

CALIFORNIA COASTAL COMMISSION

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Th19a

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Staff: Liliana Roman-LB
Staff Report: January 22, 2009
Hearing Date: February 4-6, 2009
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-08-204

APPLICANTS: Betty Bissell

PROJECT LOCATION: 214 Avenida Montalvo, San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a 5,583 sq. ft. four unit apartment complex with four two-car garages and one guest parking space including hardscape and landscape improvements and 1,350 cubic yards of fill on a vacant coastal canyon lot.

LOCAL APPROVALS RECEIVED: City of San Clemente Planning Division approval-in-concept dated 7/17/08.

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP); "Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas", dated January 2007

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **DENIAL** of the proposed project.

The site is located adjacent to Montalvo Canyon, one of seven coastal canyons in San Clemente identified as containing environmentally sensitive habitat. Primary issues associated with this development include consistency with Coastal Act and certified Land Use Plan (LUP) policies protecting biological resources, especially riparian corridors, and scenic views.

The proposed development does not conform to the LUP policy requiring a 50 foot setback from riparian vegetation canyon. Furthermore, the proposed project would result in a significant encroachment into the canyon, much further into the canyon than development on adjacent sites.

Either a 50 foot setback from riparian vegetation or a setback defined by a stringline between adjacent development would allow development of the site while also protecting riparian and visual resources.

Staff recommends denial, as opposed to approval with conditions to address the setback, because compliance with either setback necessitates substantial redesign of the project. At the time of this staff report, the applicant was not in agreement with the staff recommendation.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points
4. Coastal Canyon Map
5. Project Plans
6. Preliminary Grading Plan
7. Landscape Plan
8. Jurisdictional Delineation Map
9. Topographic Map
10. Site Photographs

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission **DENY** the coastal development permit application by voting **NO** on the following motion and adopting the following resolution.

A. MOTION

I move that the Commission approve Coastal Development Permit No. 5-08-204 for the development proposed by the applicant.

B. STAFF RECOMMENDATION OF DENIAL

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

C. RESOLUTION TO DENY THE PERMIT

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project site is located at 214 Avenida Montalvo in the City of San Clemente, Orange County (Exhibits 1 & 2). The 23,686 square foot vacant lot gently slopes in a northerly direction from the street to the bottom of Montalvo Canyon (Exhibit 4). The LUP map of Montalvo Canyon includes the subject lot. There is no clear break in the slope from the street to the canyon bottom, thus, the entire site is within the canyon. There is a small open stream and riparian vegetation at the bottom of the canyon. Surrounding development consists of single-family residences, duplexes and multi-family apartments/condominiums. There is a single family residence immediately west of

the site, a 6-unit apartment to the east, single family residences to the north across the canyon and duplexes to the south, across the street. The site is designated as Residential Medium Density in the certified Land Use Plan, and the proposed project is consistent with this designation.

The nearest public access to the beach is available at the Montalvo Access Point identified in the City of San Clemente certified Land Use Plan (Exhibit 3). The access point is taken from Avenida Montalvo along the eastern side of the Sea Point Villa condominium development approximately 350 yards west of the subject site.

The applicant proposes to construct a new 25' high above grade, two-story, 5,583 square foot 4 unit apartment complex with four two-car garages, one guest parking space, hardscape and landscape improvements on a vacant coastal canyon lot. Two buildings are proposed stepped down into the canyon toward the canyon bottom and stream, each with two units. The residence will utilize raised framed floor foundation and the garage will utilize a slab-on-grade foundation. Hardscape improvements include a new driveway and walkways. Grading consisting of 1,350 cubic yards of fill to construct grades for the new building pads, excavation of footings and backfilling of retaining walls and utility trenches is proposed for site preparation. Project plans are included as Exhibit 5. Preliminary Grading Plans are included as Exhibit 6.

The proposed development would project approximately 164 feet from the street edge into the canyon, toward the stream. Adjacent development projects between 38 feet and 77 feet into the canyon from the street. Thus, the proposed development would not be aligned with the adjacent residential structures that flank the proposed project site. The proposed project would only have an approximately 25 foot setback from the stream at its closest point.

B. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA) & WETLANDS/STREAMS

1. Coastal Act and Land Use Plan (LUP) Policies

Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 30233 (a) of the Coastal Act states,

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*

- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

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

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

Policy VII.12 of the certified LUP states:

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

Policy XV.13 of the certified LUP states:

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

The policy in the certified LUP concerning setbacks on coastal canyons is found in Chapter 3, Section 302 G, policy VII.15, and states:

New development shall not encroach into coastal canyons and shall be set back either:

- a. *a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or*

- b. *a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or*
- c. *in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.*

The development setback shall be established depending on site characteristics.

Certified LUP “Coastal Canyon, Bluff” Definition:

“Those features having vertical relief of ten feet or more. A “canyon or bluff face” is a sharp or steep face of rock, decomposed rock, sediment or soil resulting from erosion, faulting, folding or excavation of the land mass. The canyon or bluff face may be a simple planar or curved surface or it may be step like in section.”

Certified LUP “Environmentally Sensitive Area” Definition:

“The upper termination of a bluff, canyon, or cliff.

When the top edge is rounded away from the face as a result of erosional processes related to the presence of the steep bluff, canyon, or cliff face, the edge shall be defined as that point nearest the face beyond which the downward gradient of the land surfaces increases more or less continuously until it reaches the general gradient of the bluff, canyon, or cliff. In a case where there is a step like feature at the top of the bluff face, canyon, or cliff face, the landward edge of the topmost riser shall be taken as bluff edge, canyon edge, or cliff edge (refer to graphic under Coastal Canyon, Bluff).”

Certified LUP “Environmentally Sensitive Area” Definition:

“Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

ESHA

The proposed development is located in Montalvo Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP. The applicant’s entire property is within the canyon including canyon slope and the canyon bottom. Montalvo Canyon is one of the remaining coastal canyons in San Clemente with an open stream/drainage at the canyon bottom that runs to the ocean. The drainages at the majority of the other coastal canyons have been piped and buried either by the City or County. The wetland mapping provided by the applicant identifies the drainage at the bottom of Montalvo Canyon as wetland and identifies adjacent areas of riparian vegetation. The proposed final project would not have any wetland fill impacts. However, the project would be setback only 25 feet from the meandering stream at its closest point. The Commission typically requires at least a 100 foot setback from wetlands, and at least a 50 foot setback from riparian vegetation along a stream (*“Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas”*, dated January 2007).

