large population of beach users, demand for sandy beach areas is high. Since there is no demarcation, the privately owned sandy beach is likely used by the public in the same fashion it uses the publicly owned beach area. Thus, there may be a right of access acquired through use of the privately owned sandy beach area on the lot; although there has been no judicial determination regarding the presence of such rights. Interference with public access rights acquired through use would be inconsistent with Section 30211 of the Coastal Act.

Since sandy beach areas are in high demand, it is critical to ensure that private development adjacent to the sandy beach areas does not establish a presence that would effectively privatize public beach areas. There is a tendency for individuals visiting public spaces to take visual cues from adjacent private development and to stay away from those areas because the development conveys the idea that such areas are or may be privately owned. In effect, the presence of the development establishes a privacy zone that tends to thwart members of the public from using the sandy beach adjacent to that development, even if that sandy beach is public. There is a high potential for development on the subject site to have this effect due to the small distance between the private pathway that is proposed on the bluff face and the publicly owned beach. That tendency may be exacerbated here where the boundary between private and public areas is not well defined. This forces the public to move more seaward, away from the toe of the bluff, to enjoy the beach and thus has an adverse impact on public use of the beach. Overcrowding and overuse of beach areas would result. In addition, a particular concern is during the winter when

the width of the beach narrows. The narrowing of the beach would force the public to use the more inland portions of the beach that are adjacent to the toe of the bluff. The perception of privatization created in this area would dissuade the public from using the beach adjacent to the toe of the bluff, which would crowd the public into an even narrower band of sandy beach, resulting in adverse impacts upon public use of the beach.

Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. The presence of the proposed private beach access pathway would degrade the publicly owned beach area adjacent to it. Thus, the proposed private beach access pathway is inconsistent with Section 30240(b) of the Coastal Act and must be denied.

## **2. Scenic Resources**

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

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

Section 30251 of the Coastal Act states that scenic and visual qualities of coastal areas shall be protected. The proposed private beach access pathway is located upon a coastal bluff face and sandy beach immediately inland of Corona del Mar State Beach. Because of its location the project site is highly visible from public vantage points such as the beach (Corona Del Mar State Beach) and from elevated vantage points such as Inspiration Point. The pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural (Exhibit #6). Although several lots have stairways traversing the bluff face, and some have unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped, and this is especially true if one does not consider the unpermitted development.

### **a. Scenic Views, Landform Alteration and Cumulative Impacts**

#### **(1) Scenic Views**

The proposed beach access pathway is located along the mid and lower bluff face and the sandy beach. The bluff face and sandy beach are natural landforms visible from public vantage points such as the beach (Corona del Mar State Beach) and Inspiration Point and any alteration of this landform would adversely affect the scenic views of the coastline when viewed from these sites. This proposed development on the mid and lower bluff face and sandy beach results in considerable adverse impacts to views from the sandy beach. The views from Inspiration Point of the natural vegetated bluff and the beach at the project site will be marred by the proposed bluff face pathway. In addition, the new pathway causes a significant encroachment seaward of other approved development on the lot and exceeds the predominant line of development in the community. The

pattern of development along this segment of Ocean Boulevard is such that primary structures (i.e. houses) are sited at the upper bluff face, while the mid and lower bluff face and sandy beach remains largely undisturbed and natural. Although several lots have stairways traversing the bluff face, and some have unpermitted development at the toe of the bluff (either the subject of a cease and desist order issued by the Commission or currently under investigation by the Commission's Enforcement staff), the overall appearance of the bluff in this area is natural and undeveloped. The edge of the proposed new bluff deck that is being proposed and can be approved with this application would encroach approximately 23-feet seaward from the existing accessory development located on-site; however, that encroachment moves the line of development seaward to the predominant line of development in the area. However, the proposed beach access pathway would extend even further seaward, approximately 47-feet beyond this predominant line. The seaward most end of the proposed pathway would be at the 13-foot contour. Thus, the pathway encroaches past the predominant line of development and will adversely impact scenic views.

(2) Landform Alteration

As discussed earlier in these findings regarding approval-in-part of the development, the proposed project includes regrading of the existing bluff to match the existing slope and also landscaping the bluff to bring it back to its natural appearance. Doing so would make the undeveloped portion of the lower bluff face consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural. However, the applicant's proposal to construct a new beach access pathway down the bluff face would result in significant landform alteration of the mid and lower bluff and sandy beach and thus would adversely affect public views of the bluff from the adjacent public vantage points such as the beach (Corona del Mar State Beach) and from elevated vantages such as Inspiration Point, and is inconsistent with the pattern of development in the subject area. The newly regraded bluff that would be consistent with the character of the surrounding area would be adversely impacted and result in an altered bluff, which would perpetuate the existing condition of the site that presently contains unpermitted bluff face modifications.

(3) Cumulative Impacts

The proposed project is located along a coastal bluff and sandy beach immediately inland of Corona del Mar State Beach, a public beach. The site is highly visible from public vantage points such as the sandy public beach and from elevated vantages such as Inspiration Point. The overall appearance of the bluff in this area is natural and undeveloped. The applicant is seeking approval of a beach access pathway located along the mid and lower bluff face and the sandy beach. Approval of the proposed private beach access pathway would set a precedent for the construction of new development along the beach and the mid and lower bluff face that would significantly alter the natural land form and cause adverse visual impacts and encroach seaward. Therefore, the Commission cannot approve the proposed private beach access pathway.

CONCLUSION

The Commission finds that the proposed private beach access pathway results in the alteration of natural landforms, does not preserve scenic views, and is not visually compatible with the character of the surrounding area. Consequently, the proposed private beach access pathway increases adverse impacts upon visual quality in the subject area. Therefore, the Commission finds that the proposed private beach access pathway is inconsistent with Section 30251 of the Coastal Act.

### **3. Alternatives**

Denial of the proposed private beach access pathway will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. The applicant already possess a substantial residential development of significant economic value on the property. In addition, the "no project alternative," at least with respect to the new private pathway, presents fewer environmental impacts.

#### **Regrading of the Bluff to Match the Existing Slope and Landscaping the Bluff to Make it Appear Natural Without the Addition of a Beach Access Pathway Along the Bluff**

The applicant is seeking development consisting of a new private beach access pathway down the bluff face, which would be significant new development encroaching seaward. As stated previously in the approval findings of this staff report, the proposed project also will regrade the existing bluff to match the existing slope and also landscape the bluff to make it appear natural consistent with the character of the surrounding area where the mid and lower bluff face and sandy beach remains largely undisturbed and natural. However, proposing a new private beach access pathway down the bluff face would result in significant landform alteration of the mid and lower bluff and sandy beach and thus would adversely affect public views of the bluff from the adjacent public vantage points such as the beach (Corona del Mar State Beach) and from elevated vantages such as Inspiration Point, and is inconsistent with the pattern of development in the subject area. Thus, regrading the bluff to match the existing slope and also landscape the bluff to make it appear natural, without the addition of a new private pathway along the bluff would result in development that is consistent with the character of the surrounding area.

