

CALIFORNIA COASTAL COMMISSION

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

**W10c****ADDENDUM**

December 5, 2011

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to the original staff report.

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM W10c**, COASTAL COMMISSION PERMIT APPLICATION **#5-11-075(Kramer)** FOR THE COMMISSION MEETING OF **December 2011**.

Correspondence

On November 15, 2011, staff received the attached letter from Mr. Paul Douglas, the agent representing Mr. Kramer, the applicant for Coastal Development Permit Application 5-11-075. In the attached letter, Mr. Paul Douglas addresses concerns raised by local opponents to the proposed demolition of existing single family residence, lot subdivision and construction of two new single family residences in correspondence to the Commission (previously included as Exhibit #10 to the staff report).

Revision to Staff Report Project Description

Commission staff recommends the addition of the following information to the project description as proposed by the applicant but were inadvertently left out of the staff report. Revisions updating the proposed project description and revisions to the Findings of the staff report beginning on page 8. Deleted language is in ~~strike through~~ and new language is in **bold, underlined italic**, as shown below:

On page 1 of the staff report, revise as follows:

PROJECT DESCRIPTION:

Tentative Parcel Map to subdivide a single 38,335 sq. ft. single family lot into two parcels (Parcel 1: 10,989 sq. ft. and Parcel 2: 27,366 sq. ft.) for single family residential purposes; demolition of an existing one-story, single-family residence and garage and construction of a new single-family residence and 2-car garage on each newly created lot. Parcel 1 construction of a 2-story, 25 ft. tall, 4,335 sq.ft. single family residence with a 514 sq. ft. balcony deck and attached 2-car garage. Parcel 2 construction of a 3-story, 25' tall, 3,401 sq. ft. single-family residence with attached 2-car garage and 373 sq. ft. in new decks. Minimal grading for site preparation, drainage, hardscape and landscape improvements on a coastal canyon lot. **Recordation of a Conservation Easement beginning 5' from the canyon edge and extending into the coastal canyon on both of the proposed new parcels and a Deed Restriction to**

limit development on proposed Parcel 1 to the first 105 feet from the street fronting property line.

On page 6, paragraph two of the project description in the staff report, add the following:

The applicant proposes a Tentative Parcel Map 2009-141 to subdivide a single 38,335 sq. ft. single family lot into two parcels (Parcel 1: 10,989 sq. ft. and Parcel 2: 27,366 sq. ft.) for single family residential purposes (Exhibit #5); the demolition of an existing one-story, single-family residence and garage and construction of a new single-family residence and 2-car garage on each newly created lot. **The Parcel Map would also include recordation of a proposed Conservation Easement beginning 5' from the canyon edge and extending into the coastal canyon on both of the proposed new parcels. The applicant also proposes a Deed Restriction on the proposed Parcel 1 to limit this, and future development (both primary structure and ancillary structures such as patios) to the first 105 feet from the street fronting property line.**

On the bottom of page 8 of the staff report, add the following findings:

The applicant has designed the project to meet the minimum 15 foot setback from the canyon edge; setback option "a" **a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge** of the certified LUP. **The existing lot is approximately 300 feet deep and approximately 150 feet wide. As the existing lot extends to nearly the canyon bottom, the proposed configuration of the property lines for the proposed two new lots, would still render the minimum 30% depth of the lot (as taken from the canyon bottom) within the canyon. The 30% depth of lot canyon setback is intended to protect coastal resources, therefore it is taken from the farthest property line from the frontage road in order to protect a minimum 30% of the lot that is canyon/coastal resources and not the 30% of the lot that is adjacent to the frontage road. The policy then calls for a 15 foot setback from the canyon edge in addition to this minimum 30% depth of lot.** Staff agrees that the use of this setback will adequately protect coastal resources. Due to the undulating nature of the canyon edge, the proposed residence on Parcel 2 would have approximately an 18' canyon edge setback and the proposed residence on Parcel 1 would have approximately an 18' canyon edge setback at the closest point and approximately 90' canyon edge setback at the farthest point. **Additionally, to ensure that the coastal canyon is preserved, the applicant is proposing as part of the project description, recordation of a conservation easement that will begin 5 feet from the canyon edge and extend into the coastal canyon on both of the proposed new parcels. The conservation easement is proposed to begin 5 feet inland of the canyon edge to be consistent with the ancillary structure (i.e., paving, patios, garden walls) setback in the City's Zoning Ordinance.**

The applicant submitted a vegetation map of the existing parcel (Exhibit #9) conducted by Glenn Lukos Associates dated June 3, 2011. Four types of habitat types were identified on site; southern coastal bluff scrub (2.1), toyon-sumac chaparral (3.12), urban (15.1) and ornamental (15.5) per Exhibit 9. While there is a mixture of native and non-native vegetation on the subject site, vegetation on the lot is predominately ornamental along the top of canyon including species such as acacia, myoporum, sea lavender, aloe, pink melaleuca and pine. As there is no riparian vegetation or a discernable line of coastal sage scrub vegetation and the fact that the native scrub vegetation is mostly concentrated on the slope face (beyond the canyon edge), setback option "b" is not useful in this case.

The lot in question is an elongated, roughly rectangular lot that extends from the frontage road to nearly the canyon bottom as do the adjacent lots (Exhibit #2). The lot sits on a portion of the canyon with a large canyon-top "nose" or promontory that protrudes beyond the canyon-top of adjacent lots. Thus, the canyon edge on this site reaches much further into the canyon than the adjacent lots. The adjacent lots have a more narrow canyon-top area than the subject lot and residences on those lots are sited close to the street in a fashion that recognizes the undulating canyon edge. The subdivision has been reviewed for consistency with the City's certified LUP policies for subdivision of property in or adjacent to coastal canyons shall be reviewed for consistency with the coastal canyon preservation policies. These two new parcels will have adequate building site area to comply with the setback standards of these policies. The proposed new residence on Parcel 2 meets the structural and deck stringlines with the nearest corners of the adjacent structures. The new residence on Parcel 1 does not meet the structural or deck stringlines with the nearest corners of the adjacent structures and the proposed new structure would result in canyon ward encroachment by approximately 10 feet than the current single-family residence on the site proposed for demolition. It should also be noted that the existing residence also does not meet the structural stringline. However, the canyon edge on the proposed new Parcel 1 is approximately 70-80 feet from the proposed new residence.

Therefore, to prevent future homeowners from considering possible future development within this area, the applicant is proposing as part of the project description, recordation of a deed restriction that would limit future development on Parcel 1 to 105 feet from the property line at the frontage road. This includes both primary structures and accessory structures such as at-grade patio and decks, no development would be permitted within 70-80 feet from the coastal canyon edge.

The proposed project should be sufficiently set back to be consistent with the pattern of development in the surrounding area, to protect habitat and avoid frustration of future canyon enhancement efforts by avoiding encroachment into the canyon (both individually and cumulatively). Due to the undulating canyon edge at the lot, it is therefore, most appropriate and equitable to apply the 15' canyon edge setback in this case to preserve canyon habitat.

RECEIVED
South Coast Region

Item: W10c

Commission Chair Mary Shallenberger and
California Coastal Commissioners
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, Ca. 90802

NOV 15 2011

November 13, 2011

CALIFORNIA
COASTAL COMMISSION

Subject: 323 West Avenida Valencia, San Clemente, Ca. Application No. 5-11-075.

I would like to take a few moments to address the comments sent to you by the neighbors of this project. I will not respond to each comment as most of the comments are redundant. Rather, I will respond to each category.

VIEW

There is **not** currently a public view along Valencia and the area is **not** designated as a "public view corridor." However, as a result of the construction of the two proposed homes there will be a public view corridor created between the two homes. Conversely, if one home were built on this entire parcel most likely the home would span from side yard to side yard with no view corridor running through the center of the structure as would result with two homes being built. We have agreed to use minimum height gates or walls constructed of wrought iron or other non-obscure material so as to not obstruct the view.

CEQA COMPLIANCE

The Secretary of Resources has concluded that there are numerous classes of projects that are exempt from CEQA. One of those classes is described as Class 32 "in-fill development projects." Class 32 exemptions exist when:

- The project is consistent with the general plan and zoning regulations.
- The development occurs within City limits on a site less than 5 acres substantially surrounded by urban uses.
- The project has no value as habitat for endangered, rare or threatened species.
- Approval of the project would not result in any significant affects relating to traffic, noise, air quality, or water quality.
- The site can be served by all required public utilities and public services.

Based on the above City Staff and Coastal Staff agree that this project is clearly exempt from CEQA under Class 32.

EXISTING RETAINING WALL

The existing retaining wall shall remain in place to prevent its removal from disturbing the canyon. The wall will provide no structural value to the construction of the homes.

The wall is located entirely on lot number 2 and **does not span both lots** as reported by the neighbors.

INTENSIFICATION AND DENSIFICATION

Adding one home to a completely built out neighborhood is not over intensification. Conversely, if one home were built on this $\frac{3}{4}$ acre plot of land, and meeting all set backs, a home in the range of 18,000 square feet could be built. However, a self imposed deed restriction, which we have proposed and agreed to, will limit the lot coverage of lot 1 to nearly one-half. One merely needs to look to the north of the subject site to see what could happen if the project were built out to the set backs, which is typical. In essence we have voluntarily reduced the available building pad on lot 1. (Please see **Exhibit C**)

It should also be known that the proposed lot sizes and homes are very typical of the existing community. As a result of this subdivision these two lots will be the **only** two lots completely and totally in compliance with the General Plan, Zoning Code, Land Use Plan, Subdivision Code and the City's Coastal Element.

SETBACKS

It has been said that the required set backs are not being adhered to. ***This is false.*** It's obvious the opponents are either misreading the set back requirements or are attempting to mislead the Commission.

The code is clear when it requires a 15 foot set back from the canyon edge *or* "**30 % of the lot depth.**" In this case the 15 foot set back from the canyon edge is by far the more restrictive set back. Thirty percent of the lot **depth** would allow development in the canyon, obviously not allowable.

