

**CALIFORNIA COASTAL COMMISSION**

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



December 5, 2011

**ADDENDUM**

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SOUTH COAST DISTRICT STAFF**

**SUBJECT: W10a, CDP No. 5-10-224 (Bissell)**

Please find attached one public comment letter in opposition to the project.

Modify the staff report as follows:

Commission staff recommends additional language clarifying Exhibit #6 of the staff report. Deleted language is in ~~strike through~~ and new language is in **bold, underlined italic**, as shown below:

Page 1 of the staff report, project description:

Construction of a ~~25~~ **15** foot high **from street level**, 5,366 sq. ft. two unit duplex on a vacant lot

The last paragraph of Page 5 of the staff report:

The applicant proposes to construct a new, ~~25~~ **15** foot high **from street level**, 5,366 sq. ft. duplex. Grading consists of 150 cubic yards of cut and 100 cubic yards of fill. Four covered and four uncovered parking spaces would be located on site, exceeding the Commission's typical requirement of two parking spaces per unit. The residence would be constructed on a drilled pier/grade beam foundation system with 6-7 foot high retaining walls.

To Whom it may concern  
Regarding Item no: W10a  
Permit number 5-10-224  
APN 060-131-11

I am writing this letter of concern regarding the project referenced above. I am the owner of the property directly across from proposed project site.

As noted in the first hearing from permit application 05-08-204 the project would result in impacts to scenic views. We currently enjoy our canyon view from our bedroom, living room, dining room and two balconies (see picture below) these views would be no longer available. We have already lost many views of the ocean due to the planting of non-native trees within the canyon. Not only will we lose the views we will also see depreciation in our property values.

A sign was posted regarding the hearing but suspiciously was covered by another sign regarding dog droppings. I am not sure if all the neighbors many of which will lose their ocean views have had time to read the posting.

I am also not convinced that the project can be completed without impacts to the coastal canyon and stream that runs through the canyon, the wildlife and vegetation that is supported by the stream.

The plans calls for a 25ft high duplex, it is not totally clear if the plans purposed means 25ft above street level or 25ft total as it goes down to the canyon. The plans seem to state that the roofline would be 138".



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**W10a**

Filed: August 4, 2011  
49th Day: September 22, 2011  
180th Day: January 31, 2012  
Staff: JDA-LB  
Staff Report: November 17, 2011  
Hearing Date: December 7-9, 2011  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-10-224

**APPLICANT:** Betty Bissell

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

**PROJECT DESCRIPTION:** Construction of a 25 foot high, 5,366 sq. ft. two unit duplex on a vacant lot

**LOCAL APPROVALS RECEIVED:** City of San Clemente Planning Division approval-in-concept dated September 21, 2010.

**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan (LUP); Geotechnical Update Proposed Residential Duplex 214 Avenida Montalvo San Clemente, California prepared by Coastal Geotechnical dated December 8, 2010.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of the proposed project with five (5) special conditions regarding: 1) conformance with geotechnical recommendations; 2) conformance with submitted landscaping plans; 3) conformance with submitted drainage plans; 4) Best Management Practices for erosion and runoff during construction; 5) future development on the site; and 6) approval by the Orange County Fire Authority.

**LIST OF EXHIBITS:**

1. Vicinity Map
2. Site Plan
3. Elevation Plans

**STAFF NOTE:**

The applicant previously submitted Coastal Development Permit Application 5-08-204, which proposed the construction of a 5,583 sq. ft. four unit apartment complex on the subject site. In the staff report for the February 2009 hearing, Staff recommended that the Commission deny the project because of impacts to biological resources and wetlands due to the project's location within 50 feet of riparian vegetation, and because the project would result in impacts to scenic views. The project was postponed from the February hearing, and the application was withdrawn in April 2009.

The applicant's new application for Coastal Development Permit No. 5-10-224 would result in construction of a two unit duplex which is consistent with protection of riparian vegetation and wetlands on the site and protection of scenic views. Staff is therefore recommending approval of the proposed project.