### **4. Local Coastal Program (LCP)**

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

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. 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 4.4.3-12 H. states,

*Employ site design and construction techniques to minimize alteration of coastal bluffs to the maximum extent feasible, such as:*

- I. requiring any altered slopes to blend into the natural contours of the site*

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 construction of the proposed private pathway on the bluff-face is inconsistent with the policies in the City's certified LUP. The proposed private beach access pathway is not sited and designed to protect and, where feasible, enhance the scenic and visual qualities of the coastal zone. Denial of the proposed private pathway down the bluff face (and approval of the removal of the existing unpermitted development, regrading of the bluff face to natural contours and re-landscaping) would restore scenic resources to conditions existing prior to the unpermitted development and would be consistent with preserving the existing community character where development occurs at the upper bluff face. In addition, the proposed pathway would encroach substantially seaward of the predominant line of development, more specifically approximately 46-feet seaward of the predominant line of development. Allowing the proposed pathway would lead to seaward encroachment that would affect public use of the beach by discouraging the public from using the public beach area intended for public use. This would compel the public to move more seaward and thus have an impact on public use of the beach. Thus, the proposed project would adversely impact recreation on the public beach. The proposed development is inconsistent with the policies in the City's certified LUP, as well as the policies in Chapter 3 of the Coastal Act, as indicated above, and would therefore prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the proposed private beach access pathway down the bluff face must be denied.

#### **5. California Environmental Quality Act (CEQA)**

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

As described above, the proposed private beach access pathway down the bluff face would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as regrading of the bluff to match the existing slope and landscaping the bluff to make it appear natural without the addition of a beach access pathway along the bluff. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the private beach access pathway down the bluff face must be denied.

#### **D. UNPERMITTED DEVELOPMENT**

Development has occurred on site without benefit of the required coastal development permit, including existing unpermitted grading, retaining walls and beach access stairway from bluff face.

Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

## Appendix "A"

1. 3431 Ocean Boulevard (Located 4 lots down-coast from the subject site): 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 the Sections 30240, 30251 and 30253 of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites.

2. 3431 Ocean Boulevard (Located 4 lots down-coast from the subject site): 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 toe of the bluff (due to the presence of the landing for the public accessway from Inspiration Point, there is no sandy beach at the toe of the bluff at this location). 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.

3. 3431 Ocean Boulevard (Located 4 lots down-coast from the subject site): 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 would now consist 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).

4. 3425 Ocean Boulevard (Located 3 lots down-coast from the subject site): 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 pathway 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 2<sup>nd</sup> 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.

4. 3415 Ocean Boulevard (Located 2 lots down-coast from subject site): 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 pathway with keystone-type earth retention blocks, landscaping and in-ground irrigation. The applicant also proposed a public access easement over the privately owned portion of the sandy beach located seaward of the toe of the bluff. 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, does not present an adverse visual impact because it follows the natural topography of the bluff, was effectively screened with vegetation and was consistent with the character of the surrounding area.

6. 3415 Ocean Boulevard (Located 2 lots down-coast from the subject site): 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 1<sup>st</sup> floor

deck and a 383 square foot 2<sup>nd</sup> floor deck. The foundation for the residence consisted of a caisson and deepened conventional footings system. The primary concern 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.

7. 3415 Ocean Boulevard (Located 2 lots down-coast from the subject site): CDP NO. 5-05-095-A1-[Circle]

At the January 2007 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-05-095-A1-[Circle] for development that consisted of enlarging the previously approved 141 square foot basement level deck (cantilevered portion) located along the bluff face associated with a single-family residence. The enlarged deck would extend seaward a maximum 60-foot linear distance measured from the Ocean Boulevard property line. In addition, a section of the existing bluff face stairway above the approximately 33-foot contour line would be replaced with a new stair in a different configuration. No work below the 33-foot contour would take place and the foundation system for the proposed deck would consist of retaining walls and a caisson system. Minor grading was proposed. The Commission found that the proposed project, as conditioned, was sited and designed to protect scenic and visual qualities of coastal areas. Approval of the proposed project, as conditioned, would preserve existing scenic resources and would be consistent with preserving the existing community character where structures are sited at the upper bluff face, while the mid and lower bluff face remains largely undisturbed and vegetated. The alteration of the already developed upper bluff face would not result in a significant adverse visual effect when viewed from public vantage points such as the beach and would be visually compatible with the character of the surrounding area. Furthermore, the development would be consistent with the predominant pattern of development and is consistent with the recently approved Commission projects in the area (Tabak and Halfacre).

8. 3401 Ocean Boulevard (Located 1 lot down-coast from the subject site): 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 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 and therefore is consistent with

Section 30251 of the Coastal Act. However, the Commission found that the proposed sand pit cut-out would not minimize alteration 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.

9. 3401 Ocean Boulevard (Located 1 lot down-coast from the subject site): CDP No. 5-07-042-[Butterfield]

Development at the subject site was last considered by the Commission in December 2001 under Coastal Development Permit Application No. 5-01-199-[Butterfield] as described above. 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. Coastal Development Permit Application No. 5-07-042-[Butterfield] was submitted as a condition of the settlement agreement.

At the February 2008 Commission Hearing, the Commission approved Coastal Development Permit Application No. 5-07-042-[Butterfield] for development that was substantially the same as the previous proposal (Coastal Development Permit Application No. 5-01-199-[Butterfield]), except that the recent application requests removal of the "sand pit" described above. The proposal relative to the decorative gate, various lattice panels, and expanded landing remained unchanged from the prior application (Coastal Development Permit Application No. 5-01-199-[Butterfield]).

10. 3335 Ocean Boulevard (The subject site): 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.

11. 3329 Ocean Boulevard (Located 1 lot up-coast from the subject site): 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 was whether the development preserves scenic resources, minimizes landform alteration and avoids 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.

12. 3317 Ocean Boulevard (Located 2 lots up-coast from the subject site): 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.