In June we met at the site with the State's Geologist, Mark Johnsson, to review and verify the canyon edge location and he concurred with our depicted location and the resulting 15 foot canyon edge set back on the side and rear.

DEVELOPMENT IN THE CANYON

It has been said that this application allows development in the canyon. ***This is false.*** The subdivision lot lines are **not** located within the canyon, even though subdivision lines are allowed to run through canyons for subdivision purposes. The entire canyon lies within lot 2 while lot 1 is a reduced building pad, as noted above.

There is **no** proposed construction in the canyon. The existing wall will remain to prevent its removal from disturbing the canyon. The 15 foot canyon edge set back is maintained in all areas adjacent to the canyon, both side and rear.

I believe this addresses all of the comments submitted to the Commission. Thank you for the opportunity to address these concerns.

Sincerely,



Paul Douglas



Exhibit C

CALIFORNIA COASTAL COMMISSION

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Filed: June 13, 2011
49th Day: August 1, 2011
180th Day: December 10, 2011
Staff: Liliana Roman-LB
Staff Report: November 17, 2011
Hearing Date: December 5-7, 2011
Commission Action:

Item W10c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-11-075

APPLICANTS: Warren Kramer

PROJECT LOCATION: 323 W. Avenida Valencia, San Clemente, Orange County

PROJECT DESCRIPTION: Tentative Parcel Map to subdivide a single 38,335 sq. ft. single family lot into two parcels (Parcel 1: 10,989 sq. ft. and Parcel 2: 27,366 sq. ft.) for single family residential purposes; demolition of an existing one-story, single-family residence and garage and construction of a new single-family residence and 2-car garage on each newly created lot. Parcel 1 construction of a 2-story, 25 ft. tall, 4,335 sq.ft. single family residence with a 514 sq. ft. balcony deck and attached 2-car garage. Parcel 2 construction of a 3-story, 25' tall, 3,401 sq. ft. single-family residence with attached 2-car garage and 373 sq. ft. in new decks. Minimal grading for site preparation, drainage, hardscape and landscape improvements on a coastal canyon lot.

LOCAL APPROVALS RECEIVED: Tentative Tract Map 2009-141 approved March 15, 2011 and letter dated October 13, 2011 from the City of San Clemente Planning Department

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP); *Limited Geotechnical Engineering Report for Proposed Lot Split prepared by South Coast Geotechnical Services dated July 29, 2011; Response to California Coastal Commission Staff Inquiries, prepared by South Coast Geotechnical Services dated October 13, 2011.*

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of the proposed project with seven (7) special conditions, which require 1) submittal of revised final plans; 2) final plans indicating conformance with geotechnical recommendations; 3) landscaping; 4) compliance with construction-related best management practices (BMPs); 5) liability for costs and attorneys fees; 6) future improvements come back to the Commission for review; and 7) assumption of risk, waiver of liability

The proposed development is in the City of San Clemente, an uncertified jurisdiction, the standard of review for the project is therefore the Chapter 3 policies of the Coastal Act. The City of San Clemente certified Land Use Plan (LUP) serves as guidance. The site is located adjacent to Toledo Canyon, one of seven coastal canyons in San Clemente identified as containing environmentally sensitive habitat (ESHA) and subject to the canyon preservation policies in the certified LUP.

Primary issues associated with this development include assurance that the proposed development is consistent with the geologic hazard policies of the Coastal Act, as well as assuring that the development is consistent with protection of ESHA. The proposed development conforms to the 15 foot canyon setback policy in the certified LUP (one of three possible policies that may be applied), and is consistent with the pattern of development in the surrounding area.

At the time of this staff report, the applicant is in agreement with the staff recommendation and conditions of approval. However, staff has received correspondence (Exhibit 10) from local opponents to the project and local opposition was expressed at the local level at the time the lot split was approved by the City. The opponents primarily argue that the project is inconsistent with several certified LUP policies regarding visual impacts, intensification of use, canyon setback, drainage, and unpermitted development. The Commission, however, reviews these issues using Chapter 3 policies of the Coastal Act as the standard of review, not the certified LUP, and finds that as conditioned, the proposed project to subdivision a single lot into two lots and construction of two new single family residences complies with the coastal resource protection policies of the Coastal Act.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points
4. Coastal Canyon Map
5. Tentative Parcel Map
6. Preliminary Grading Plans and Demolition Plan
7. Project Plans
8. Landscape Plan
9. Existing Vegetation Map
10. Letters of Opposition

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP No. 5-11-075 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. Submittal of Revised Final Plans
 - A. Prior to issuance of the coastal development permit, the applicant shall submit, for review and approval of the Executive Director two (2) sets of final architectural plans, grading plans, drainage and run-off control plans, and landscaping plans that substantially conform with the plans submitted to the Commission June 13, 2011, titled "Site Development: Custom Home, Lot No. 5, Tract No. 897: 323 W. Ave. Valencia, San Clemente, CA" prepared by Robert Linnaus & Associates and are 1) stamped "Approval in Concept" by the City of San Clemente Planning Department and 2) revised to include the following: the 3-foot high garden wall with underground 6-caisson grade and beam along the canyon edge of the proposed Parcel 1 shall be shaded and clearly marked "this element not permitted by any coastal development permit" on each set of plans;
 - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Plans Indicating Conformance to Geotechnical Report Recommendations

- A. All final design and construction plans, including foundation, grading and drainage plans, and landscape plans shall be consistent with all recommendations contained in the Geotechnical Investigation titled *Limited Geotechnical Engineering Report for Proposed Lot Split* prepared by South Coast Geotechnical Services dated July 29, 2011. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Landscaping – Drought Tolerant, Non-Invasive Plans

Vegetated landscaped areas within the canyon portion of the proposed Parcel 1 and Parcel 2 shall only consist of native drought tolerant plants, which are non-invasive drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. No permanent in-ground irrigation systems shall be installed on the canyon-facing portion of the site. Temporary above ground irrigation is allowed to establish plantings. Vegetated landscaped areas on the street-side of the residence are encouraged to use native plant species, however, non-native drought tolerant non-invasive plant species may also be used in that area. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (<http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

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

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control 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 the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;

- (d) 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. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

5. Liability For Costs and Attorneys Fees

The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

6. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-11-075. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the 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. 5-11-075 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

7. Assumption of Risk, Waiver of Liability and Indemnity

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project site is located at 323 West Avenida Valencia in the City of San Clemente, Orange County (Exhibits 1). The 38,335 square foot lot (Exhibit #2) slopes southerly from Avenida Valencia to the bottom of Toledo Canyon. Toledo Canyon is one of seven coastal canyons identified in the City of San Clemente certified Land Use Plan (Exhibit #4). Surrounding development consists of single-family residences. The nearest public access to the beach is available approximately 800 feet south of the site at the Lost Winds public beach access way (Exhibit #3). The site is designated as Residential Low Density in the certified Land Use Plan, and the proposed project is consistent with this designation.

The applicant proposes a Tentative Parcel Map 2009-141 to subdivide a single 38,335 sq. ft. single family lot into two parcels (Parcel 1: 10,989 sq. ft. and Parcel 2: 27,366 sq. ft.) for single family residential purposes (Exhibit #5); the demolition of an existing one-story, single-family residence and garage and construction of a new single-family residence and 2-car garage on each newly created lot.

Parcel 1 construction of a 2-story, 25 ft. tall, 4,335 sq.ft. single family residence with a 514 sq. ft. balcony deck and attached 2-car garage, minimal grading for site preparation, drainage, hardscape and landscape improvements is proposed. Project plans are included as Exhibit #7.

Parcel 2 construction of a 3-story, 25' tall, 3,401 sq. ft. single-family residence with attached 2-car garage and 373 sq. ft. in new decks; minimal grading for site preparation, drainage, hardscape and landscape improvements is proposed. Project plans are included as Exhibit #7.

The applicant has also submitted a preliminary grading plan (Exhibit #6) and a proposed landscaping plan (Exhibit #8).

Prior Permit History/Unpermitted Development

It has been brought to the Commission's attention that unpermitted development exists on the site. A 1981 City permit issued to a previous homeowner documents the existence of a below grade 6-caissons/grade beam and 3' tall garden/screen wall at the top of the canyon edge along the southerly edge of the concrete patio of the existing residence. Commission staff does not have a record of a coastal development permit issued for the 6-caisson/grade beam. At this time, the applicant is not requesting 'after-the-fact' approval for the unpermitted development undertaken by a previous owner at the site in 1981, nor is the applicant proposing to remove the unpermitted development in this coastal development permit application. Although it is not impossible to remove the below grade 6-caissons/grade beam and 3' tall garden/screen wall, it would be difficult and require significant landform alteration and re-grading along the canyon edge. The site meets the minimum required factors of safety without reliance on the existing non-permitted caissons/grade beam. The proposed new development does not rely on the existing non-permitted caissons/grade beam for stability, nor will the caisson wall be used to support any portion of the proposed residence on Parcel 1.

Local Agency Review

The San Clemente City Council approved the Tentative Parcel Map 2009-141 on March 15, 2011. City approval was exclusively for the lot subdivision and demolition of the existing structures. In a letter dated October 13, 2011, the City Planning Department states that it has reviewed the

proposed architectural plans for the proposed two single family residences and indicated that the plans meet applicable zoning development standards. The City however, did not issue an actual Approval in Concept (AIC) for the proposed new single family development plans as they are prevented by their regulations to issue an AIC for development on a site that is not yet a legal lot. Approval of the lot subdivision proposed under the Tentative Parcel Map is currently before the Coastal Commission and issuance of a coastal development permit. Therefore, as Coastal Development Permit Application requests Commission approval of both the Tentative Parcel Map and the demolition of the existing residence and construction of two new residences, one on each newly created lot, should the Commission approve the proposed development, **Special Condition #1** requires the applicant submit final plans that substantially conform with the plans submitted to the Commission, stamped “Approval in Concept” by the City of San Clemente Planning Department prior to issuance of the Coastal Development Permit.

B. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

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

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.