The drainage located at the bottom of Montalvo Canyon has yearlong flows, is approximately 4’ wide, and conducts storm water and runoff within a defined bed and bank to the Pacific Ocean approximately 350 yards away. Varying water levels, heavy scouring and low sediment deposit in most upstream portions of the drainage have resulted in a lack of vegetation within the drainage. However, as described below, there is riparian vegetation along this stretch of the stream. The applicant provided a jurisdictional delineation map of the site (Exhibit 8), however, a biological analysis documenting the types of non-wetland vegetation on the site was not included with the project submittal.

Based on staff site observations, the canyon is somewhat degraded due to the presence of both native and non-native plant species. Approximately half of the site (closest to the street) has been routinely mowed per City weed abatement policies. Vegetation along the stream bed contains a mix of willow (a type of riparian vegetation), lemonade berry a coastal canyon native plant, and non-native grasses. Riparian vegetation in the vicinity of the stream is mostly undisturbed. The development area includes only previously disturbed, mowed, non-native vegetation and therefore is not itself ESHA. Nevertheless, preservation and enhancement of the City's coastal canyons and remaining streams and wetlands is a goal supported by both the environmental protection policies of the Coastal Act, and the certified LUP.

Development Canyon Setback

As noted above, the proposed development would project approximately 164 feet from the street edge into the canyon, toward the stream. Encroachment into the canyon by development increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the canyon from excess irrigation. Encroaching development also threatens the visual quality of the canyons. The above-cited policies of the LUP were designed for habitat protection and enhancement; to minimize visual impacts and landform alteration; to avoid cumulative adverse impacts of development encroachment into the canyon; and as a means to limit brush management necessary for fire protection. In this case, the encroachment also reduces the setback from wetlands/stream habitat.

In addition to the habitat value of the canyons, the remaining wetlands in the canyons are important. One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway, a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

Buffers (or setbacks) from wetlands are also important. Buffer areas are undeveloped lands adjacent to wetlands. Buffer areas serve to protect wetlands from the direct effects of nearby disturbance. In addition, buffer areas can provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. Buffer areas provide obstructions which help minimize the entry of domestic animals and humans to wetlands. Buffers also provide visual screening between wetland species that are sensitive to human impacts, such as lighting. Buffers can also reduce noise disturbances to wetland species from human development (*"Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas"*, dated January 2007).

The certified LUP identifies three canyon setback choices which are to be selected based upon 'site characteristics'. There are seven canyons identified in the LUP and these setback choices exist because conditions from canyon to canyon, and are highly variable within each canyon. Each canyon has a different shape, width and depth. The degree of existing disturbance within each canyon is also different. The land uses, density and intensity of development also vary. Public views of the canyons vary from point to point. The lots along and in these canyons vary with regard

to lot size and shape. The topography of each lot can be highly variable, where in some cases there are canyon-top areas in which to site development, there are other lots comprised mostly of canyon slope and canyon bottom. The pattern of existing development varies from place to place along the canyon changes. Another site characteristic that changes is presence or absence of native vegetation and/or a stream on the lot. Considering these site characteristics, a setback must be chosen that achieves habitat protection and enhancement (including siting development to minimize required brush management), minimizes visual impacts and landform alteration, and avoids cumulative adverse impacts of development encroachment into the canyon. Finally, sometimes equity is a consideration (i.e. size of development footprint available under each setback scenario compared with adjacent development).

The lot in question is an elongated, roughly rectangular lot comprised entirely of canyon slope and canyon bottom. The canyon slopes gently from the street to the canyon bottom and there is no discernable canyon edge on this site. The development on adjacent lots is sited close to the street in a fashion that minimizes encroachment into the canyon.

The applicant characterizes the project as complying with LUP's setback policy option VII.15(a) cited above. This would require the setback to be "a minimum of 30% of the depth of the lot, and *not less than 15 feet from the canyon edge*" emphasis added. This setback option, however, is inapplicable to this site because there is no truly defined canyon edge from which to measure the setback. Instead, the canyon slopes gently all the way up to the street with no significant break evident in Exhibit 9, a topographic map of the site and Exhibit 10, site photographs. The appropriate setback must therefore be determined by reference to the LUP's two other alternative setbacks: 50 feet from the riparian vegetation or in accordance with the stringline between the adjacent structures.

As proposed, the site extends dozens of feet beyond the adjacent development, which would exacerbate rather than prevent canyon encroachment. In addition, this option would result in a minimal setback from the stream and riparian vegetation that would not be protective of the wetland resources.

While there is a mixture of native and non-native vegetation on the subject site and adjacent sites, there is a discernable line of riparian vegetation, as well as a delineated wetland/stream in the canyon bottom. The LUP setback policy option VII.15(b) would require that all development be sited at least 50 feet from the riparian vegetation and stream, which would be generally consistent with the setbacks the Commission has adopted for such resources in San Clemente and elsewhere in the State. Therefore, setback option "b" is a useful and appropriate setback to apply at this location to provide an appropriate level of resource protection in the coastal canyon. While this 50 foot setback would be smaller than the 100 foot wetland setback the Commission has adopted in other cases, this setback recognizes site limitations, the pattern of adjacent development, and the condition of the resources. Were a 100 foot setback to be imposed there would be almost no development potential left on the property. Whereas, the 50 foot setback retains a sizeable development area of approximately 5,900 sq. ft. while amply protective of the wetlands.

The LUP setback policy option VII.15(c) for a setback in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures could also be applicable. In fact, such a setback would be even more consistent with the adjacent pattern of development and create an even larger setback from the riparian vegetation and wetlands. However, such a setback would also significantly limit development potential at the site without providing a substantial benefit in terms of wetland resource protection. As noted above, the 50 foot setback has been deemed to be protective of riparian resources in San Clemente's canyons.