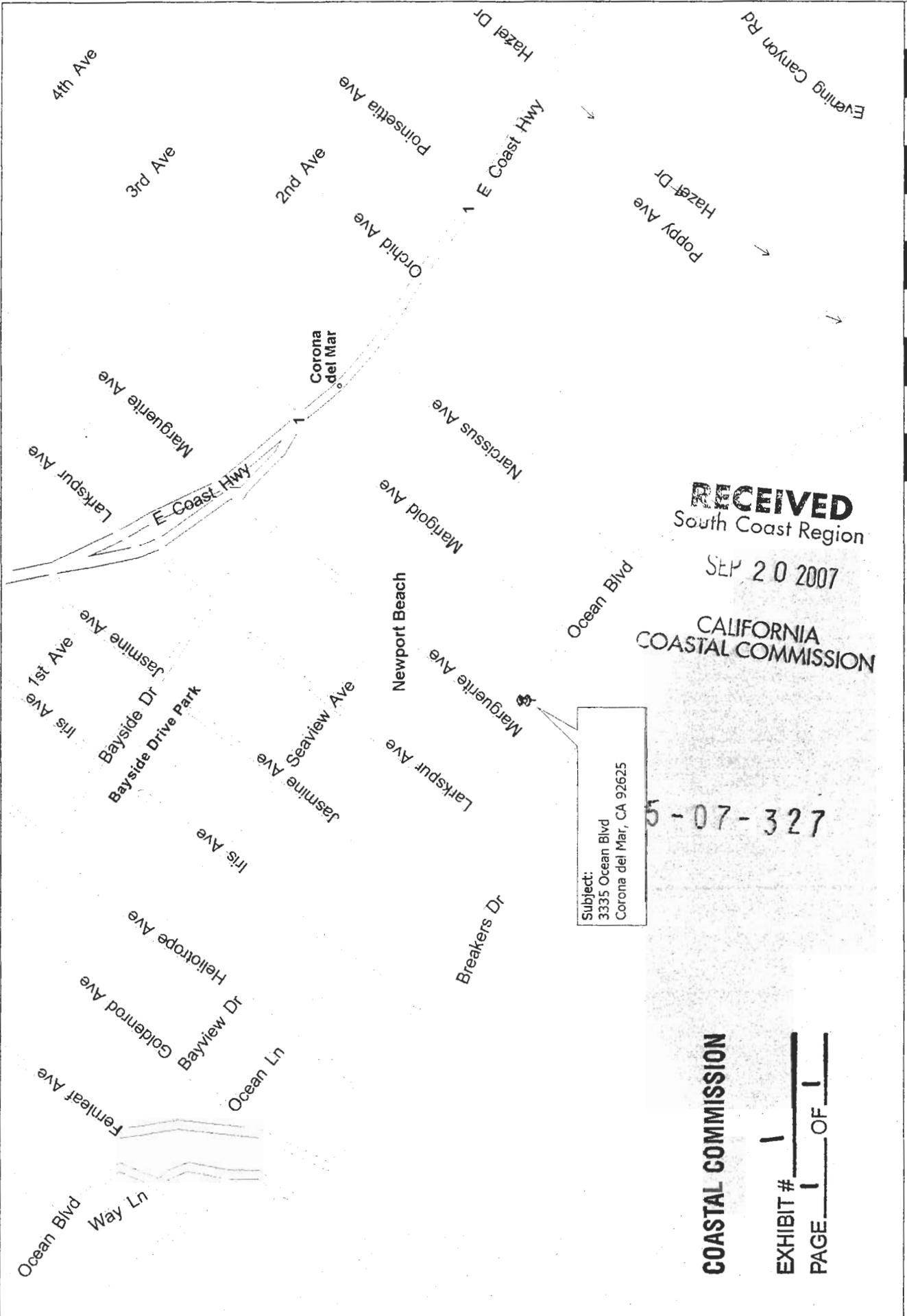
13. 3317 Ocean Boulevard (Located 2 lots up-coast from the subject site): CDP No. 5-04-339-[Palermo]

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.

13. 3317 Ocean Boulevard (Located 2 lots up-coast from the subject site): 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. Furthermore, the Commission prohibited any work seaward of the approximately 33-foot contour and also any work to the existing unpermitted stairway, including any connection from the proposed pool house or pool/deck to the existing unpermitted stairway, which also includes any work to the unpermitted beach bathroom with the proposed project. As conditioned, the development would be consistent with the predominant pattern of development and consistent with the recently approved Commission projects in the area (Tabak and Halfacre).