Policy XV.14 of the certified LUP states:

Any subdivision of property in or adjacent to coastal canyons shall be reviewed for consistency with the coastal canyon preservation policies. New parcels that do not have an adequate building site area to comply with the setback standards of these policies shall not be created.

The policy in the certified LUP concerning development setback standards 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.

Canyon Setback

The proposed development is located adjacent to Toledo Canyon, one of seven coastal canyons designated as environmentally sensitive habitat area (ESHA) in the certified LUP. The applicant's property extends to the canyon bottom. The canyon is considered somewhat degraded due to the presence of both native and non-native plant species. Furthermore, in this canyon there are existing homes at the toe of the canyon slope in the bottom of the canyon. No portion of the area proposed to be graded or otherwise developed with structures contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal canyons is a goal supported by both the environmental protection policies of the Coastal Act, and the certified LUP. Encroachment into the canyon by structures and other appurtenances 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 structures also threaten 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 the encroachment of structures into the canyon; and as a means to limit brush management necessary for fire protection.

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 within each canyon, are highly variable. 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 to site structures, there are other lots comprised mostly of canyon slope and canyon bottom. The pattern of existing development along the canyon changes from place to place. 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, minimizes visual impacts and landform alteration, and avoids cumulative adverse impacts of the encroachment of structures 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 applicant has designed the project to meet the minimum 15 foot setback from the canyon edge; setback option "a." of the certified LUP. Staff agrees that the use of this setback will adequately protect coastal resources. Due to the undulating nature of the canyon edge, the proposed

residence on Parcel 2 would have approximately an 18' canyon edge setback and the proposed residence on Parcel 1 would have approximately an 18' canyon edge setback at the closest point and approximately 90' canyon edge setback at the farthest point.

The applicant submitted a vegetation map of the existing parcel (Exhibit #9) conducted by Glenn Lukos Associates dated June 3, 2011. Four types of habitat types were identified on site; southern coastal bluff scrub (2.1), toyon-sumac chaparral (3.12), urban (15.1) and ornamental (15.5) per Exhibit 9. While there is a mixture of native and non-native vegetation on the subject site, vegetation on the lot is predominately ornamental along the top of canyon including species such as acacia, myoporum, sea lavender, aloe, pink melaleuca and pine. As there is no riparian vegetation or a discernable line of coastal sage scrub vegetation and the fact that the native scrub vegetation is mostly concentrated on the slope face (beyond the canyon edge), setback option "b" is not useful in this case.

The lot in question is an elongated, roughly rectangular lot that extends from the frontage road to nearly the canyon bottom as do the adjacent lots (Exhibit #2). The lot sits on a portion of the canyon with a large canyon-top "nose" or promontory that protrudes beyond the canyon-top of adjacent lots. Thus, the canyon edge on this site reaches much further into the canyon than the adjacent lots. The adjacent lots have a more narrow canyon-top area than the subject lot and residences on those lots are sited close to the street in a fashion that recognizes the undulating canyon edge. The subdivision has been reviewed for consistency with the City's certified LUP policies for subdivision of property in or adjacent to coastal canyons shall be reviewed for consistency with the coastal canyon preservation policies. These two new parcels will have adequate building site area to comply with the setback standards of these policies. The proposed new residence on Parcel 2 meets the structural and deck stringlines with the nearest corners of the adjacent structures. The new residence on Parcel 1 does not meet the structural or deck stringlines with the nearest corners of the adjacent structures and the proposed new structure would result in canyon ward encroachment by approximately 10 feet than the current single-family residence on the site proposed for demolition. It should also be noted that the existing residence also does not meet the structural stringline. However, the canyon edge on the proposed new Parcel 1 is approximately 80 feet from the proposed new residence.

The proposed project should be sufficiently set back to be consistent with the pattern of development in the surrounding area, to protect habitat and avoid frustration of future canyon enhancement efforts by avoiding encroachment into the canyon (both individually and cumulatively). Due to the undulating canyon edge at the lot, it is therefore, most appropriate and equitable to apply the 15' canyon edge setback in this case to preserve canyon habitat.

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 Toledo 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. No portion of the area on the subject site that is proposed to be graded or otherwise developed with structures contains resources that rise to the level of ESHA. 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.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>

Additionally, since the proposed development is adjacent to 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. In the areas on the canyon ward side of the lot, landscaping should consist of plant species native to coastal Orange County only. Elsewhere on the site, 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 landscape plan that indicates no grading, vegetation removal, or disturbance of vegetation beyond the canyon edge on the proposed Parcel 2 and the majority of the canyonward side of the proposed Parcel 1 is designated as "undisturbed area" in the landscape plan. Proposed new landscaping on both new parcels is proposed to be directly adjacent to the proposed structures and proposed to be with native, non-invasive, drought tolerant plant species approved by the Orange County Fire Authority (OCFA). Proposed new landscaping on the inland/street facing side of the proposed parcels is with 'low water use' non-invasive plants (e.g., lavender, bougainvillea, rosemary, yucca). **Special Condition #3** requires the applicant adhere to the proposed drought-tolerant, non-invasive landscaping plan. Additionally, because the proposed development is located adjacent to a coastal canyon, the applicant has submitted Orange County Fire Authority (OCFA) approval of the proposed landscaping plan and determination that a fuel modification plan is not required for the proposed development.

The special conditions of this staff report are designed to protect and enhance Toledo Canyon as an environmentally sensitive habitat area. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30240 of the Coastal Act and the canyon protection policies of the certified LUP.

C. GEOLOGIC STABILITY

Coastal Act Policies

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

New development shall do all of the following:

(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 limited geotechnical engineering report prepared by South Coast Geotechnical Services dated July 29, 2010. The geotechnical investigation consisted of the review of available geologic maps, subsurface exploration by drilling, logging and laboratory testing of two site borings, bluff retreat calculations, stability analyses, review of geotechnical reports and other geotechnical data for the site and surrounding area; and geotechnical analysis of the site conditions in relation to proposed improvements.

Slope Stability and Rate of Slope/Canyon Retreat Analyses

The report states that the site is grossly stable, no faults are located on the property and no significant landslides were observed to have been previously mapped on the property though nearby areas to the site have experienced landslides along the coastal bluff. A limited surficial slope failure has recently occurred along the upper reaches of the coastal canyon slope likely related to either concentrated ponding near the canyon edge or water directed over the canyon slope. Drainage in the area of the surficial slope failure has now been redirected in this area via a flexible pipe to conduct water to the toe of the slope. The site is underlain by non-marine and marine terrace deposits atop bedrock of the Capistrano Formation. Groundwater was not encountered.

Review of aerial photographs from 1967-1999 revealed a slope retreat between 0.25 and 1.25 inches per year during those years. The report concludes that an average of 0.75 inches per year retreat is considered reasonable for the site. The long term anticipated retreat over a 50 year period was calculated at approximately 3 feet. The results of the stability analysis indicate that the factors of safety for static and pseudo-static conditions are in excess of 1.5 and 1.1 respectively. The Commission's staff geologist, Dr. Mark Johnsson, reviewed the submitted geotechnical reports and concurs with their findings.

Additionally, as previously noted in the description of unpermitted development at the beginning of the staff report, the presence of an unpermitted 6-caissons/grade beam at the top of the canyon edge along the southerly edge of the concrete patio of the existing residence was brought to the attention of staff. These caissons were not considered in the slope stability analysis. The site meets the minimum required factors of safety without reliance on the existing non-permitted caissons/grade beam. However, as the submitted geotechnical report simply notes the location of an "existing wall" in the geologic cross section without further discussion; the applicant subsequently submitted a letter from South Coast Geotechnical dated October 13, 2011 which confirms the existence of the below grade 6-caissons/grade beam and above grade 3' tall garden/screen wall and states that these caissons will not be utilized to support any portion of the proposed new residence. Therefore, the proposed development does not rely on unpermitted development for slope stability.

Section 30253(b) of the Coastal Act states that new development shall assure stability and structural integrity and shall not contribute to erosion, geologic instability or destruction of the site or require the construction of protective devices which would substantially alter natural landforms. The preliminary geotechnical report concludes that based upon estimated slope retreat and a slope stability analyses, the site may be safely subdivided and developed from a geotechnical viewpoint and that the planned project is not anticipated to impact adjacent properties.

The applicant has submitted foundation plans for both structures utilizing continuous deepened concrete footings and slab-on-grade foundation. However, South Coast Geotechnical Services notes that caissons will likely be utilized to support the southeasterly portion of the proposed residence on the proposed Parcel 2 because of the presence of unconsolidated fill in that area.

Special Condition #2 requires the applicant submit final plans including foundation plans signed by the consulting geotechnical experts verifying conformance with all geotechnical recommendations. As such, these special conditions guarantee that the final development plans are consistent with Section 30253 of the Coastal Act.

Site Drainage

The applicant has adequately addressed site drainage issues that could otherwise contribute to erosion and geologic instability. As proposed, the preliminary grading plan and erosion control plan prepared by Toal Engineering (Exhibit #7) indicate new drain lines and surface runoff directed to area drains and piped directly to an existing City storm drain at the street. Runoff and storm water will be directed away from the canyon. A buried 6" diameter gravity flow drain line from each storm drain lift station with an outlet on the canyon slope is also proposed for emergency overflow for use during an emergency and/or power outage which would prevent the primary pump system to the street from operating. Minor cut/fill grading for site preparation is proposed; no canyon disturbance will occur during site grading activities. The geotechnical report states, *"The impact from the proposed development from a geotechnical viewpoint is considered minimal due to the anticipated improved site drainage and landscaping during site development."*

Nevertheless, since the final recommendations to be provided by the geotechnical consultant include measures to mitigate any adverse geologic effects, the Commission finds that **Special Condition #2** requiring that the consulting geotechnical expert review the final plans to verify conformance with their geotechnical recommendations. As such, these special conditions guarantee that the final development plans are consistent with Section 30253 of the Coastal Act.

Future Development

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 (5-11-075) or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping and fencing.

D. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit, including construction of a below grade 6-caissons/grade beam and above grade 3' tall garden/screen wall at the top of the canyon edge along the southerly edge of the concrete patio of the existing residence. All work occurred within the canyon edge setback. The work that was undertaken is considered "unpermitted development" as it constitutes development that requires a coastal development permit application by virtue of the type of development and its location adjacent to the canyon slope.

Special Condition 1 requires the applicant submit final revised project plans clearly depicting the location and the entire length of the existing below grade 6-caissons/grade beam and above grade 3' tall garden/screen wall along the southerly canyon edge on the proposed Parcel 1 shaded and clearly marked "this element not permitted by any coastal development permit" as it has not received Commission approval.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified San Clemente Land Use Plan was used as guidance by the Commission in reaching its

decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission's enforcement division will evaluate further actions to address unpermitted development not resolved under this permit.

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 proposes both construction phase best management practices (BMPs) and long term post-construction water quality measures such as channel drains in driveways with fossil filter inserts to treat pollutants carried in water runoff prior to discharge and partially porous driveways for onsite water infiltration to minimize runoff. Site runoff will be directed to area drains and piped to directly to the existing City storm drain at the street. All runoff and storm water will be directed away from the canyon. Additionally, a 6" diameter gravity flow drain line from each storm drain lift station with an outlet on the canyon slope is proposed for emergency overflow for use during an emergency and/or power outage which would prevent the primary pump system to the street from operating. Furthermore, **Special Condition 5** imposes additional construction BMPs designed to minimize erosion and prevent debris from entering the adjacent canyon or storm drain system.

Combined with the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, the project 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. SCENIC AND VISUAL QUALITIES

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

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

San Clemente's certified Land Use Plan (LUP) visual resource policies:

Plan policy provides for maintaining the visual character and aesthetic resources of the City through the preservation of: open space areas, coastal bluffs and canyons and public view corridors.

Policy VII.3 of the certified LUP states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed:

- a. To protect public views to and along the ocean and scenic coastal area.*
- b. To minimize the alteration of coastal bluffs and canyons.*
- c. Where feasible, to restore and enhance visual quality in visually degraded areas.*
- d. Require that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development in accordance with this Element and the Urban Design Element (GP Policy 1.3.6)*

Policy XII.3 of the certified LUP states:

Require the following coastal roadways be maintained and preserved as scenic corridors in accordance with the scenic highways element of the General Plan (GP Policy 5.1.1):

- Avenida Pico*
- El Camino Real/Pacific Coast Hwy*
- Ola Vista*
- El Camino Real*

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 development is located on a private coastal canyon parcel designated as Residential Low Density in the City's certified Land Use Plan (LUP). The site is visible to motorists and pedestrians on West Avenida Valencia. West Avenida Valencia is not designated as a scenic corridor in the City's certified LUP. The residential street is mostly traveled by local residents and is not a regional corridor. There are no public trails, public parks, or other such public vantage points with direct coastal views through the subject site. Public ocean views are mostly completely obstructed by one and two-story single-family residences on the seaward side West Avenida Valencia.

Local opponents to the project have argued that the project would interfere with existing view corridor. Photographs submitted show a distant narrow view corridor of the ocean between single-family residences and mature trees travelling southbound on Avenida Valencia. Other photographs show views from the public sidewalk in front of the existing residence that are partially obstructed by vegetation, deck railing and side yard fencing (Exhibit #10, pages 15 thru 19).

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and where feasible to be restored and enhanced. As the applicant proposes the complete demolition and reconstruction of the existing structure the new development at this location must also be sited and designed to be visually compatible with the character of the neighborhood in this area. The proposed two new residences meet the City's height limits and are compatible with existing two-story single family residences in the area. Some existing views at the southwest corner of the lot through the property to the ocean to the west would be impacted. However, as proposed, the lot subdivision would create a clear direct 12-foot wide view corridor to the ocean through the two new lots due to side yard setback requirements (Exhibit #11). Existing views of the ocean traveling southbound on Avenida Valencia would remain after construction of the proposed new residences. However, no adverse visual impact to public views is anticipated as no significant public coastal views currently exist across the site (i.e., from public trail, public park or public land) and the site is not located in a scenic corridor identified in the City's certified LUP. As proposed, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

G. 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 approximately 800 feet south of the site at the Lost Winds public beach access way (Exhibit 3). There is no direct beach access at 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. As adequate access exists nearby, the Commission finds that the proposed development is consistent with Section 30212 of the Coastal Act.

H. 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).

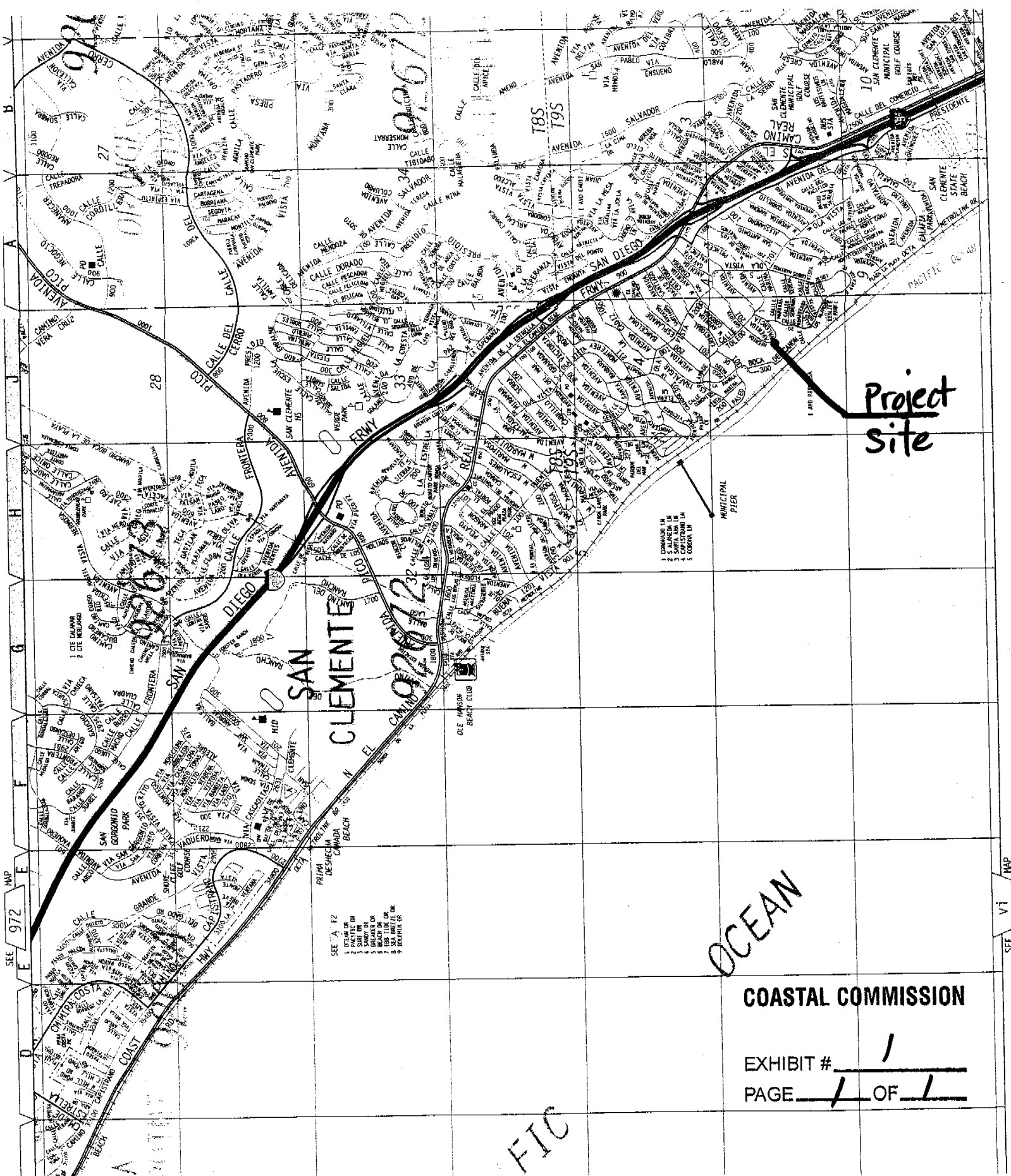
I. COSTS AND ATTORNEYS FEES

Title 14, section 13055(g) of the California Code of Regulations authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with the Commission's regulations, the Commission imposes **Special Condition 5**, requiring reimbursement of any costs and attorneys fees the Commission incurs "in connection with the defense of any action brought by a party other than the Applicant/Permittee ... challenging the approval or issuance of this permit."

J. 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) submittal of revised final plans; 2) final plans indicating conformance with geotechnical recommendations; 3) landscaping; 4) compliance with construction-related best management practices (BMPs); 5) clarifies liability for costs and attorney's fees; 6) future improvements come back to the Commission for review; and 7) assumption of risk, waiver of liability. 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.