**STAFF RECOMMENDATION:**

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

**MOTION:**

*I move that the Commission approve CDP No. 5-10-224 pursuant to the staff recommendation.*

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

**RESOLUTION:**

**I. APPROVAL WITH CONDITIONS**

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

**II. STANDARD CONDITIONS:**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and 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 the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. SPECIAL CONDITIONS:**

**1. Final Plans Indicating Conformance to Geotechnical Report Recommendations**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be in substantial conformance with the preliminary plans submitted 04/14/11 and consistent with all recommendations contained in the Geotechnical Update prepared by Coast Geotechnical, dated December 8, 2010. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, the final foundation, grading, and drainage plans along with evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced 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 to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**2. Final Landscaping 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) sets of a final revised landscaping plan prepared by an appropriately licensed professional which demonstrates the following:
- (a) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Any existing landscaping affected by construction activities that doesn't meet all of the requirements in this special condition shall be removed;
  - (b) Landscaped areas in the rear yard (canyon-facing) areas shall be planted and maintained for erosion control and native habitat enhancement purposes. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent existing native plant areas, all landscaping adjacent to the canyon shall consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. Invasive, non-native plant species that tend to supplant native species shall not be used;
  - (c) Landscaped areas in the front yard (street-facing) area shall consist of native and/or non-invasive non-native drought tolerant plant species;
  - (d) All planting will be completed within 60 days after completion of construction;

(e) All vegetation shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscaping 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.

**3. Conformance with Proposed Drainage Plan**

The applicant shall conform to the proposed Drainage Plan received in the Commission's office on April 14, 2011 titled Preliminary Grading Plan, showing all runoff directed to the City's storm drain system. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris**

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

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete

- trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

**5. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-10-224. Pursuant to Title 14 California Code of Regulations Section 13253(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610 (b) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities 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. 5-10-224 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**6. Orange County Fire Authority Approval**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director a copy of a permit issued by the Orange County Fire Authority (OCFA) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the OCFA. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**IV. 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 foot high, 5,366 sq. ft. duplex. Grading consists of 150 cubic yards of cut and 100 cubic yards of fill. Four covered and four uncovered parking spaces would be located on site, exceeding the Commission's typical requirement of two parking spaces per unit. The residence would be constructed on a drilled pier/grade beam foundation system with 6-7 foot high retaining walls.

The proposed two unit residence would result in development located between 84 and 95 feet from the street. This is a substantial improvement from the previously proposed but withdrawn project, that would have projected up to 164 feet from the street into the canyon. The adjacent single family residence located to the west of the site extends 38 feet from the street, and the nearest corner of the 6-unit condominium building immediately east of the site encroaches 77 feet into the canyon from the street. Thus, the proposed development would be located further out than the adjacent residential structures that flank the proposed project site. However, the proposed project would have a setback of at least 50 feet from riparian vegetation.

## **B. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)**

Section 30231 of the Coastal Act states (emphasis added):

*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.*

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.*

The definition of “Coastal Canyon, Bluff” in the Certified LUP is:

*“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.”*

The definition of “Edge” in the Certified LUP is:

*“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).”*

The definition of “Environmentally Sensitive Area” in the Certified LUP is:

*“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.”*

The proposed development is located in Montalvo Canyon, one of seven coastal canyons designated as Environmentally Sensitive Habitat Area (ESHA) in the certified LUP. 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 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 has resulted in a lack of vegetation within the drainage. However, as described below, there is riparian vegetation along this stretch of the stream.

Based on staff site observations, the canyon is somewhat degraded due to the presence of both native and non-native plant species. 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. 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. The riparian vegetation in the vicinity of the stream is mostly undisturbed. The predominant upland vegetation on the site include non-native grasses and non-native vegetation. The development area of the site includes only previously disturbed, mowed, non-native vegetation and therefore is not itself ESHA.

The applicant's entire property is within the canyon including canyon slope and the canyon bottom. The wetland mapping for the site provided by the applicant identifies the drainage at the bottom of Montalvo Canyon as wetland and identifies that adjacent to the drainage exists adjacent areas of riparian vegetation.

### Canyon Setback

As noted above, the proposed development would project between 84 and 95 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 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.

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 from site to site 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 too. 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 for fire hazard management purposes), 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. Therefore, the LUP's setback policy option VII.15(a), which requires a setback of "a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge" is inapplicable to this site because there is no truly defined canyon edge from which to measure the setback. 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.

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.

Choice of a setback for the subject site should 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.