Vicinity Map Prepared for: 3335 Ocean Blvd, Corona Del Mar, CA 92625



Subject:  
3335 Ocean Blvd  
Corona del Mar, CA 92625

**RECEIVED**  
South Coast Region

SEP 20 2007

CALIFORNIA  
COASTAL COMMISSION

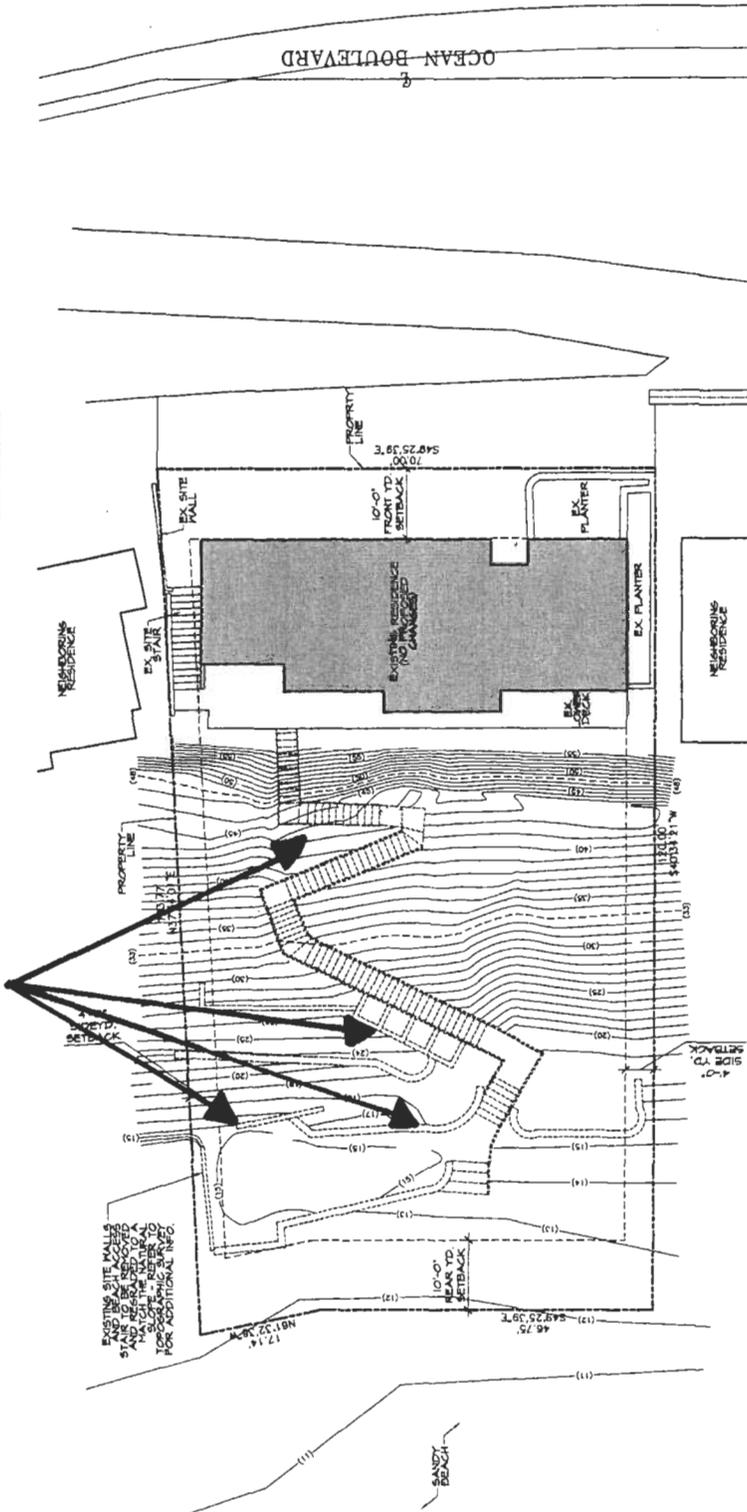
5-07-327

**COASTAL COMMISSION**

EXHIBIT # 1 OF 1  
PAGE 1 OF 1



EXISTING UNPERMITTED DEVELOPMENT TO BE REMOVED



SCALE 1/8" = 1'-0"