The proposed project should be sufficiently set back to protect habitat and avoid frustration of future enhancement efforts by avoiding encroachment into the canyon (both individually and cumulatively).

Due to the configuration of the lot and the undulating canyon edge, it is therefore, most appropriate to apply the 50 foot setback from riparian vegetation/wetlands in this case to preserve canyon habitat. Applying the depth of lot/canyon edge setback policy in this case would result in a canyon ward encroachment that adversely impacts wetland resources.

The applicant has argued that the development conforms to the 30% depth of lot/15 foot canyon edge setback policy in the certified LUP, thus, the development is setback a sufficient distance from the canyon edge. The applicant has argued that if the project meets any one of the setback policies in the LUP, then the project is in full conformity with LUP. As explained above, however, because of the topography of the site, this setback option cannot be applied to the subject property. In addition, this approach ignores both Coastal Act requirements relative to resource protection and the LUP requirement to avoid encroachment into coastal canyons and consider site characteristics in the selection of the appropriate setback. In this case, either the 50 feet from riparian vegetation or the stringline setback achieve the goal of preventing further encroachment toward the canyon with all of the attendant resource benefits (e.g. habitat protection, etc.). The 15 feet from canyon edge does not provide a sufficient buffer from the riparian vegetation. Furthermore, if built as proposed, the project would create a new future stringline further into the canyon that would be applicable for possible future redevelopment of adjacent residential lots. Thus, siting development on this lot farther into the canyon could lead to encroachment on adjacent lots, leading to cumulative adverse impacts upon coastal resources.

Thus, the Commission finds that the proposed development is not consistent with Sections 30231 or 30240(b) of the Coastal Act and the policies of the certified LUP. Therefore, the project as proposed must be denied. Although the a 50 foot setback from riparian vegetation significantly impacts the proposed project, reasonable economic use of the property is obtainable as discussed in the alternatives section of these findings.

Landscaping

San Clemente's certified LUP advocates the preservation of native vegetation and discourages the introduction of non-native vegetation in coastal canyons. While no rare or endangered species have been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons, including Montalvo Canyon, as environmentally sensitive habitat areas (ESHA), as depicted in Exhibit 5. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis.

The canyon adjacent to the subject site is considered somewhat degraded due to the presence of both native and non-native plant species. However, to decrease the potential for canyon instability, deep-rooted, low water use, plants, preferably native to coastal Orange County should be selected for general landscaping purposes in order to minimize irrigation requirements and saturation of underlying soils. Low water use, drought tolerant, native plants require less water than other types of vegetation, thereby minimizing the amount of water introduced into the canyon slope. Drought resistant plantings and minimal irrigation encourage root penetration that increases slope stability. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" (a.k.a. WUCOLS) prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

Additionally, since the proposed development is within a coastal canyon where the protection and enhancement of habitat values is sought, the placement of vegetation that is considered to be

invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org>) and California Native Plant Society (www.CNPS.org/) in their publications. The Commission typically requires that applicants utilize native plant species, particularly along coastal canyons and within buffer/setback areas from wetlands. Thus, landscaping within the setback/buffer area and on the canyon-facing side of the development should consist of plant species native to coastal Orange County only. Elsewhere on the site (adjacent to the street), while the use of native plants is still encouraged, non-native plant species that are drought-tolerant and non-invasive may be used.

The applicant submitted a landscape plan (Exhibit 7) that includes non-invasive, 'low water use' plants throughout the site including on the canyon ward side of the vacant lot. However, the landscape plan does not provide an appropriate native plant palette (native to coastal Orange County) for the canyon ward portion. Additionally, because the site is located within a canyon, the applicant must contact the Orange County Fire Authority (OCFA) to determine if their review is required. Written evidence of OCFA approval of a fuel modification plan, or that no fuel modification plan is required and was not included in the application submittal.

If the proposed development were otherwise approvable, these deficiencies in the landscape plan could probably be addressed through permit conditions.

C. SCENIC AND VISUAL QUALITIES

Section 30251 of the Coastal Act states, in part:

(a) 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.

Policy VII.3 of the certified LUP states, in 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:

- a. To protect public views to and along the ocean and scenic coastal areas.*
- b. To minimize the alteration of coastal bluffs and canyons.*
- c. Where feasible, to restore and enhance visual quality in visually degraded areas.*

Policy XII.5 of the certified LUP states:

Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views (GP Policy 10.2).

Policy XII.6 of the certified LUP states:

Preserve the designated undeveloped "natural" coastal canyon areas where appropriate that were originally intended to be open space buffers (see Figure 2-1) (GP Policy 10.2.3).

The subject site and views of Montalvo Canyon are visible from across the canyon at the Calle Majorca cul-de-sac. The canyon bottom stream is not visible as it is shaded by riparian vegetation. As proposed the two, two-story, two-unit/two car garage buildings would step down the gently sloping lot into the canyon to the 94' to 95' contour line. A topographic map is included as Exhibit 9. Additionally, 1,350 cubic yards of fill up to approximately the 94' contour line for site preparation is proposed. The fill for the building closest to the street (Unit A and Unit B) would bring

the finished floor for the ground floor Unit B from approximately the 105' contour to the 112' contour (7 foot difference) and for the building closest to the canyon/wetland (Unit C and Unit D) would bring the finished floor from the 96' contour to approximately the 100' contour (5 foot difference) as depicted on elevation building sections on pages 4 and 5 of Exhibit 5.

The proposed development would descend significantly further down the canyon slope than adjacent development, encroaching upon the lower, more scenic portion of the canyon. The single family residence located immediately to the west of the site encroaches 38 feet into the canyon from the street. The nearest corner of the 6-unit condominium building immediately east of the site encroaches 77 feet into the canyon from the street. The proposed development encroaches approximately 164 feet from the street edge into the canyon. The proposed development is therefore inconsistent with the requirements of Section 30251 and the LUP to minimize alterations of natural land forms and of coastal canyons.