The applicant has submitted a map of riparian vegetation on the subject site prepared by Glenn Lukos Associates, dated October 26, 2010, which indicates that the proposed duplex would be located at least 50 feet from the edge of riparian vegetation. The project is therefore consistent with the setback requirements located within the City's Land Use Plan. Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Sections 30231 and 30240 of the Coastal Act and the policies of the certified LUP.

#### 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 [www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf](http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf)

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](http://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 has submitted a landscaping plan which includes the use of species native to Coastal Orange County in the rear of the lot. However, the landscaping plan includes the use of non-drought tolerant species on the front portion of the lot adjacent to the street. Therefore, **Special Condition 2** requires the submittal of a revised landscaping plan to ensure that the proposed project would be consistent with the Commission's typically applied requirement for landscaping in San Clemente, and not result in impacts to biological productivity or geologic instability.

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. The applicant has submitted a letter from the OCFA indicating that fuel modification would be required on the subject site. The applicant has also submitted a fuel modification plan which includes the clearance of existing vegetation located upland of the riparian vegetation zone, and installation of fire-resistant species native to California. However the applicant has not provided evidence that the submitted plan was approved by the OCFA. Therefore, the Commission imposes **Special Condition 6** which requires the applicant to submit evidence of approval of the fuel modification plan or evidence that no fuel modification is needed prior to issuance of the permit.

The special conditions of this staff report are designed to protect and enhance the biological productivity of the riparian and upland areas of Montalvo Canyon. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Sections 30231 and 30240 of the Coastal Act and the policies of the City's Certified Land Use Plan.

**C. GEOLOGIC STABILITY**

Section 30253 of the Coastal Act states, in part:

*New development shall:*

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

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

The applicant submitted a geotechnical study conducted by Coast Geotechnical, dated December 8, 2010. The report concludes that the proposed development is considered geotechnically feasible provided the recommendations of the reports are incorporated in design, construction and maintenance of the site. The recommendations provided by the geotechnical consultant include measures to mitigate any adverse geologic effects. Therefore, the Commission imposes **Special Condition 1**, which ensures that the project will conform to the recommendations provided in the geotechnical report.

In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability and/or environmentally sensitive habitat area concerns expressed in this staff report, the Commission imposes **Special Condition 5**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-10-224) or a new coastal development permit. Future development includes, but is not limited to, structural additions, garden walls, landscaping, fencing and/or other appurtenances.

Therefore, as conditioned, the proposed project ensures geologic stability of the subject site, and is consistent with Section 30253 of the Coastal Act.

**D. 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 proposed two unit residence would result in development located further out into the canyon than the adjacent residential structures. However, the project would not result in impacts to scenic views. The proposed development would be located in an area that is currently occupied by primarily non-native vegetation, and would not result in impacts to the more intact riparian vegetation at the bottom of the canyon. Furthermore, the project is located within an existing developed residential neighborhood and has been designed to be consistent with the height and setback requirements located in the City's certified Land Use Plan. Therefore, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act and the scenic resource policies of the LUP.

#### **E. 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.*

The applicant submitted a drainage plan which indicates that site runoff will be directed to a sump pump and area drains for discharge into the City storm drain system. 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. Runoff and erosion during construction have the potential to impact the riparian habitat located at the bottom of the subject site. Therefore, the Commission imposes **Special Condition 4**, requiring conformance with Best Management Practices during construction.

Combined with the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, the project as conditioned will minimize the project's adverse impact on coastal waters to such an extent that it will not have a significant impact on marine resources, biological productivity or coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

#### **F. PUBLIC ACCESS**

Section 30212(a)(2) of the Coastal Act states, in pertinent part:

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

The 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 proposed development does not impact access either

directly or indirectly to the ocean. As such, the development will not create adverse impacts, either individually or cumulatively, on public access and will not block public access from the first public road to the shore. Therefore, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