SITE DEMO PLAN

COASTAL COMMISSION

EXHIBIT # 2  
PAGE 2 OF 2

LIVONI RESIDENCE  
3935 OCEAN BLVD  
CORONA DEL MAR, CA

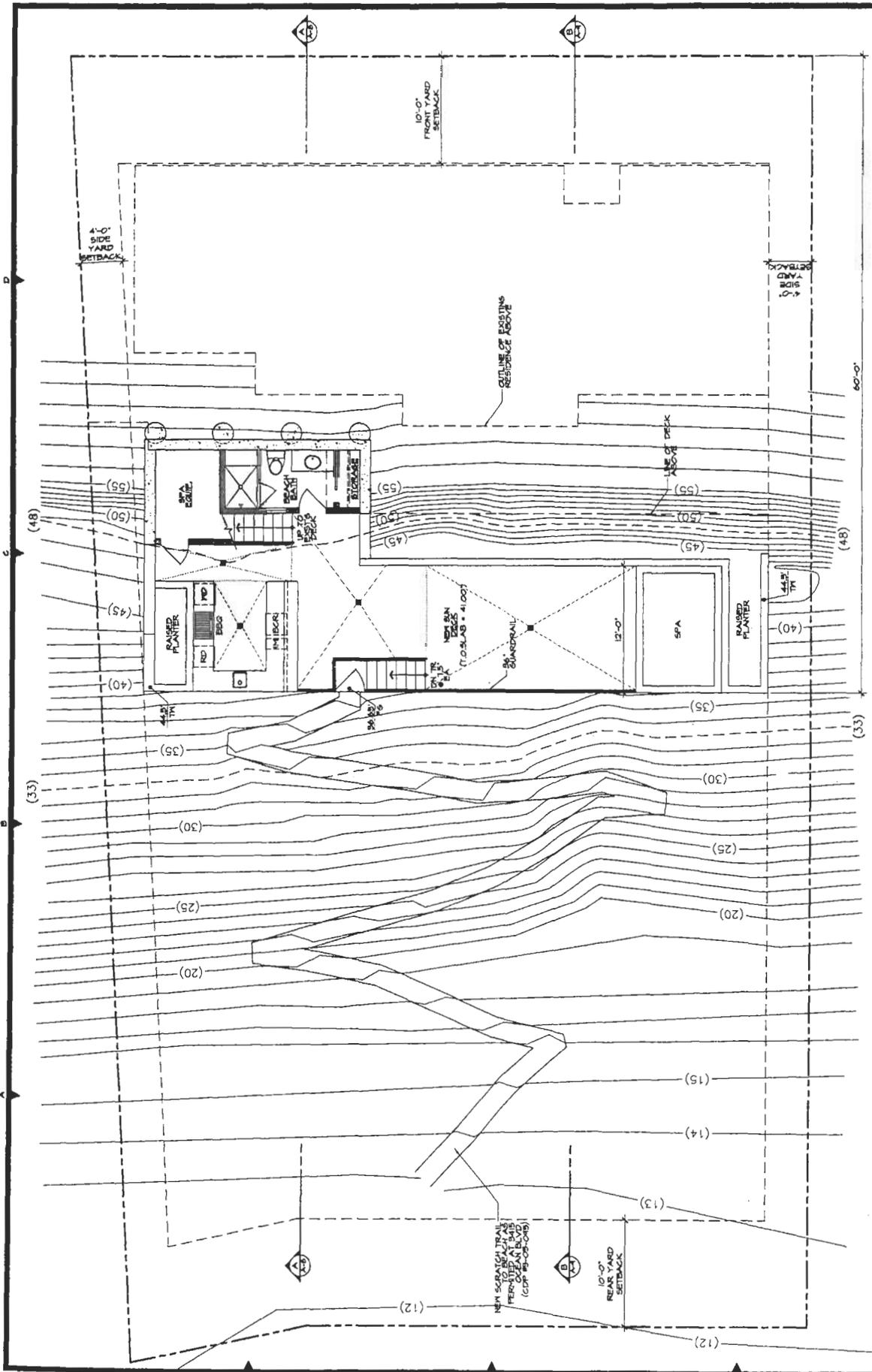
Bron Jeannette Architecture

SUN DECK  
PLAN

Date:	
Revision:	
Job No. 08-024	



A-3



SCALE: 1/4" = 1'-0"  
JOB NORTH

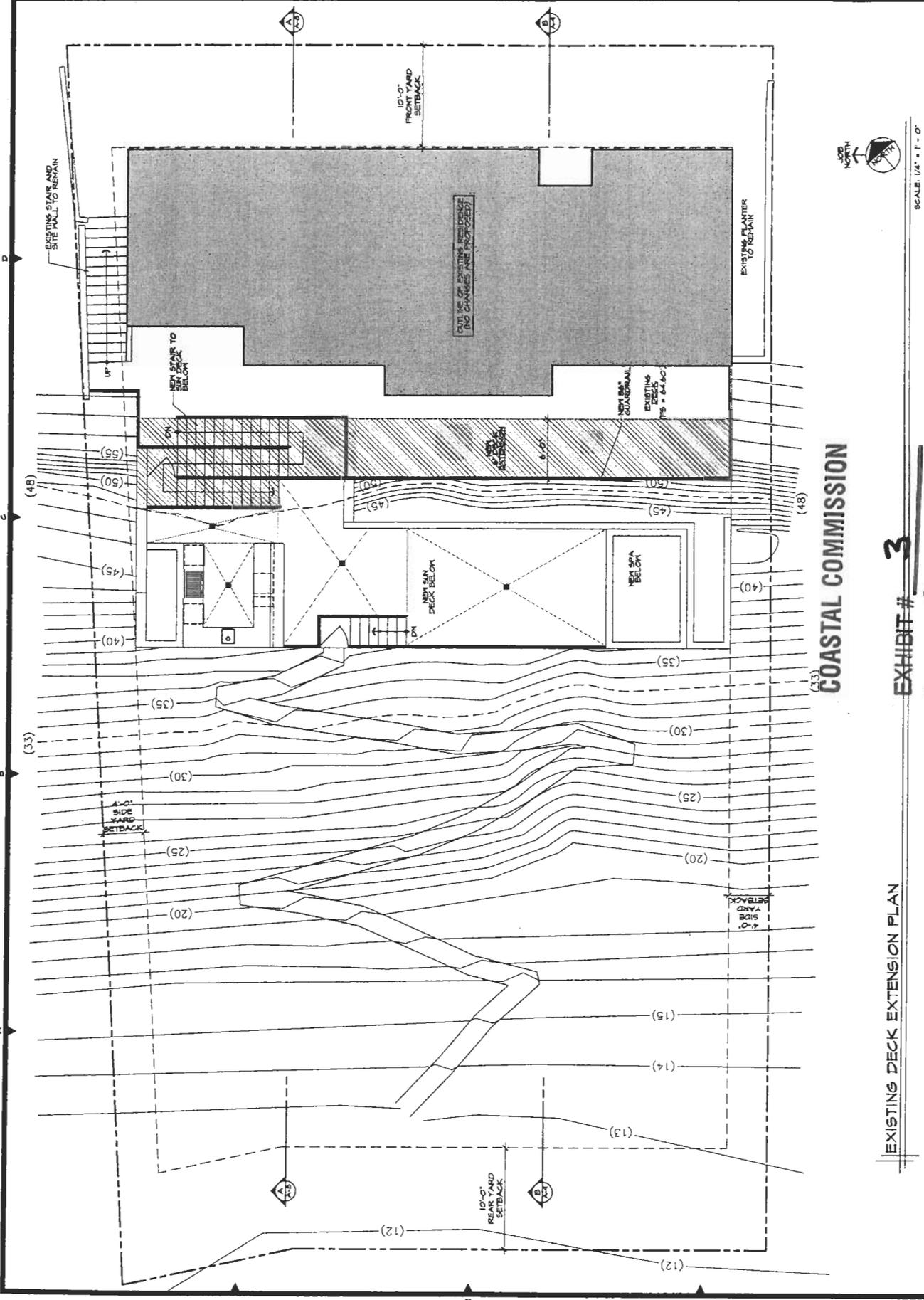
COASTAL COMMISSION

NEW SUN DECK

EXHIBIT # 3

PAGE 1 OF 2

Date:	
Revision:	
Revision:	
Revision:	
Revision:	
License No. 06-054	



SCALE: 1/4" = 1'-0"

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 2 OF 2

EXISTING DECK EXTENSION PLAN

Date:	
Revision:	
Revision:	
Revision:	
Revision:	
Job No. 04-074	



COASTAL COMMISSION

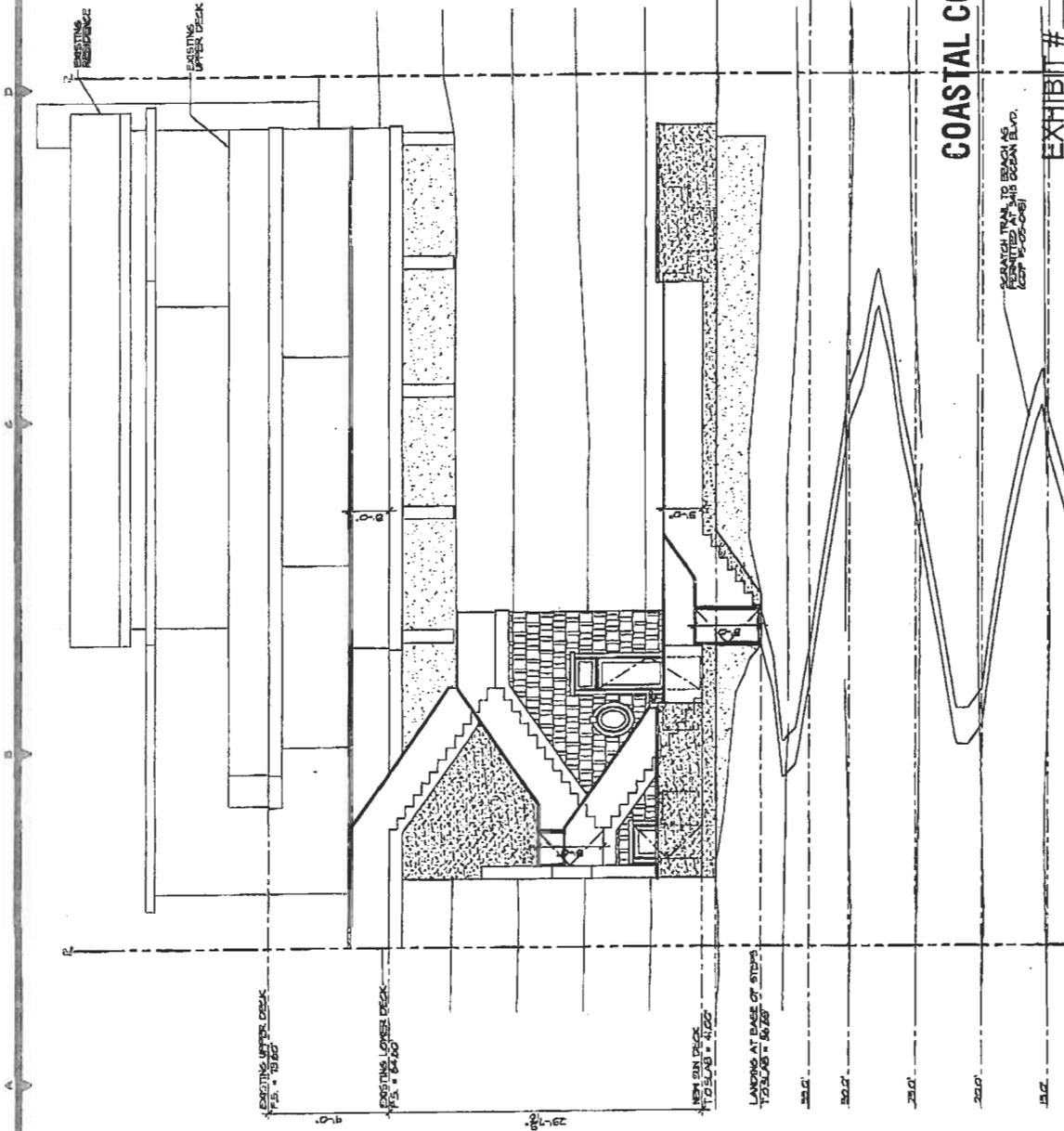
SCRATCH TRAIL TO BEACH AS  
PERMITTED AT 5415 OCEAN BLVD.  
(2021-2025-061)