There aren't that many public vantage points of the canyons. The southern slope of Montalvo Canyon is an exception as five cul-de-sac streets (e.g., Calle Marjorca, Calle Monte Carlo, Calle Madeira, Calle Capri, and Avenida de la Riviera) on the northern slope of the canyon afford excellent public views of the coastal canyon. As this site is visible from one of the few public view vantage points that does exist, it is important to protect this view. The scenic and visual qualities of the canyon from the public vantage point at the Calle Majorca cul-de-sac is a protected public resource under Coastal Act Section 30251. Permitted development should be sited to protect those views and should be sited to minimize the alteration of the natural canyon landform. As proposed, the 4-unit apartment development encroaches deeper into the canyon than adjacent development, and is thereby not visually compatible with the character of the surrounding area, nor is it sited to protect views into the scenic coastal canyon.

Additionally, as the site is gently sloping and there is no defined uppermost break in slope to clearly define the canyon edge at the site, the proposed amount of fill and retaining walls would significantly alter the natural canyon land forms.

Thus, the Commission finds that the proposed development is not consistent with Section 30251 of the Coastal Act and the scenic resource policies of the LUP. Therefore, the project must be denied.

D. WATER QUALITY

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

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

Section 30231 of the Coastal Act states:

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

Adequate measures to address water quality were incorporated into the project design. After construction, site runoff will be directed to area drains and piped directly to existing City storm drains at the street for the front portion of the house; drain lines for the back portion of the house lead to a sump pump that then directs its outfall to the street. All runoff and storm water is proposed to be directed away from the canyon. However, the applicant did not propose to

implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering coastal waters during the project construction phase, nor submit a construction erosion control plan. Thus, were the Commission to approve the project, a condition for erosion control measures would be required.

Combined with the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, the project would minimize adverse impacts on coastal water quality to such an extent that it will not have a significant water quality impact on marine resources or biological productivity. Therefore, with conditions, the Commission could find that the proposed development conforms to the Coastal Act policies regarding the protection of water quality. However, the Commission is denying the project due to an inappropriate setback from wetland resources and adverse visual impacts.

E. PROJECT ALTERNATIVES

Denial of the proposed project 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. Several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. Design Development Consistent with 50 foot setback: The site could accommodate a single family residence or duplex within the remaining buildable lot area with the 50 foot setback from riparian vegetation and other front and side yard setbacks.
2. Design Development Consistent with Stringline: Although more restrictive than the 50 foot setback, even with a stringline setback, some development potential remains on the property to accommodate at least a small single family residence. There are many small homes along the canyons. A small home on this lot would be in keeping with the size of other homes along canyons in San Clemente. In fact, the Commission recently approved a proposed home that was only 529 sq.ft. plus 2-car garage (5-08-099 (Dewey)) along Lobos Marinos canyon, that was designed to minimize encroachment into the canyon. Furthermore, the applicant could gain a larger developable area on the site by requesting a variance from the City-required 15 foot setback from the street. Neither of the structures on the adjacent properties comply with the 15-foot setback. Thus, in terms of equity, a variance from the street-side setback appears reasonable.

F. LOCAL COASTAL PROGRAM

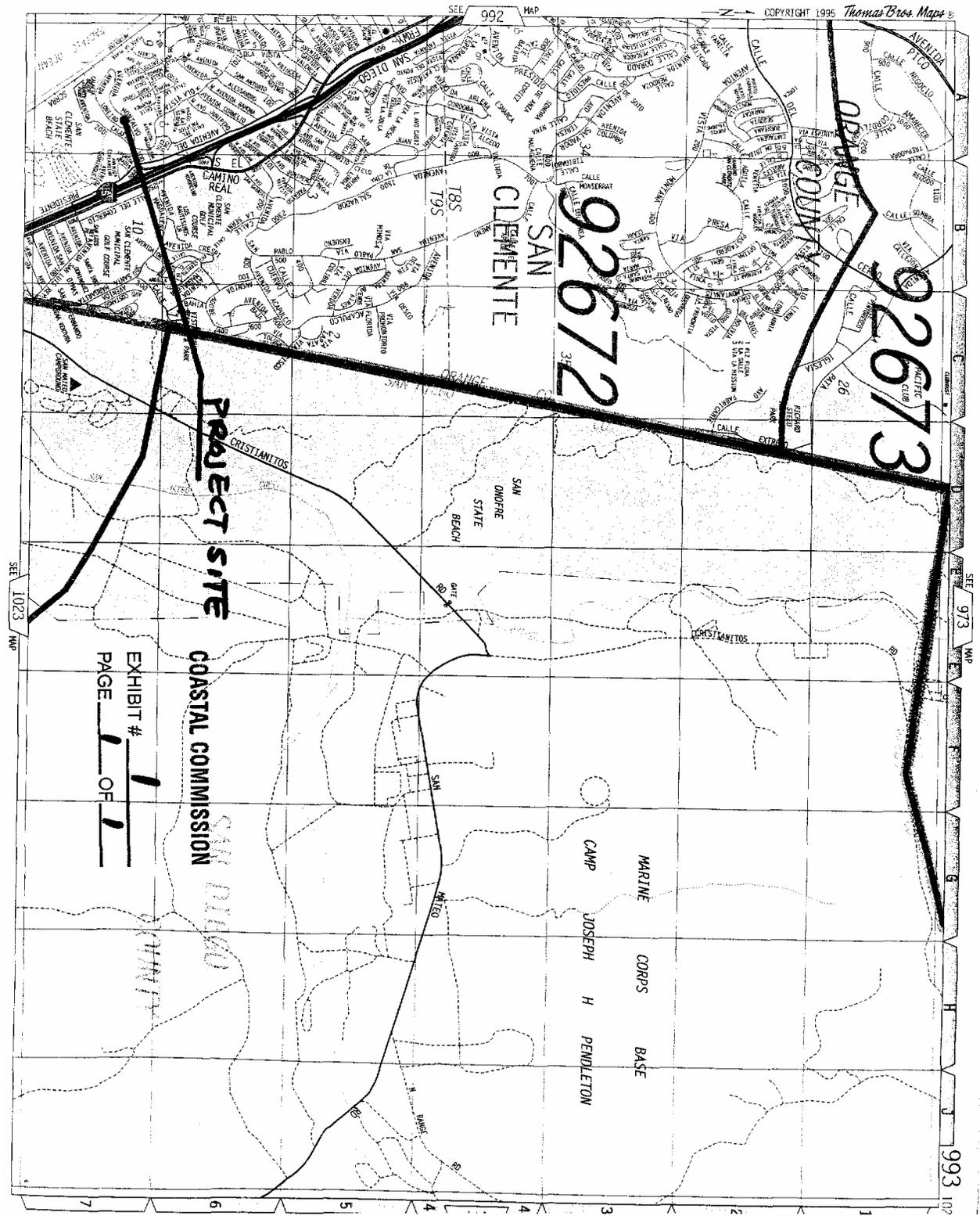
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development is not consistent with the canyon resource protection policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, is inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

G. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

The City of San Clemente is the lead agency for purposes of CEQA compliance. The City determined that the project is categorically exempt from CEQA. However, the Commission finds that there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.



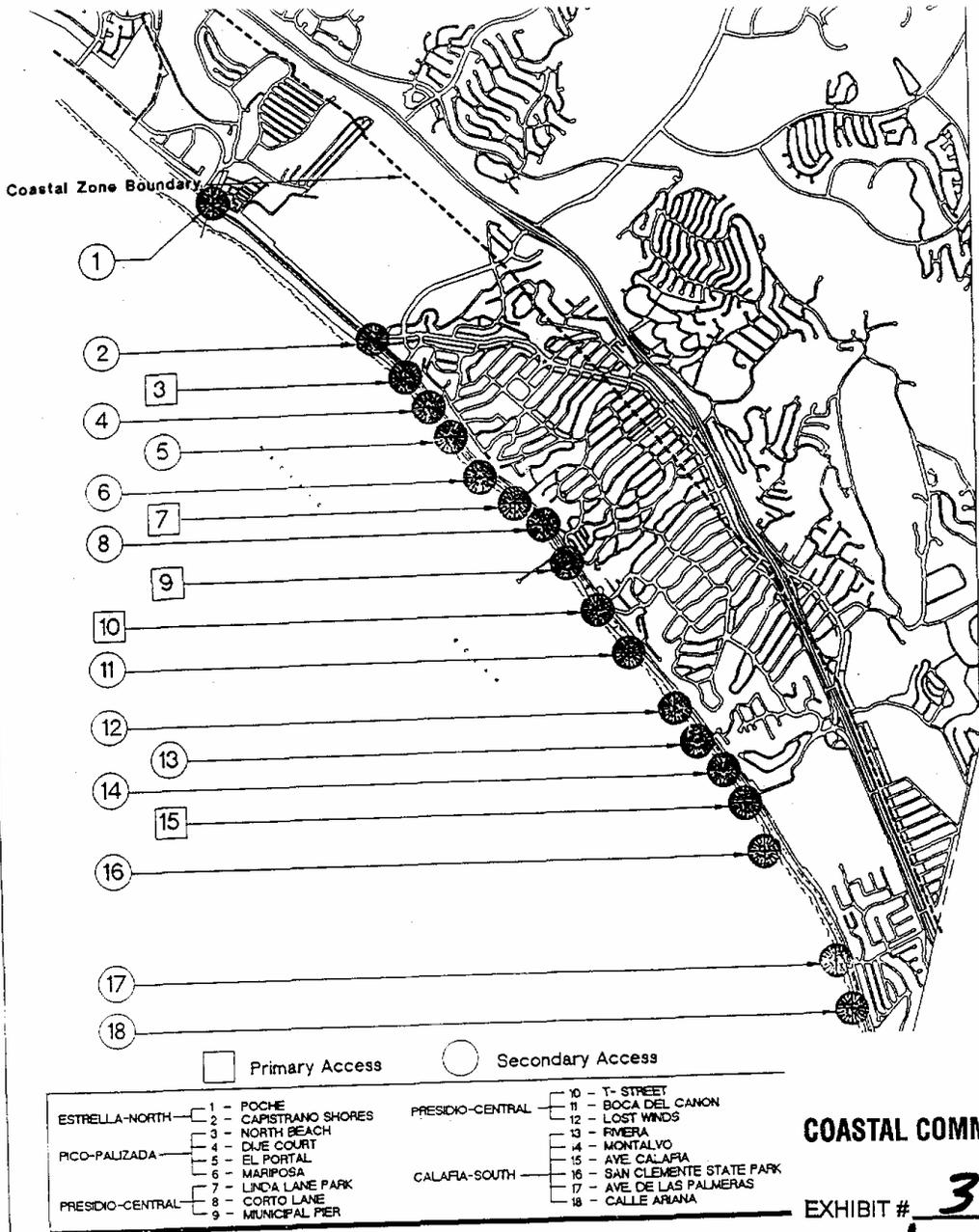


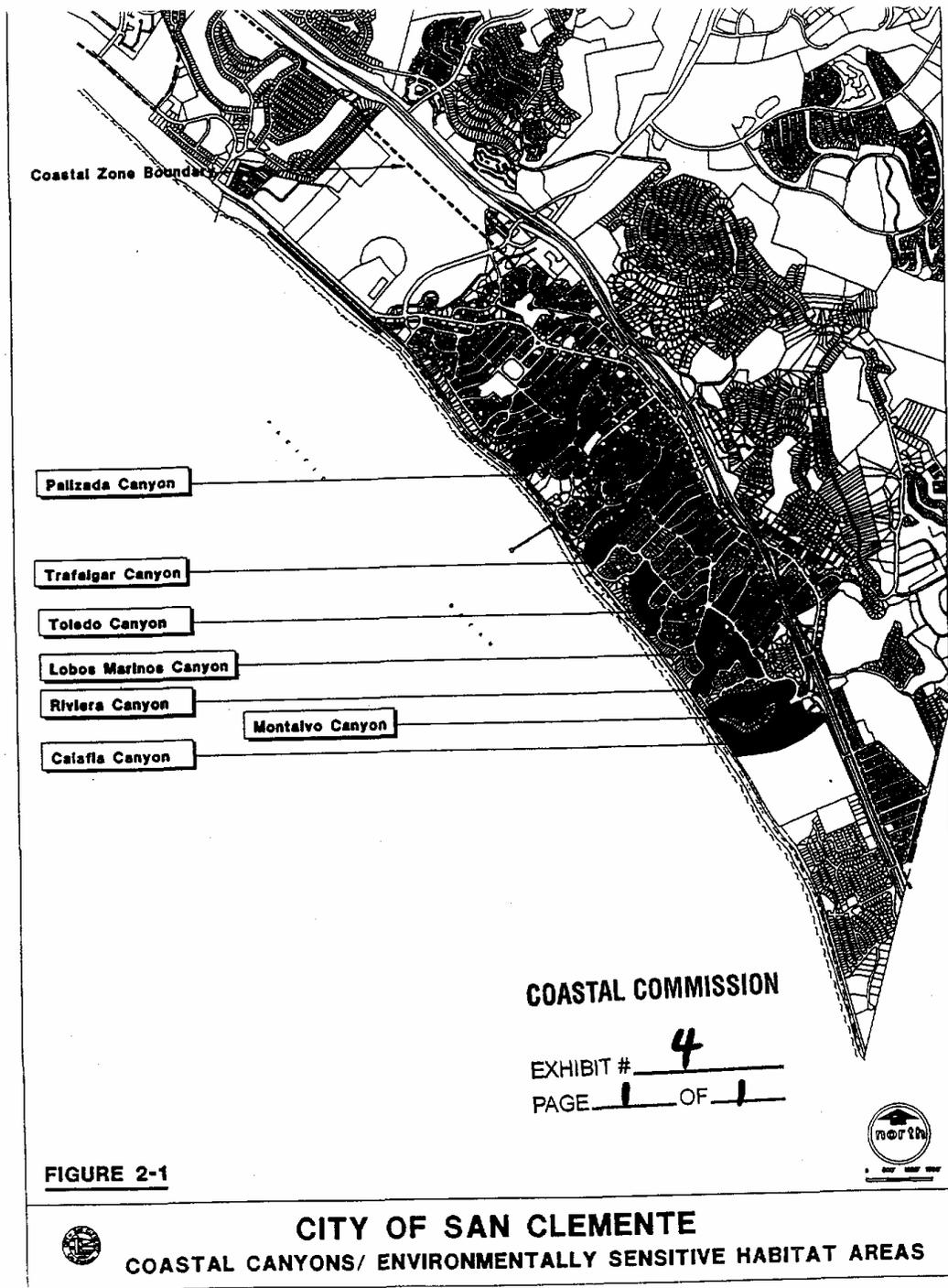
FIGURE 2-5

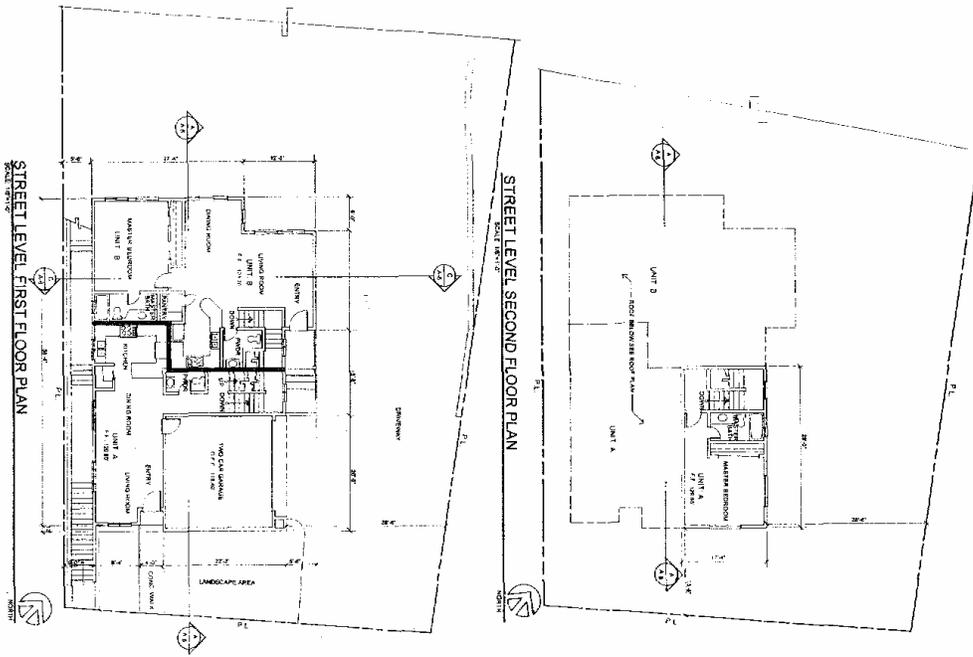
COASTAL COMMISSION

EXHIBIT # 3
 PAGE 1 OF 1

CITY OF SAN CLEMENTE
COASTAL ACCESS POINTS







COASTAL COMMISSION

EXHIBIT # 5
 PAGE 1 OF 5

SAU
 5/14/08

<p>PROJECT NO. A 1</p>	<p>Scale: 1/8" = 1'-0"</p> <p>North Arrow</p> <p>Notes: 1. All dimensions are in feet and inches. 2. All areas are in square feet. 3. All areas are to be finished. 4. All areas are to be in accordance with the applicable codes and regulations.</p>	<p>Four Unit Condominium 214 Avenida Montalvo, San Clemente, CA</p>	<p>DATE: 5/14/08</p>
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PARKING LEVEL FLOOR PLAN