#### **G. LOCAL COASTAL PROGRAM**

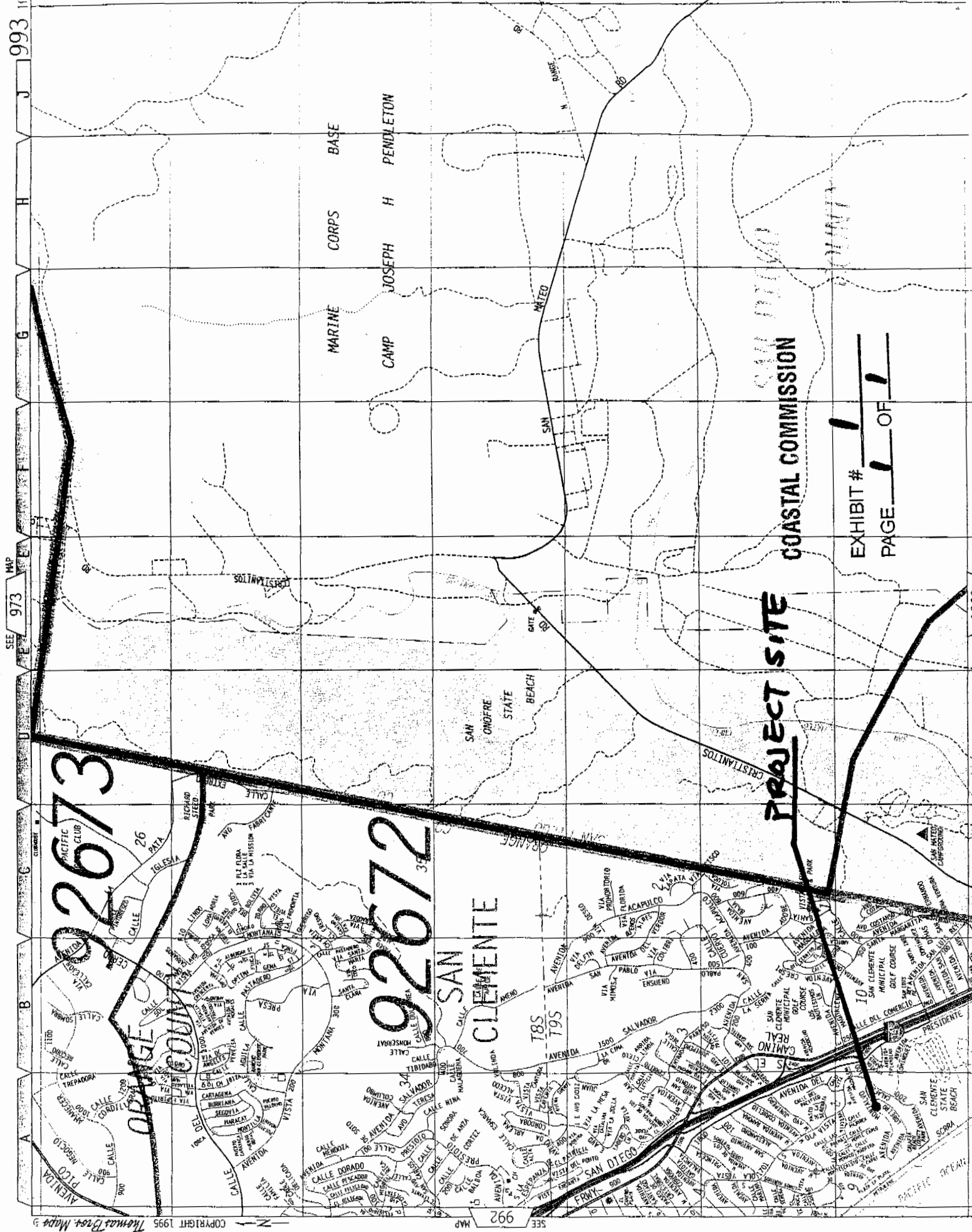
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission 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, as conditioned, is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not 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).

#### **H. 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 any significant adverse effect 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 adopts additional mitigation measures. The proposed project has been conditioned in order to be found consistent with the environmentally sensitive habitat, geologic hazards, and water quality policies of the Coastal Act. Mitigation measures, in the form of special conditions require 1) conformance with geotechnical recommendations; 2) conformance with submitted landscaping plans; 3) conformance with submitted drainage plans; 4) Best Management Practices for erosion and runoff during construction; 5) future development on the site come back to the Commission for review; and 6) evidence of approval by the Orange County Fire Authority. As conditioned, there are no 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.