EXHIBIT # 4

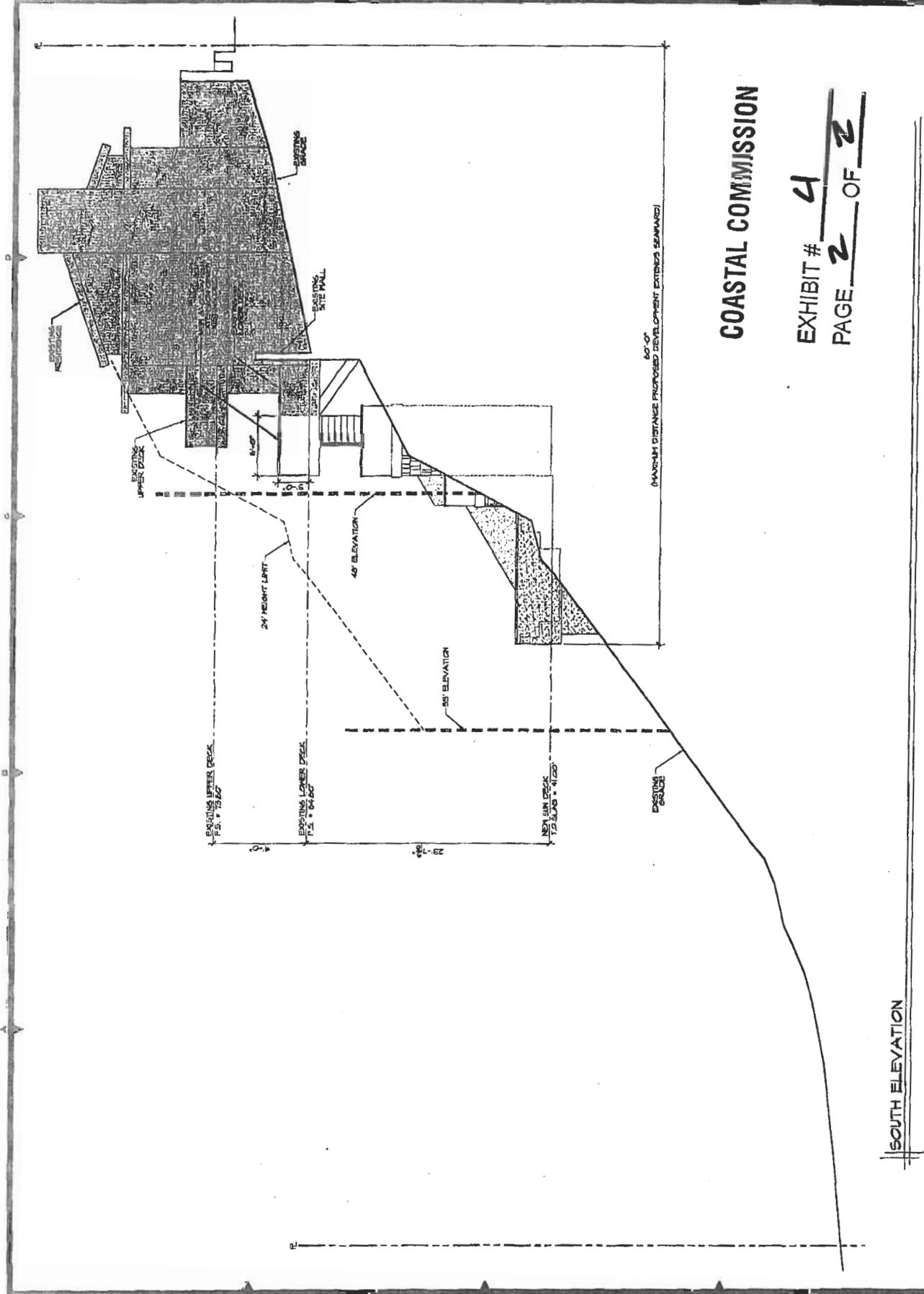
PAGE 1 OF 2

SCALE: 1/4" = 1'-0"

WEST ELEVATION



Date:	
Designer:	
Architect:	
Engineer:	
Contractor:	
Photographer:	
Other:	



COASTAL COMMISSION

EXHIBIT # 4  
PAGE 2 OF 2

SOUTH ELEVATION

SCALE 1/4" = 1'-0"