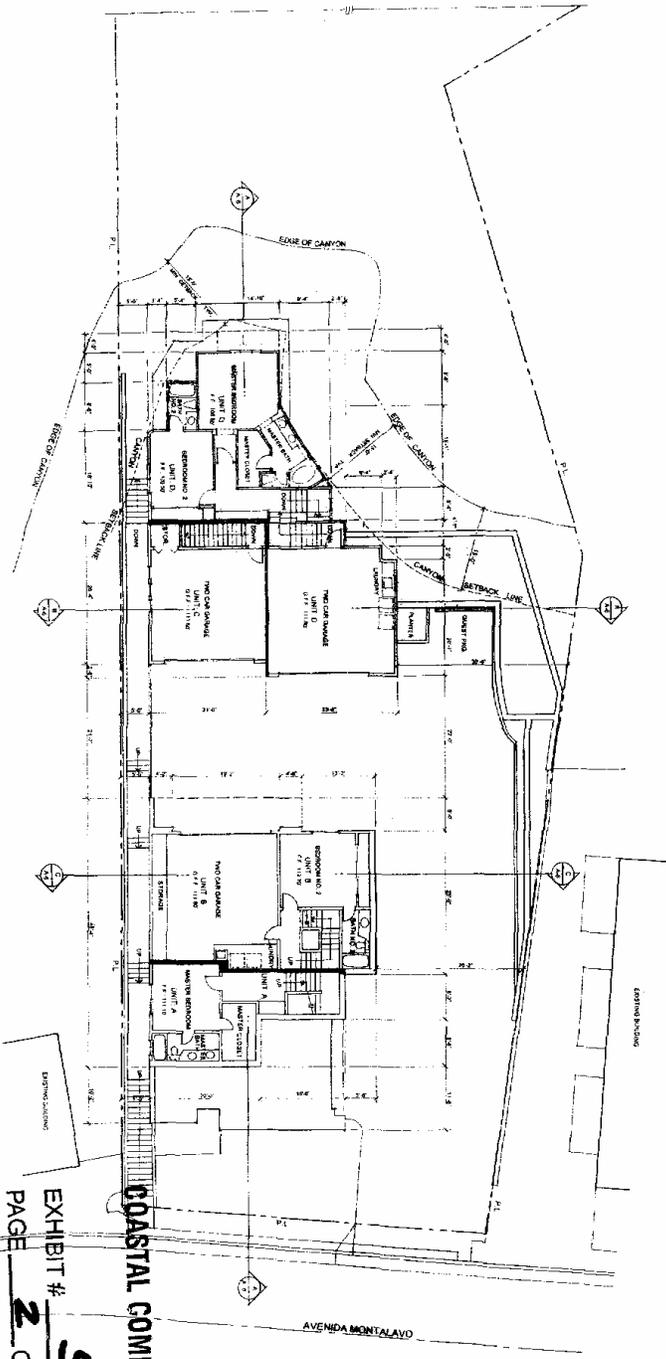
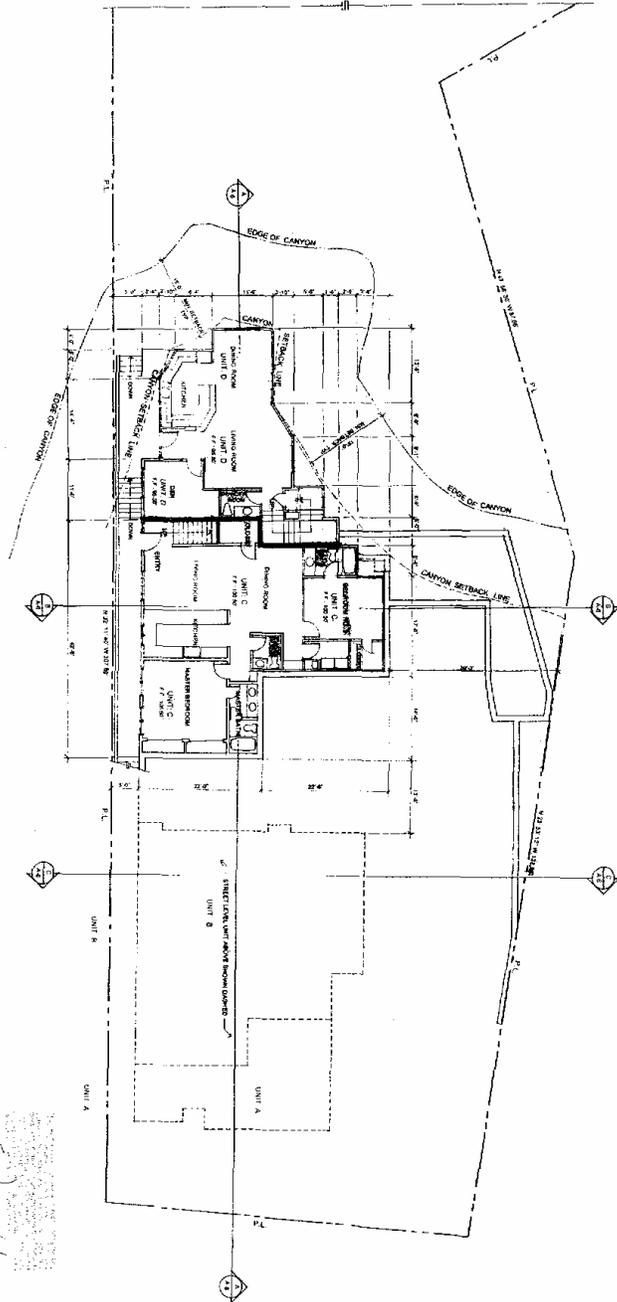