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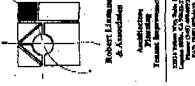
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PROJECT SITE

COASTAL COMMISSION

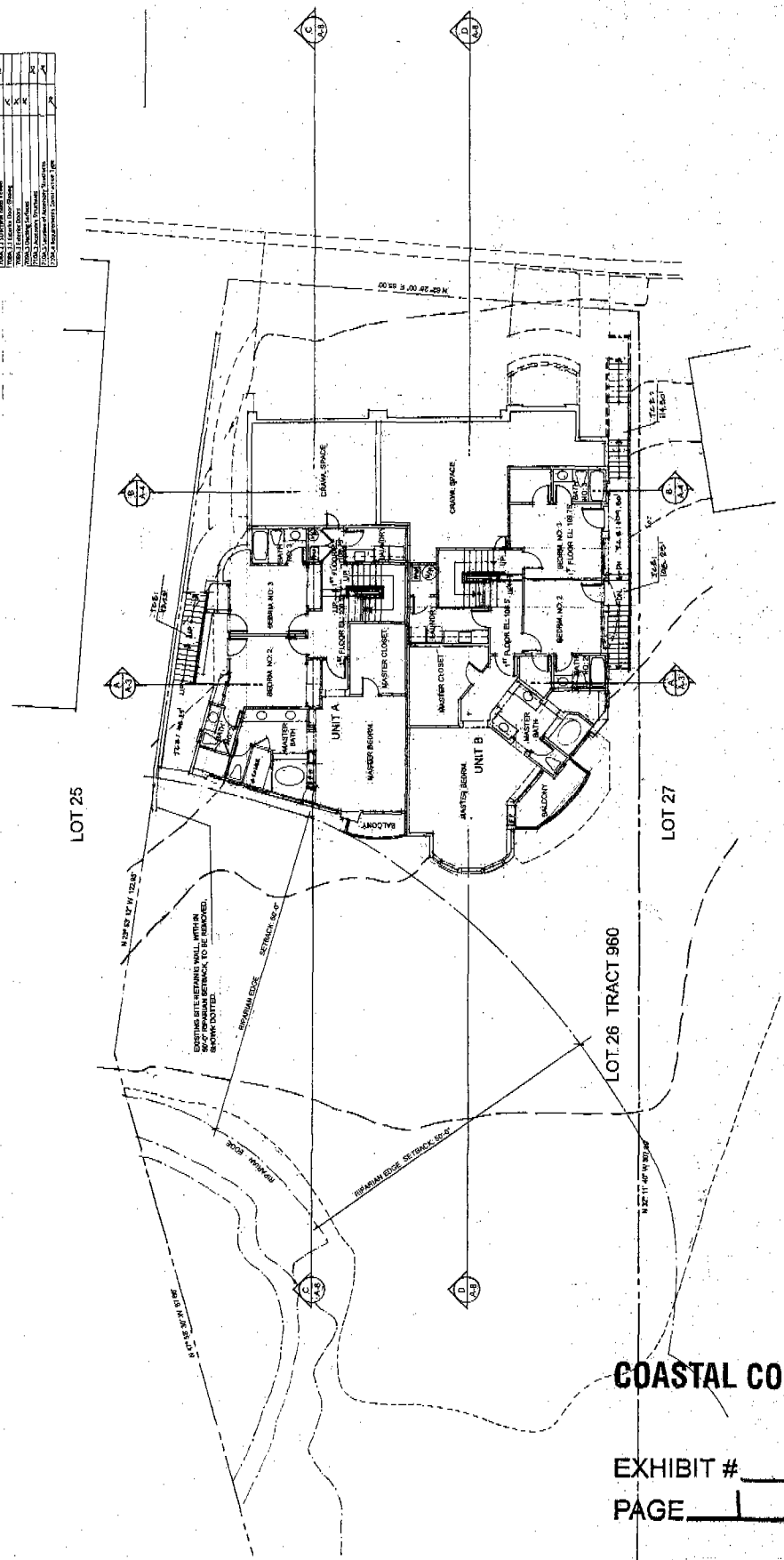
EXHIBIT # 1 OF 1





2010 CBC Chapter 7A Screening Form  
To be Completed by Applicant  
This map and plan were prepared by the Architect of the City of San Clemente.