3317

3329

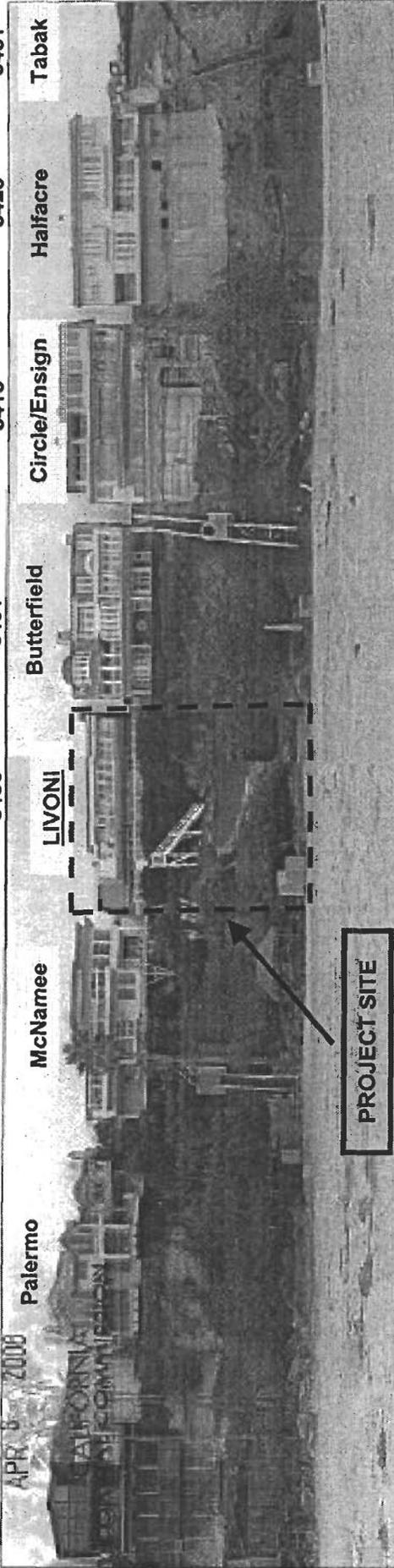
3435

3401

3415

3425

3431



3304  
 PALERMO RES.  
 3304 OCEAN  
 CDP # 45-08-020  
 APPROVED 12/04

3317  
 PALERMO RES.  
 3317 OCEAN  
 CDP # 45-08-020  
 APPROVED 12/04

3329  
 McNamee RES.  
 3329 OCEAN  
 PROPERTY IN QUESTION  
 CDP APP# 45-07-357

3435  
 LIVONI RES.  
 3435 OCEAN  
 PROPERTY IN QUESTION  
 CDP APP# 45-07-357

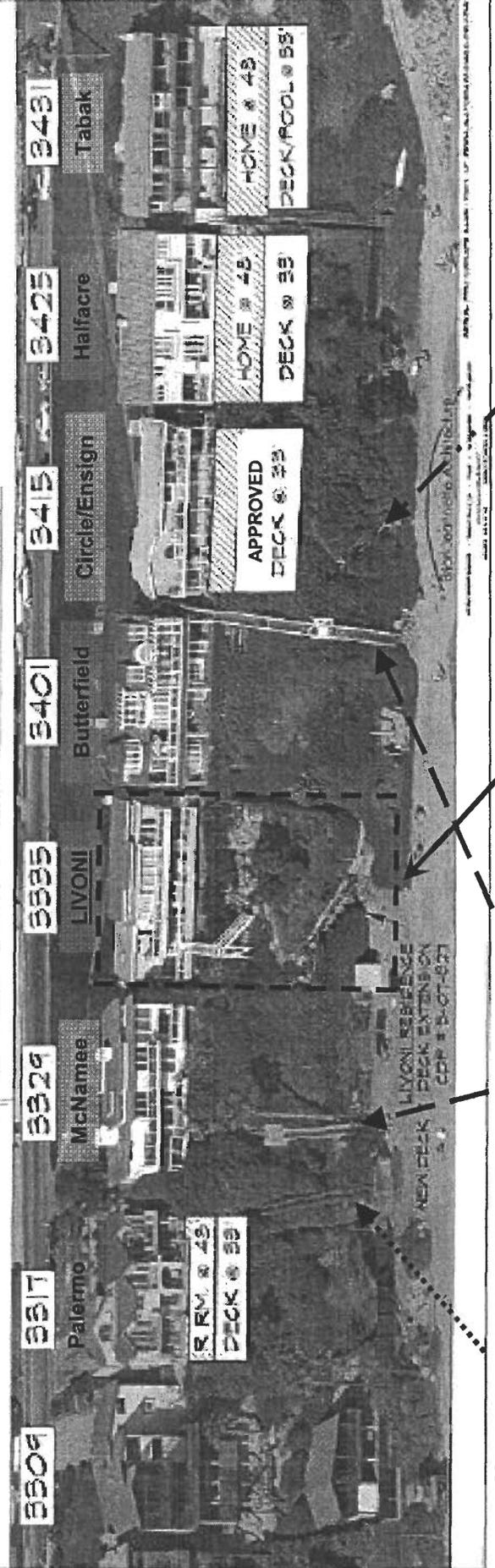
3401  
 BUTTERFIELD RES.  
 3401 OCEAN

3415  
 CIRCLE/ENSIGN RES.  
 3415 OCEAN  
 CDP # 45-08-045  
 APPROVED 10/05

3425  
 HALFACRE RES.  
 3425 OCEAN  
 CDP # 45-08-045  
 APPROVED 10/05

3431  
 TABAK RES.  
 3431 OCEAN

EXISTING BEACH ELEVATION PHOTO



3304  
 PALERMO RES.  
 3304 OCEAN

3317  
 PALERMO RES.  
 3317 OCEAN

3329  
 McNamee RES.  
 3329 OCEAN

3435  
 LIVONI RES.  
 3435 OCEAN

3401  
 BUTTERFIELD RES.  
 3401 OCEAN

3415  
 CIRCLE/ENSIGN RES.  
 3415 OCEAN

3425  
 HALFACRE RES.  
 3425 OCEAN

3431  
 TABAK RES.  
 3431 OCEAN

3 RM. # 45  
 DECK # 33

LIVONI REFERENCE  
 DECK EXTENSION  
 CDP # 45-07-357

APPROVED  
 DECK # 33

HOME # 45  
 DECK # 33

HOME # 45  
 DECK # 33

Unpermitted stairway

Pre-Coastal stairway

PROJECT SITE

Permitted pathway with an OTD

OCT 19 2007

CALIFORNIA  
COASTAL COMMISSION

Batram  
Consent Order No. CCC-04-CD-01

CONSENT AGREEMENT AND CEASE AND DESIST ORDER CCC-04-CD-01

Pursuant to its authority under PRC § 30810, the California Coastal Commission hereby authorizes and orders Kenneth Batram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to cease and desist from: (1) engaging in any further development on his property unless authorized pursuant to the Coastal Act and (2) continuing to maintain any development on his property that violates the Coastal Act, except as authorized herein. Accordingly, through the execution of this Consent Order, the Respondents agree to comply with the terms of the above-stated order and with the following terms and conditions.

1.0 TERMS AND CONDITIONS

1.1 Within 60 days of issuance of the Consent Order, Respondents shall remove all unpermitted development from the flat/sandy beach portion of the subject property, including concrete patio, storage shed and storage cabinets.