Project site

OCEAN

COASTAL COMMISSION

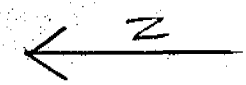
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PAGE 1 OF 1

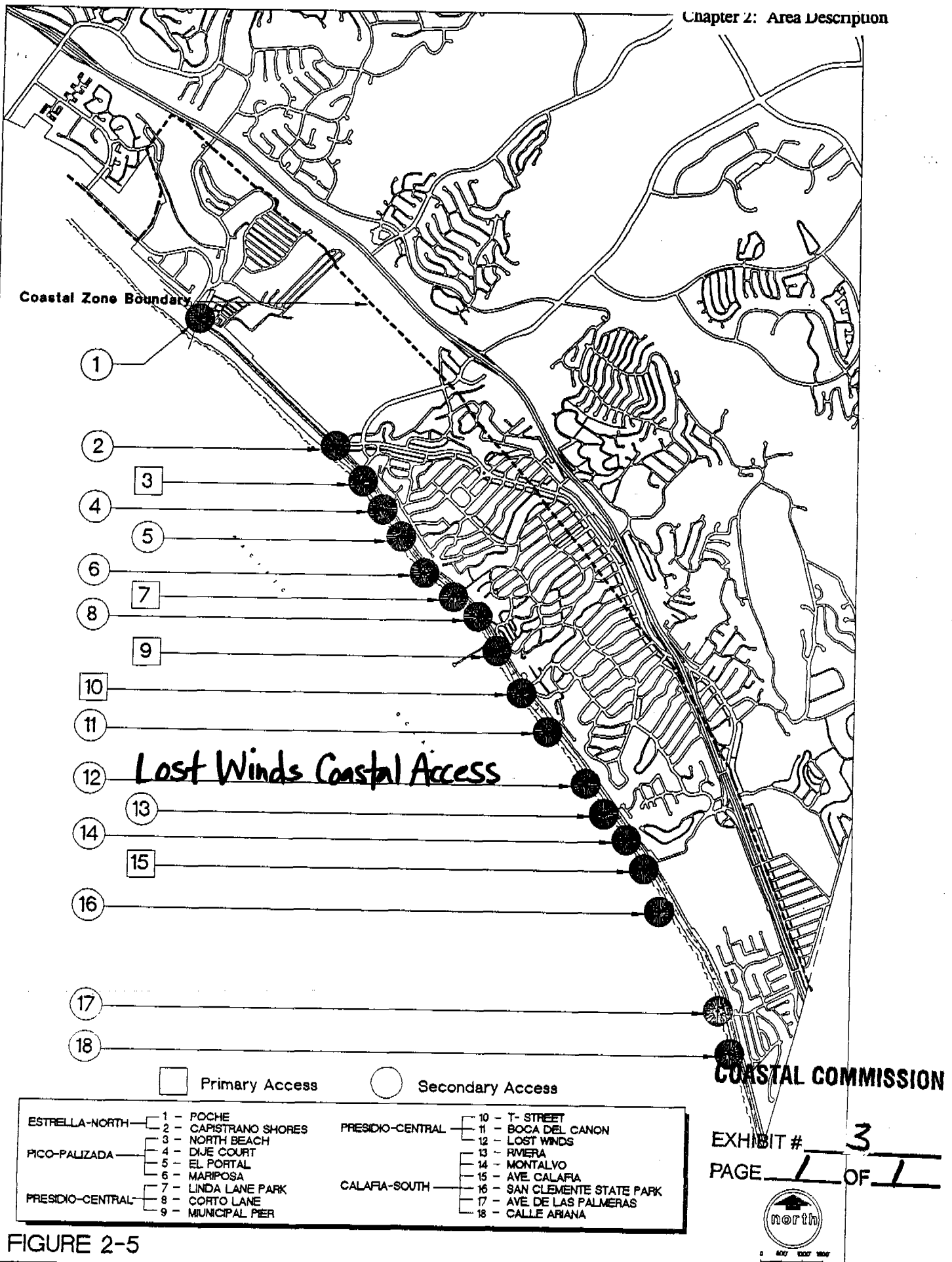
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COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1





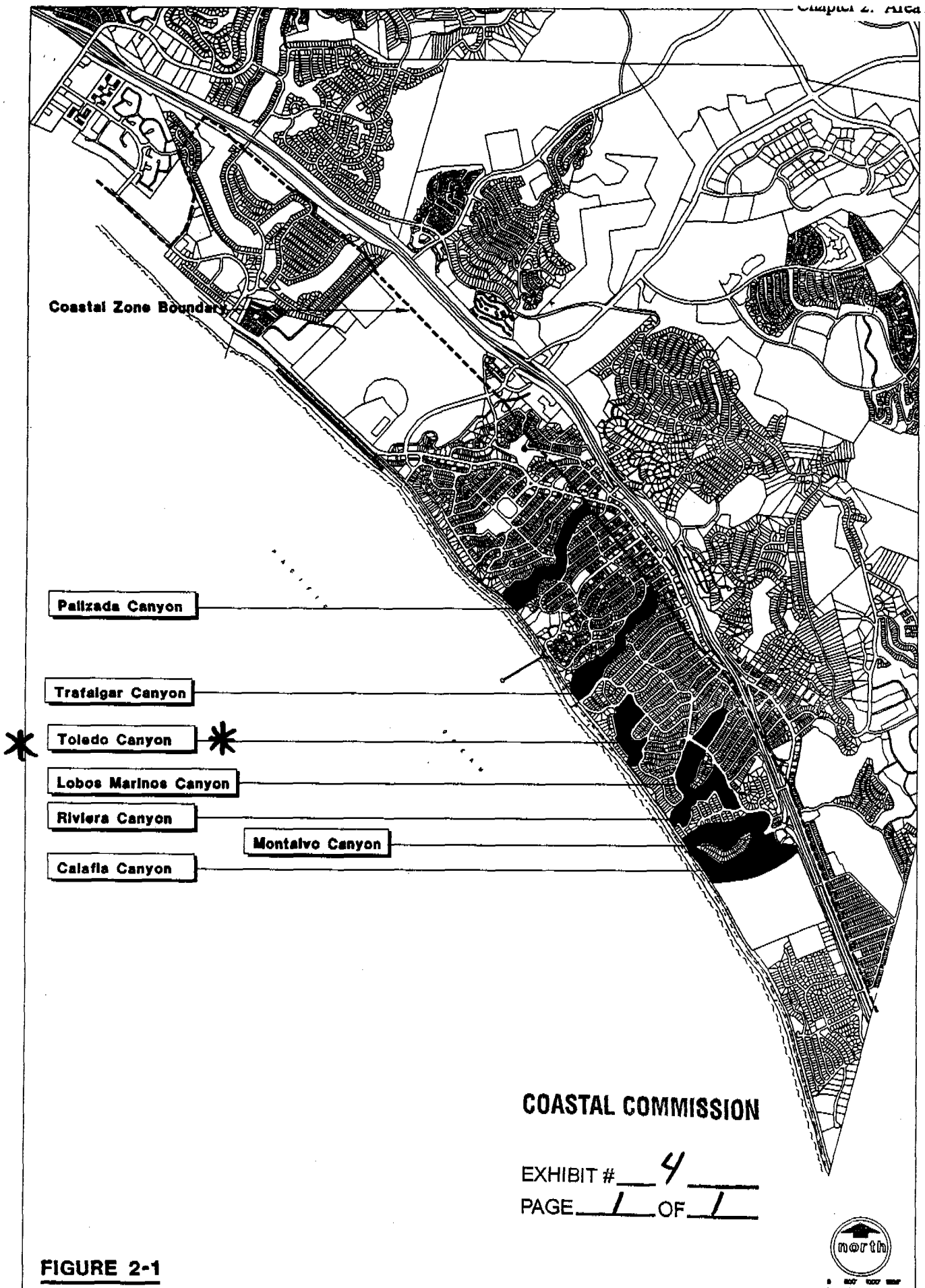


FIGURE 2-1



CITY OF SAN CLEMENTE
COASTAL CANYONS/ ENVIRONMENTALLY SENSITIVE HABITAT AREAS

SITE DATA

OWNER/SUBDIVISOR: WARREN FRANKER
SAN JOSE, CA 95127

DATE: 1-15



DATE: 3-17-11
OAV 5, NCM 15 1384

GENERAL PLAN LAND USE: RESIDENTIAL

EXISTING LAND USE: SINGLE-FAMILY HOME

TOTAL AREA: 36,133 SQ. FT. (0.83 AC)

EXISTING ZONING: RESIDENTIAL

PROPOSED ZONING: 1 FOOT

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: 2

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

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PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

PROPOSED LOT AREA: N/A

AVENIDA VALENCIA

100'

95'

90'

85'

80'

75'

70'

SECTION A-A
SCALE 1"=10'

100'

95'

90'

85'

80'

75'

70'

65'

60'

55'

50'

45'

40'

35'

30'

25'

20'

15'

10'

5'

0'

5'

10'

15'

20'

25'

30'

35'

40'

45'

50'

55'

60'

65'

70'

75'

80'

85'

90'

95'

100'

105'

110'

115'

120'

125'

130'

135'

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145'

150'

155'

160'

165'

170'

175'

180'

185'

190'

195'

200'

205'

210'

215'

220'

225'

230'

235'

240'

245'

250'

255'

260'

265'

270'

275'

280'

AVENIDA VALENCIA

100'

95'

90'

85'

80'

75'

70'

65'

60'

55'

50'

45'

40'

35'

30'

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35'

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45'

50'

55'

60'

65'

70'

75'

80'

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330'

AVENIDA VALENCIA

100'

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</

Warren K. Kramer

DATE	01/02/00	TIME	17:10
NAME	A.M.S.	NAME	A.M.S.
DATE	01/02/00	TIME	17:10
NAME	A.M.S.	NAME	A.M.S.

1. The first step in the process of developing a new product is to identify a market need. This is often done through market research, which can be conducted in a number of ways. One common method is to conduct surveys, which can be done online or in person. Another method is to focus group, which involves bringing a group of people together to discuss their needs and preferences. A third method is to observe customers in their natural environment, which can provide valuable insights into their behavior and needs.

2. Once a market need has been identified, the next step is to develop a product concept. This involves creating a detailed description of the product, including its features, benefits, and target market. The product concept should be developed in a way that is consistent with the market need and the company's overall business strategy.

3. The third step in the process is to develop a business plan. This involves creating a detailed financial and operational plan for the new product. The business plan should include information about the product's cost of production, its selling price, and the expected sales volume. It should also include information about the company's marketing and distribution strategy, as well as its overall financial goals and objectives.

4. Once a business plan has been developed, the next step is to secure financing for the new product. This can be done in a number of ways, including through bank loans, venture capital, or crowdfunding. The company should carefully evaluate the different financing options and choose the one that best fits its needs and goals.

5. The final step in the process is to launch the new product. This involves creating a marketing and distribution plan for the product, and then implementing that plan. The company should carefully monitor the product's performance in the market and be prepared to make adjustments as needed.