Item No.	Description	Yes	No
1	Is the project located in a historic district or historic landmark?	X	
2	Is the project located in a historic district or historic landmark?	X	
3	Is the project located in a historic district or historic landmark?	X	
4	Is the project located in a historic district or historic landmark?	X	
5	Is the project located in a historic district or historic landmark?	X	
6	Is the project located in a historic district or historic landmark?	X	
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25	Is the project located in a historic district or historic landmark?	X	
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50	Is the project located in a historic district or historic landmark?	X	

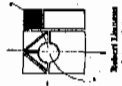


SITE PLAN / 1<sup>ST</sup> FLOOR PLAN

SCALE: 1/8" = 1'-0"

COASTAL COMMISSION

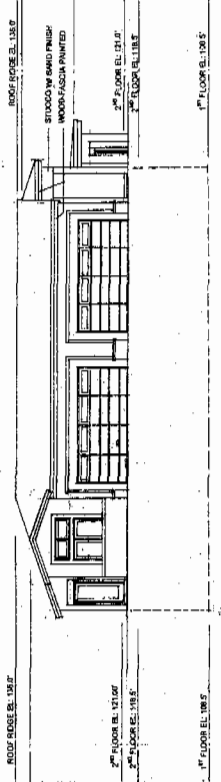
EXHIBIT # 2  
PAGE 1 OF 1



Robert L. Johnson  
 & Associates  
 Architects  
 1000 N. Highway 101, Suite 200  
 San Clemente, CA 92672  
 (949) 425-1100  
 DATE

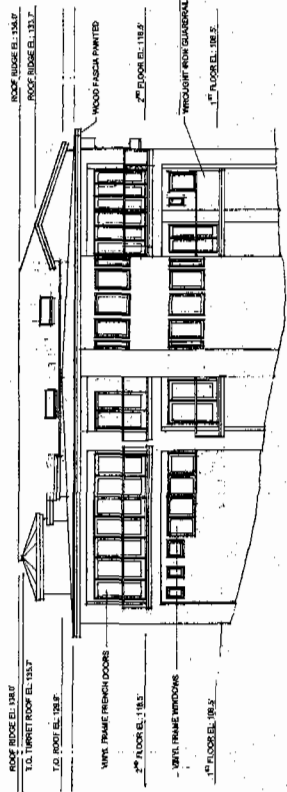
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A-7



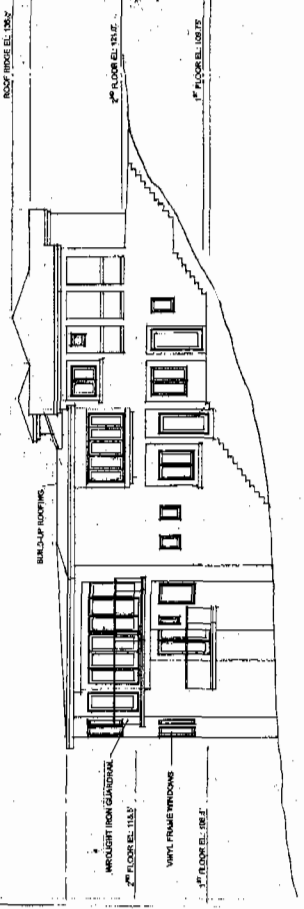
FRONT ELEVATION

SCALE: 1/8" = 1'-0"



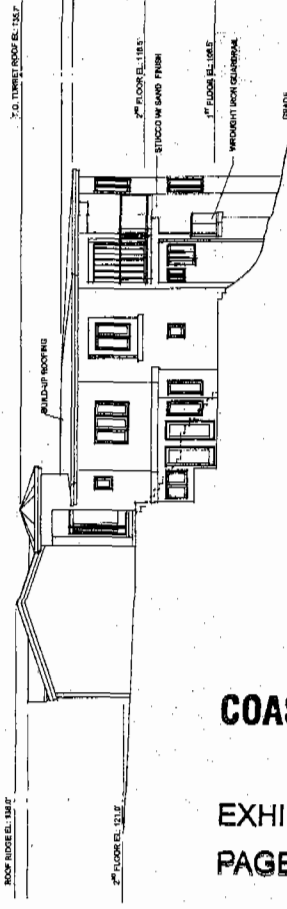
REAR ELEVATION

SCALE: 1/8" = 1'-0"



RIGHT SIDE ELEVATION

SCALE: 1/8" = 1'-0"



LEFT SIDE ELEVATION

SCALE: 1/8" = 1'-0"

COASTAL COMMISSION

EXHIBIT # 3  
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