1.2 Within 60 days of issuance of the Consent Order, Respondents shall submit a complete CDP application for retention of the unpermitted stairway and retaining walls on the subject property. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property, Respondents shall remove the remaining unpermitted development on the subject property according to Sections 1.3 and 1.4 of the Consent Order. If the Commission denies a CDP application for after-the-fact retention of unpermitted development on the subject property and the Respondents decide to challenge such a denial without first implementing Sections 1.3 and 1.4 of the Consent Order, the Commission shall have the full right to seek penalties for Respondents' failure to remove unpermitted development under Chapter 9 of the Coastal Act.

1.3 If a CDP application to retain the stairway, retaining walls, grading and any other unpermitted development on the bluff slope is denied, or if staff does not obtain a complete CDP application within nine months of the date of issuance of this Order (whichever is shorter), Respondents shall then submit within 60 days for the review and approval of the Executive Director of the Commission a Stairway Removal and Bluff Slope Revegetation and Monitoring Plan for the bluff face portion of the subject property, and comply with all other terms of this Order regarding removal of the stairway. The Revegetation and Monitoring Plan (hereinafter, "Plan") shall be prepared by a qualified restoration professional and shall include the following:

a) Goals and Performance Standards. Section A of the Plan shall present the following goals of the revegetation activities.

1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and

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1. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
2. Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities. No invasive plants are permitted for revegetation.
3. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Plan will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
4. Section A of the Plan shall also include specific ecological performance standards that relate logically to the revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
5. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent vegetated areas vegetated undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture.

If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

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- b) **Revegetation Methodology.** Section B of the Plan shall describe the methods to be used to revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:
1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the revegetation of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated shall not be disturbed by activities related to the Plan.
  2. Specify that the revegetation of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation.
  3. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using local native drought resistant plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area. Invasive plants are not permitted for the revegetation of the site.
- c) **Monitoring and Maintenance.** Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
1. The Respondents shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration professional, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional revegetation activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of revegetation at the site.
  2. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the revegetation project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the

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revised or supplemental restoration plan must be processed as a CDP or modification of Consent Agreement and Cease and Desist Order CCC-04-CD-01.

- d) Appendix A shall include a description of the education, training and experience of the qualified restoration professional who shall prepare the Plan. A qualified restoration professional for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of coastal bluff habitats.
- e) Interim erosion control plans shall be included in the Plan. Interim erosion control measures shall be prepared by a qualified restoration professional and shall include the following:
  - 1. The following temporary erosion control measures shall be used: hay bales, wattles, silt fences. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
  - 2. Interim erosion control measures shall include, at a minimum, the following components:
    - a. A narrative describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
    - b. A detailed site plan showing the location of all temporary erosion control measures.
    - c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term revegetation and monitoring plan.

1.4 Within 30 days of the approval by the Executive Director of the documents submitted under Section 1.3, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under Section 1.3.

If a CDP application to retain the stairway is denied, or a complete CDP application is not submitted within nine months of the date of issuance of this Consent Order (whichever is shorter):

- 1. Remove the unpermitted stairway, retaining walls and all other unpermitted development from the bluff face.
- 2. Perform grading to restore the bluff slope topography to its condition prior to the unpermitted development.

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3. Revegetate the bluff face as described in Section 1.3.

4. Submit to the Executive Director a report documenting the revegetation of the bluff face. The report shall include photographs that clearly show all portions of the bluff face on the subject property.

1.5 Within 60 days of the submittal of the report documenting the revegetation of the bluff face, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the Consent Order.

1.6 In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to Section 1.3 above, submit to the Executive Director monitoring reports. For the duration of the monitoring period, all persons subject to the Order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Consent Order, subject to twenty-four hours advance notice.

## 2.0 PERSONS SUBJECT TO THE ORDER

Mr. Kenneth Batram, all his employees, agents, and contractors, and any persons acting in concert with any of the foregoing.

## 3.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is described as follows:

3335 Ocean Boulevard, Corona del Mar, CA, APN 052-120-20

## 4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted grading and landform alteration and unpermitted construction of a stairway, chain-link fence, retaining walls, concrete patio, storage shed and storage cabinets.

## 5.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810, and the Respondents have elected to not challenge the Commission's jurisdiction over this matter in the interest of settling and resolving it. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has jurisdiction to act as set forth in this Consent Order, and Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

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6.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual basis and the terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist Order dated December 10, 2003. Specifically, Respondents decided not to file a statement of defense and to waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Order. Respondents are not contesting the Commission's jurisdiction and basis for the purposes of adoption, issuance and enforcement of this Consent Order. Respondents' waiver herein is limited to a hearing on the Commission's adoption, issuance and enforcement of this Consent Order and no other hearing or proceeding.

7.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is March 19, 2004. This order shall remain in effect permanently unless and until rescinded by the Commission.

8.0 FINDINGS

This order is issued on the basis of the findings adopted by the Commission on March 19, 2004, as set forth in the attached document entitled "Findings for Consent Agreement and Cease and Desist Order No. CCC-04-CD-01."

9.0 SETTLEMENT/COMPLIANCE OBLIGATION

9.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$4,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payment amount by April 30, 2004 to the attention of Sheila Ryan of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.

9.2 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension, will constitute a violation of this Consent Order and shall result in respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public

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Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

10.0 DEADLINES

Prior to the expiration of the deadlines established by this Consent Order, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under this Consent Order, but cannot meet deadlines due to unforeseen circumstances beyond their control.

11.0 SITE ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

12.0 GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by respondents or their agents in carrying out activities pursuant to this Consent Order. Respondents acknowledge and agree (a) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (b) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

13.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order,

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Respondents agree to waive whatever right they may have to challenge the issuance and enforceability of this Consent Order in a court of law.

14.0 SETTLEMENT OF CLAIMS

The Commission and respondents agree that this Consent Order settles all monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. However, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this order.

15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future respondents of the property, interest and facility, heirs and assigns. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Order.

16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 10.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

17.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

18.0 LIMITATION OF AUTHORITY

18.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.

18.2 Correspondingly, Respondents have entered into this Consent Order and waived their right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

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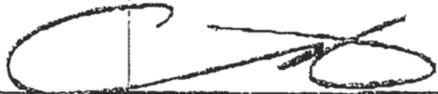
19.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

20.0 STIPULATION

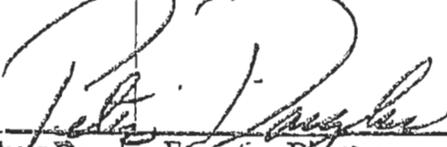
Respondents and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:  
On behalf of Respondents:

  
\_\_\_\_\_  
Kenneth Battram

2-27-04  
Date

Executed in Monterey on behalf of the California Coastal Commission:

  
\_\_\_\_\_  
Peter Douglas, Executive Director

3/18/04  
Date

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