1. CHINESE DRUGS OR DRUGS WHICH HAVE BEEN UNDER RESEARCH TO BE TESTED FOR A LIMITED PERIOD TO DETERMINE, MATERIALLY, THE EFFECTS OF THE DRUGS AND BE CONSIDERED TO HAVE PROVED TO BE BENEFICIAL TO THE PATIENTS.
2. CHINESE DRUGS OR DRUGS WHICH HAVE BEEN UNDER RESEARCH TO BE TESTED FOR A LIMITED PERIOD TO DETERMINE, MATERIALLY, THE EFFECTS OF THE DRUGS AND BE CONSIDERED TO HAVE PROVED TO BE BENEFICIAL TO THE PATIENTS.
3. CHINESE DRUGS OR DRUGS WHICH HAVE BEEN UNDER RESEARCH TO BE TESTED FOR A LIMITED PERIOD TO DETERMINE, MATERIALLY, THE EFFECTS OF THE DRUGS AND BE CONSIDERED TO HAVE PROVED TO BE BENEFICIAL TO THE PATIENTS.

EMERGENCY OVERFLOW NOTE:
 A. If overflow occurs from the low level, then the high level will be reached automatically. Only the water contained in the overflow will be sent above the alert water level of the pumps. In the case of pump failure the overflow line will allow the sludge to collect down the slope in the tank and reduce the potential for flooding on-site.

PL	PROPOSED LINE
TM	TOP OF MALL
F	TOP OF FLOOR
WF	WATER FEATURE
TP	TOP OF PLASTER
LA	LANDSCAPE AREA

PROCESSED BY THE FBI	✓
RECEIVED DIRECTOR	53
MAY 30 1968	PM-6
COMMUNICATIONS SECTION	7/1
PROCESSED AND FORWARDED TO THE DIRECTOR	
FBI - NEW YORK	

[illegible]

EXHIBIT # 6
PAGE 1 OF 2

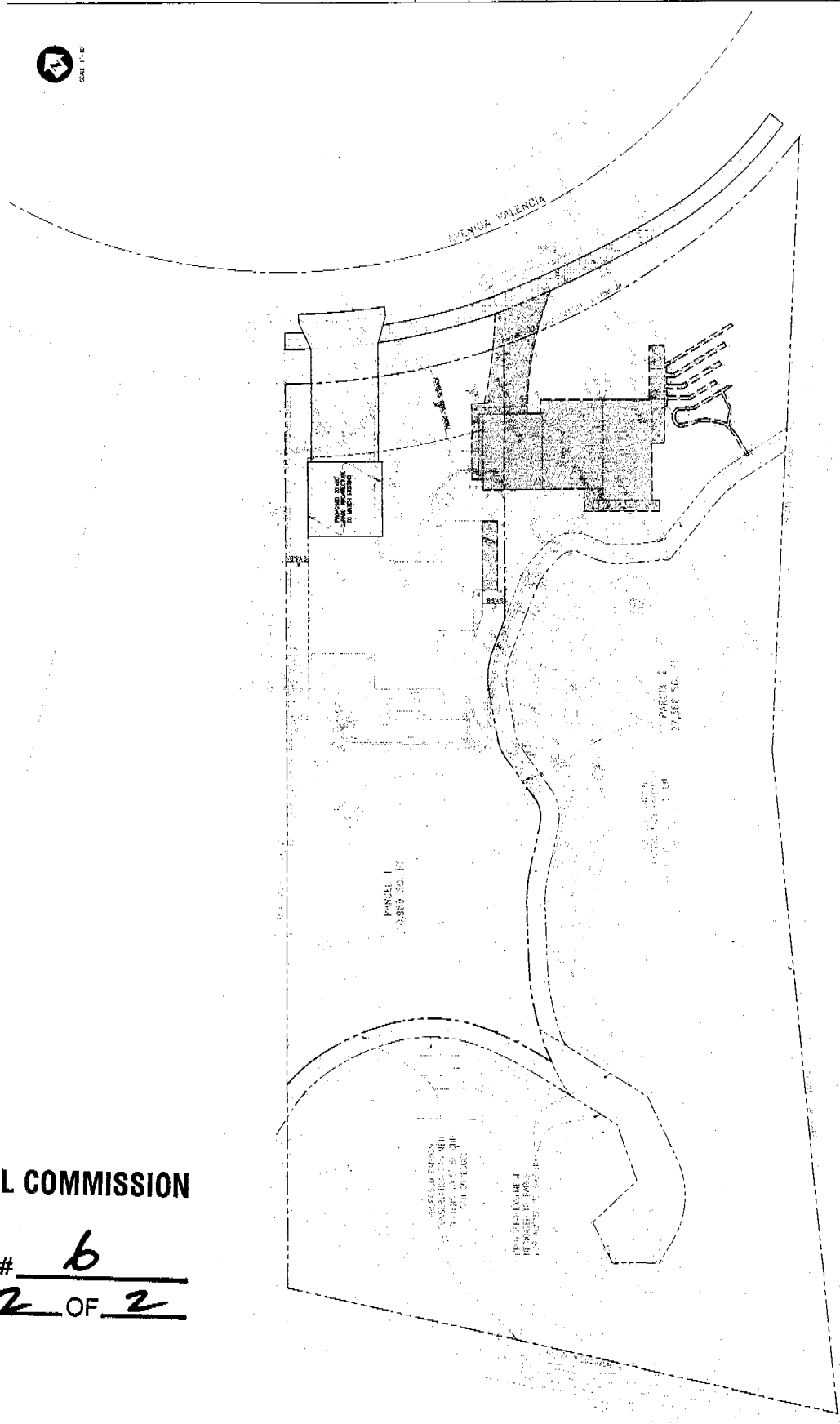
NO.	DATE	DESCRIPTION	BY	CHKD.	APP'D.
1	1/22/08	DEMOLITION PLAN	W. H. H.		
2	1/22/08	DEMOLITION PLAN	W. H. H.		
3	1/22/08	DEMOLITION PLAN	W. H. H.		
4	1/22/08	DEMOLITION PLAN	W. H. H.		
5	1/22/08	DEMOLITION PLAN	W. H. H.		
6	1/22/08	DEMOLITION PLAN	W. H. H.		
7	1/22/08	DEMOLITION PLAN	W. H. H.		
8	1/22/08	DEMOLITION PLAN	W. H. H.		
9	1/22/08	DEMOLITION PLAN	W. H. H.		
10	1/22/08	DEMOLITION PLAN	W. H. H.		

DEMOLITION PLAN
 323 W. AVENIDA VALENCIA (LOT 5, TRACT 007)
 SAN CLEMENTE, CALIFORNIA
 DRAWN BY: W. H. H.
 CHECKED BY: W. H. H.
 APPROVED BY: W. H. H.



DISPOSITION LEGEND

- EXISTING LOT 5, TRACT 007, SAN CLEMENTE, CALIFORNIA
- EXISTING LOT 5, TRACT 007, SAN CLEMENTE, CALIFORNIA
- EXISTING LOT 5, TRACT 007, SAN CLEMENTE, CALIFORNIA
- EXISTING LOT 5, TRACT 007, SAN CLEMENTE, CALIFORNIA



COASTAL COMMISSION

EXHIBIT # 6
 PAGE 2 OF 2

EXHIBIT # 7
PAGE 1 OF 16



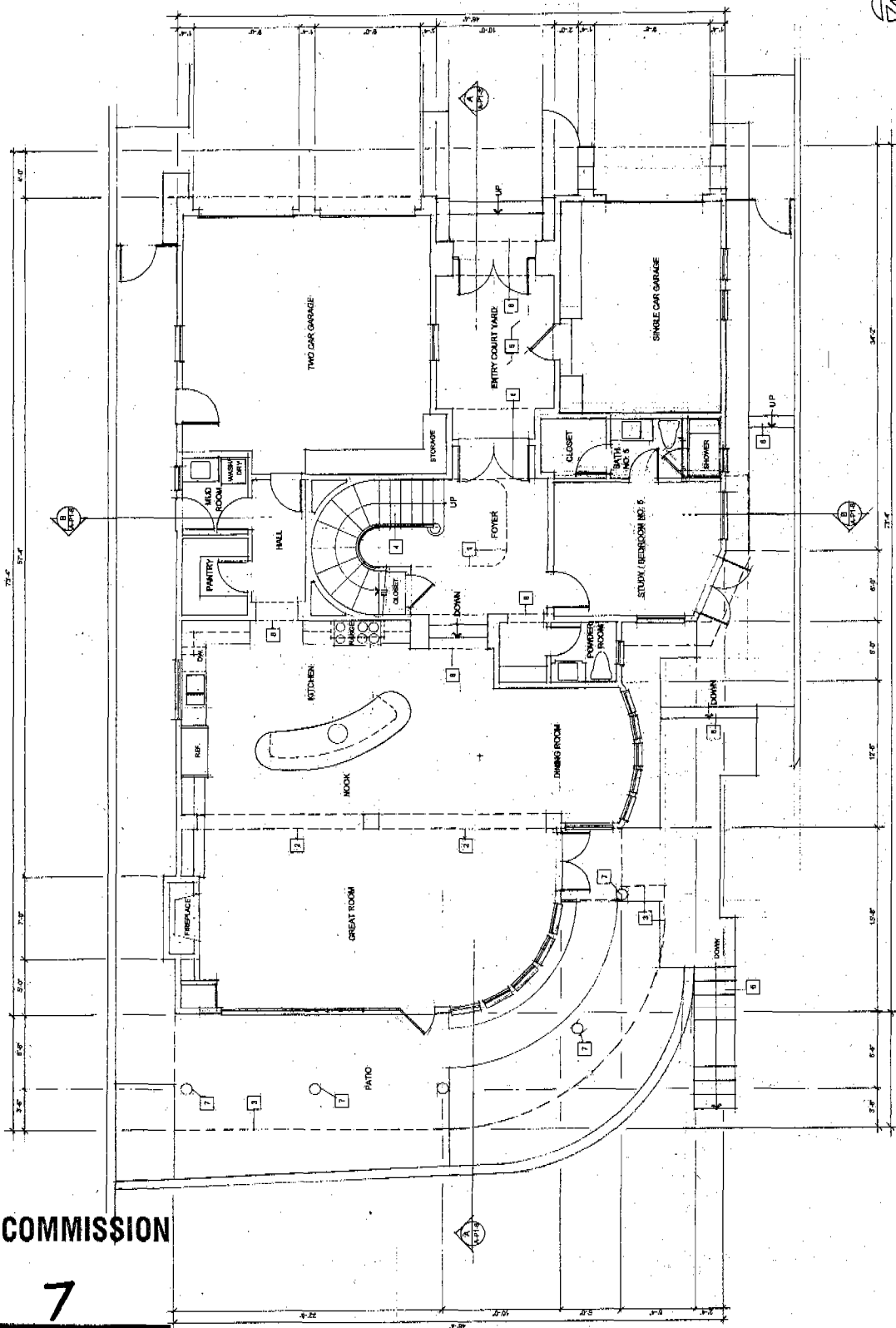
SITE PLAN: PARCEL 1 & PARCEL 2

SCALE: 1/16" = 1'-0"