EXHIBIT # **S**
 PAGE **2** OF **5**

COASTAL COMMISSION

<p>SHEET NO. A 2</p>	<p>DATE</p>		<p>Project Location 214 Avenida Montalavo, San Clemente, CA</p>	<p>Four Unit Condominium 214 Avenida Montalavo, San Clemente, CA</p>
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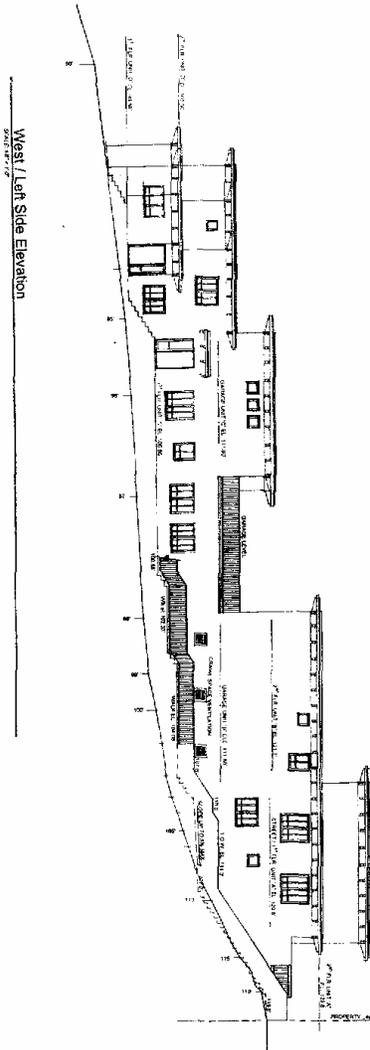
GROUND LEVEL FLOOR PLAN
 SCALE: 1/8" = 1'-0"



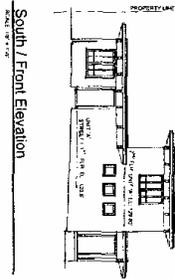
COASTAL COMMISSION

EXHIBIT # **S**
 PAGE **3** OF **5**

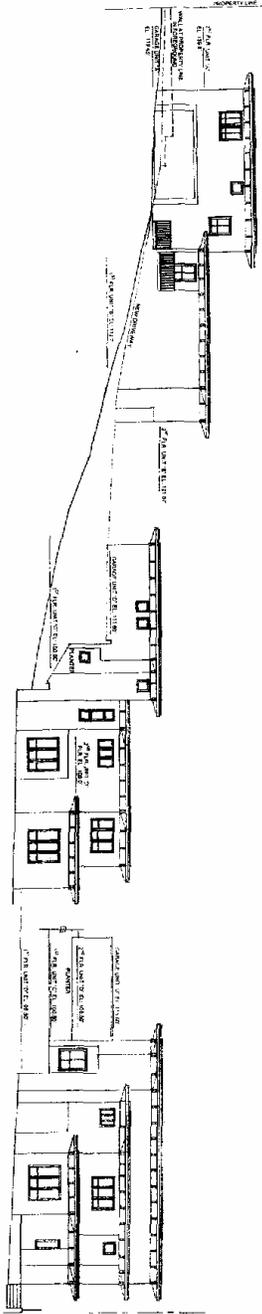
SHEET NO. A 3		Project Location: 214 Avenida Montalvo, San Clemente, CA	
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West / Left Side Elevation



South / Front Elevation



North / Rear Elevation

COASTAL COMMISSION

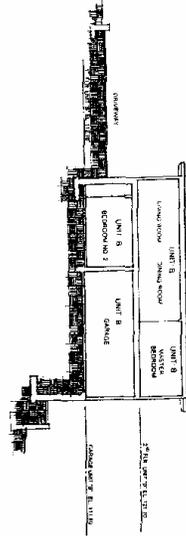
EXHIBIT # 5
 PAGE 4 OF 5

A5

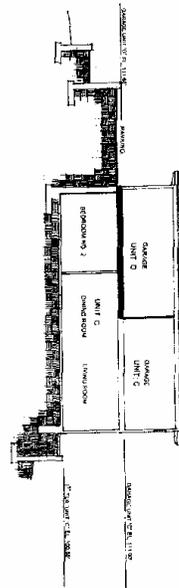
Four Unit Condominium
 214 Avenida Montarvo, San Clemente, CA



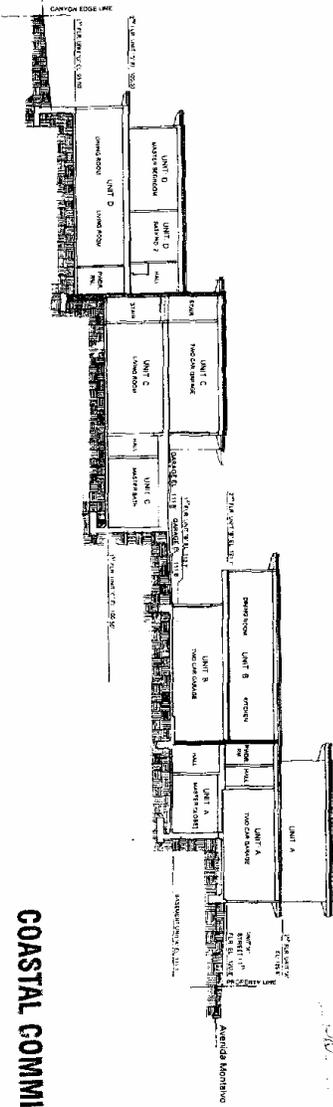
Scale: 1/8" = 1'-0"
 Date: 5/11/12



SITE / BUILDING SECTION 'C'



SITE / BUILDING SECTION 'B'



SITE / BUILDING SECTION 'A'

COASTAL COMMISSION

EXHIBIT # **5**
 PAGE **5** OF **5**

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 2/1/10

Four Unit Condominium
 214 Avenida Montalvo, San Clemente, CA

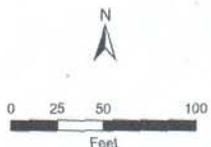
A-6



COASTAL COMMISSION
EXHIBIT # 8
PAGE 1 OF 1

Legend

-  Project Boundary
-  Site Development Plan
-  Jurisdictional Drainage
-  Riparian Vegetation
-  50 ft Buffer of Riparian Vegetation



214 AVE MONTALVO
Jurisdictional Delineation Map
GLENN LUKOS ASSOCIATES



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June 3, 2006



COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 1

View of the lot looking up to the street from the edge of riparian vegetation.



COASTAL COMMISSION

EXHIBIT # 10
PAGE 1 OF 3

Two photographs looking west from the top (street side of the lot).



COASTAL COMMISSION

EXHIBIT # 10
PAGE 2 OF 3

Public view of Montalvo Canyon and project site from the north side of the canyon, Calle Majorca cul-de-sac



COASTAL COMMISSION

EXHIBIT # 10
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