A-1

FLOOR PLAN KEY NOTES:

- 1 LINE OF FLOOR ABOVE SHOWN DASHED
- 2 LINE OF FLOOR BELOW SHOWN DASHED
- 3 UNFINISHED FLOOR ABOVE SHOWN DASHED
- 4 UNFINISHED FLOOR BELOW SHOWN DASHED
- 5 WOOD FRAME STAIR
- 6 CONCRETE STAIR
- 7 CONCRETE STAIR
- 8 CONCRETE STAIR
- 9 CONCRETE STAIR
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- 100 CONCRETE STAIR



COASTAL COMMISSION

EXHIBIT # 7
PAGE 3 OF 16

First Floor Plan

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

SHEET NO. AP1-2

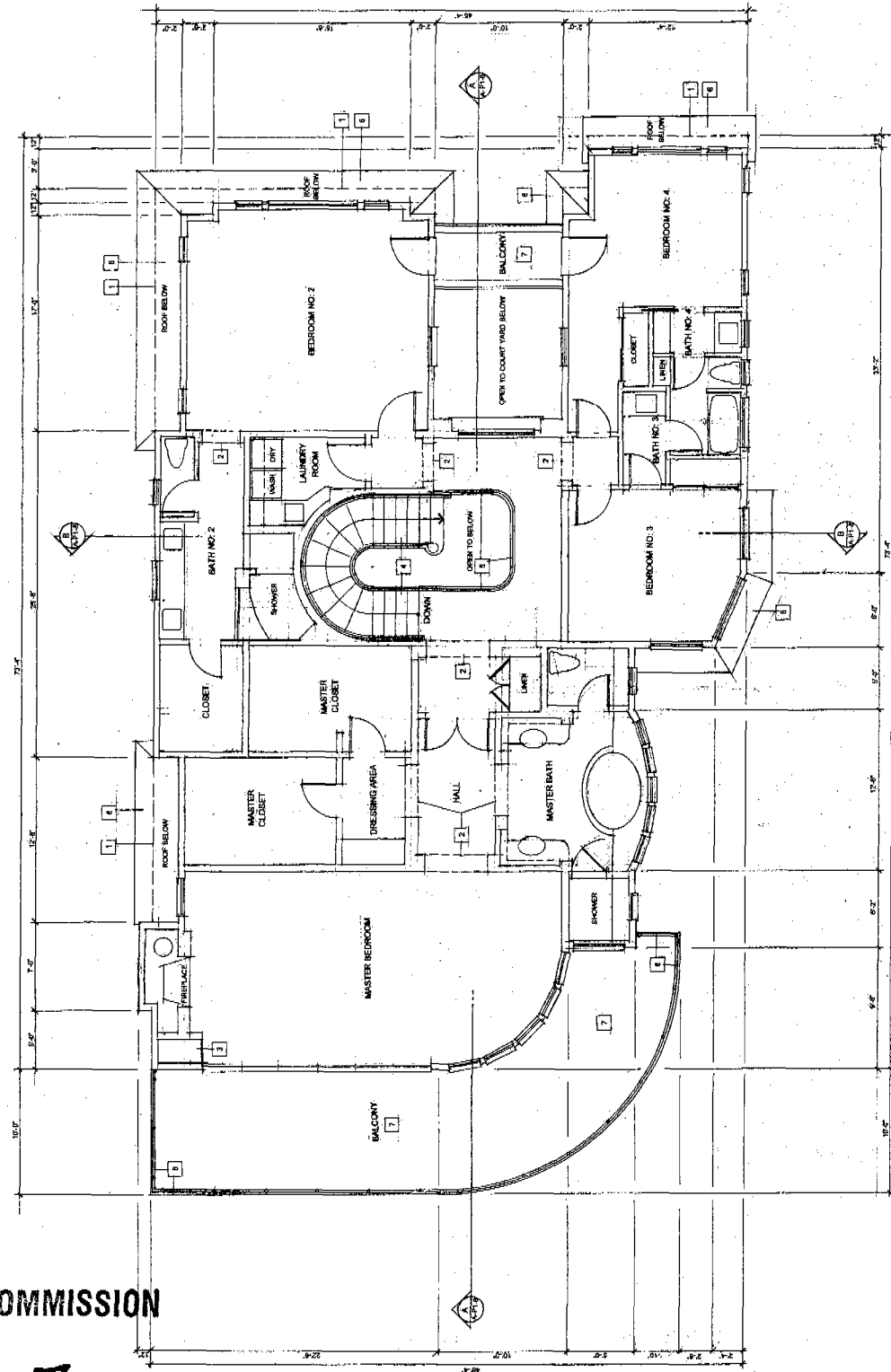
DATE

Robert L. Lerner
Architect
1000 S. Main Street
Santa Ana, CA 92701
(714) 241-1111
Fax: (714) 241-1112
www.rll.com

Site Development: Custom Home
Lot No. 5, Tract No. 897, Parcel 1
323 W. Ave. Valencia, San Clemente, CA

FLOOR PLAN KEY NOTES:

- 1 EXTERIOR FACE OF WALL BELOW SHOWN DASHED
- 2 ARCHED WALL OPENING SHOWN DASHED
- 3 4" x 4" x 1/2" TYP. BRICK DOOR PANELS
- 4 WOOD FRAME
- 5 WROUGHT IRON GLAZED, AND STAIR HANDRAIL
- 6 TWO PIECE CLAY TILE ROOFING
- 7 WOOD FRAME BALCONY, COVER WITH STONE TILE OVER WATERPROOF TOPPING
- 8 GLAZED, STAINLESS STEEL: POST & CAP, STAINLESS STEEL ROOF AT 4" ON CENTER, VERT.



Second Floor Plan:

COASTAL COMMISSION

EXHIBIT # 7
PAGE 4 OF 16

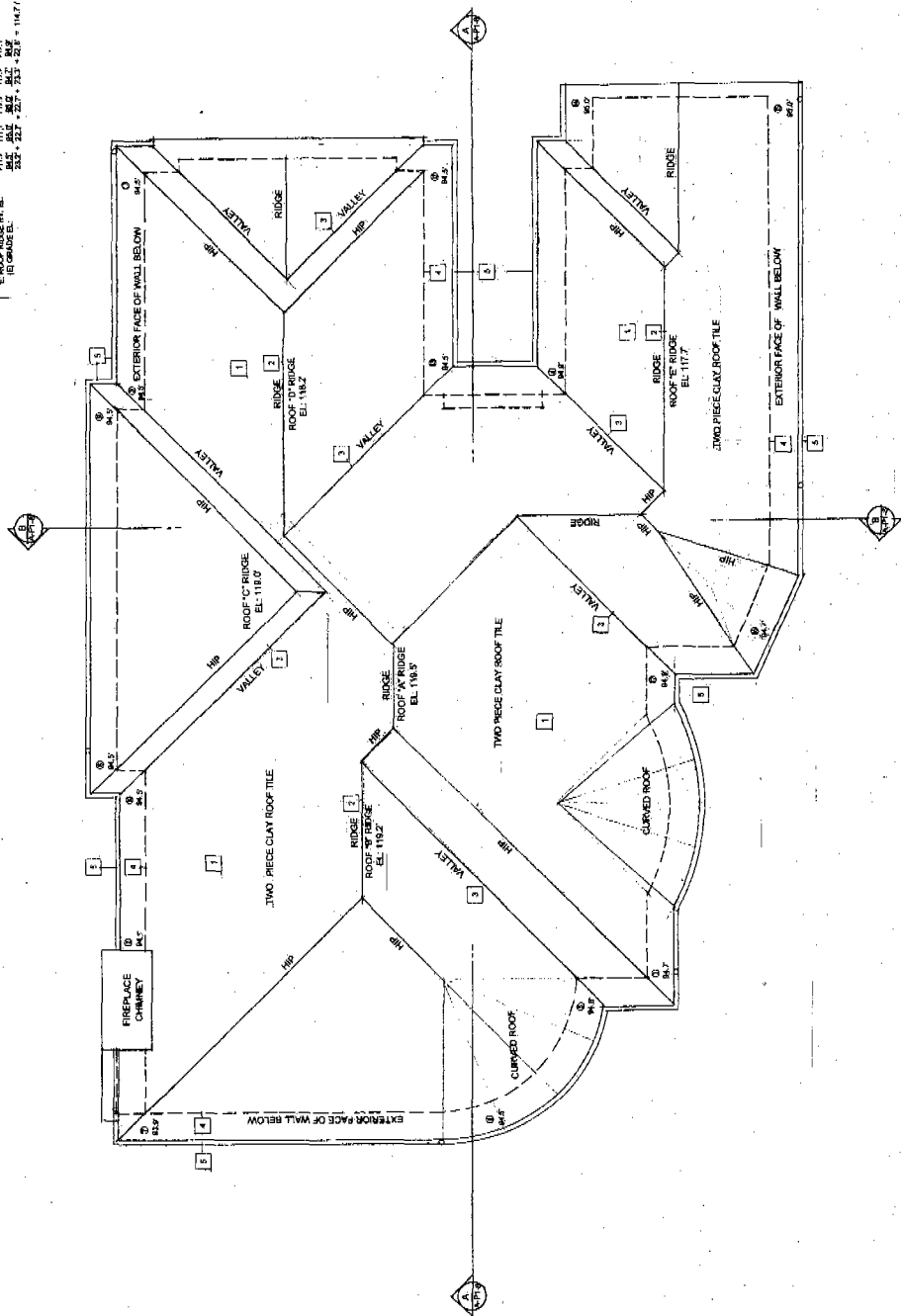
COASTAL COMMISSION

EXHIBIT # 7
PAGE 5 OF 16

ROOF PLAN KEY NOTES:
1. TWO PIECE CLAY TILE ROOFING OVER TWO LAYERS 3/4" ASPHALT
FIBER FELT OVER 1/2" OSB OR 1/2" WOOD ROOF SHEATHING, CLASS "X"
2. ROOF RIDGE WITH RIDGE CAP
3. PRELAPSED CLAY TILE ROOFING OVER TWO LAYERS 3/4" ASPHALT
FIBER FELT OVER 1/2" OSB OR 1/2" WOOD ROOF SHEATHING, CLASS "X"
4. EXTERIOR FACE OF WALL BELOW
5. EXTERIOR FACE OF WALL BELOW SHOWN DASHED
6. PRELAPSED CLAY TILE ROOFING OVER TWO LAYERS 3/4" ASPHALT
FIBER FELT OVER 1/2" OSB OR 1/2" WOOD ROOF SHEATHING, CLASS "X"
7. DOWNPOUT

ROOF HEIGHT CALCULATIONS FOR PARCEL NO. 11

ROOF KEY NO.	1	2	3	4	5	6	7
A. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
B. GRADE EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
C. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
D. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
E. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
F. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
G. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
H. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
I. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
J. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
K. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
L. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
M. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
N. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
O. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
P. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
Q. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
R. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
S. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
T. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
U. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
V. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
W. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
X. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
Y. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5
Z. ROOF RIDGE HT. EL.	115.1	115.5	115.5	115.5	115.5	115.5	115.5



Roof Plan

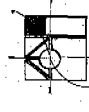
SCALE 1/4" = 1'-0"



SHEET NO.

A-P1-4

DATE

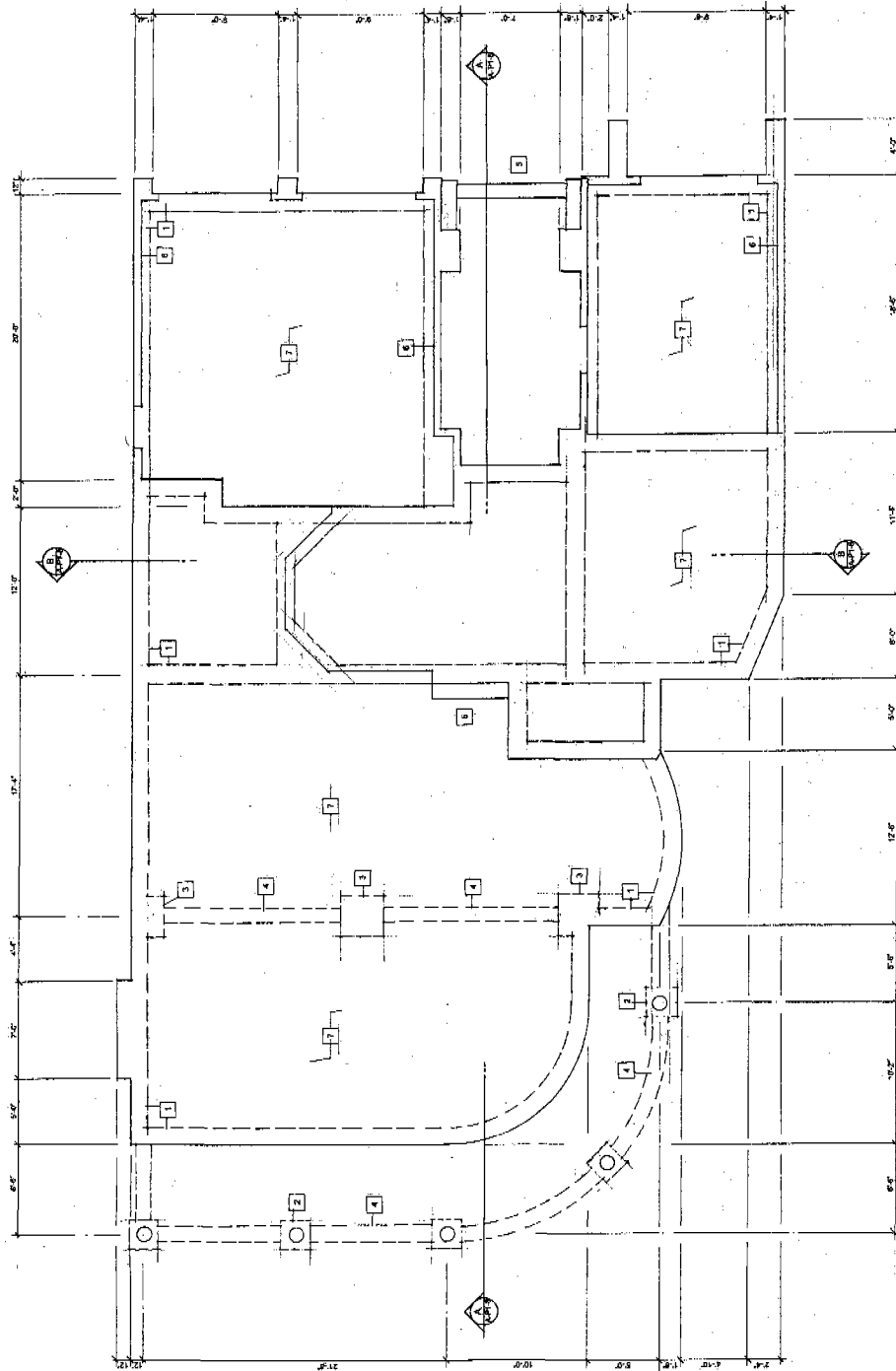


Project Location:
Project Name:
Project Number:
Project Date:

Site Development: Custom Home
Lot No. 5, Tract No. 897, Parcel 1
323 W. Ave. Valencia, San Clemente, CA

FOUNDATION PLAN KEY NOTES:

- 1 CONT. CONC. FOOTING: 18" MADE X 2'-2" DEEP (BELOW GRADE MIN) WITH:
- 2 10 NO. 3 BARS CONT. THE TOP AND BOTTOM SLOTTED AND SLOTTED
- 3 CONC. PAD FOOTING: 36" NO. 3 12" DEEP WITH 14 NO. 3 BARS EA WAY
- 4 CONC. PAD FOOTING: 36" NO. 3 12" DEEP WITH 14 NO. 3 BARS EA WAY
- 5 CONC. GRADE BEAM: 12" MADE X 3' DEEP WITH (2) NO. 4 BARS EA WAY
- 6 CONC. STEPS
- 7 CONC. CURB: 6" MADE X 6" DEEP
- 8 CONC. SLAB ON GRADE: 4" MIN. THICKNESS WITH NO. 3 BARS AT 18" ON
- 9 CENTER EA. WAY OVER 2' SAND OR GRAVEL OVER 6" M.L. VIBROCAST
- 10 VAPOR BARRIER OVER 2" SAND OR GRAVEL



SCALE 1/2" = 1'-0"

Foundation Plan

COASTAL COMMISSION

EXHIBIT # 7
PAGE 6 OF 16



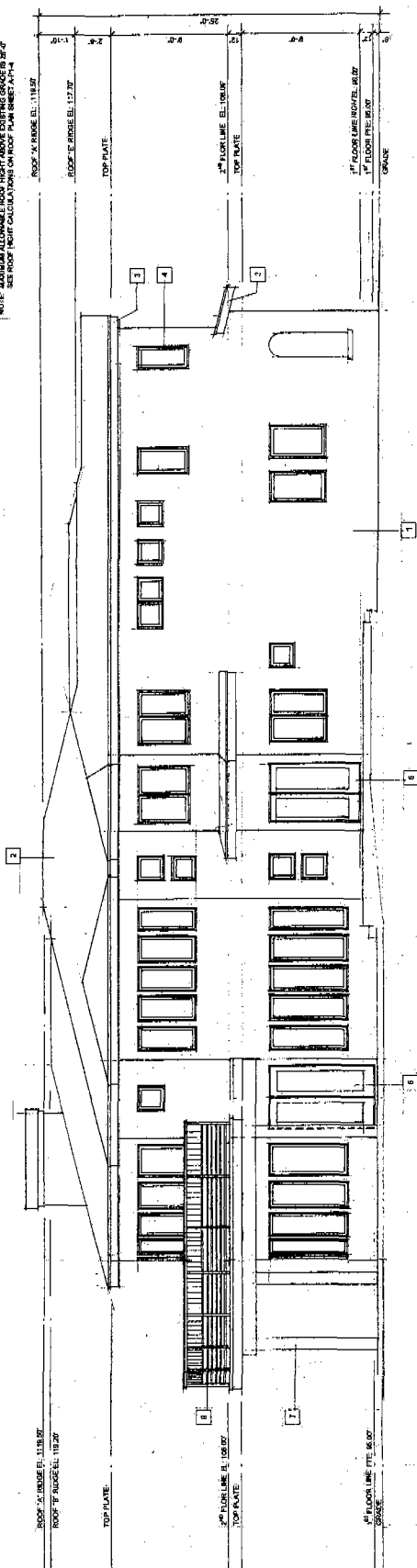
**Robert Lindner
& Associates**

Architects
Planners
Special Improvement

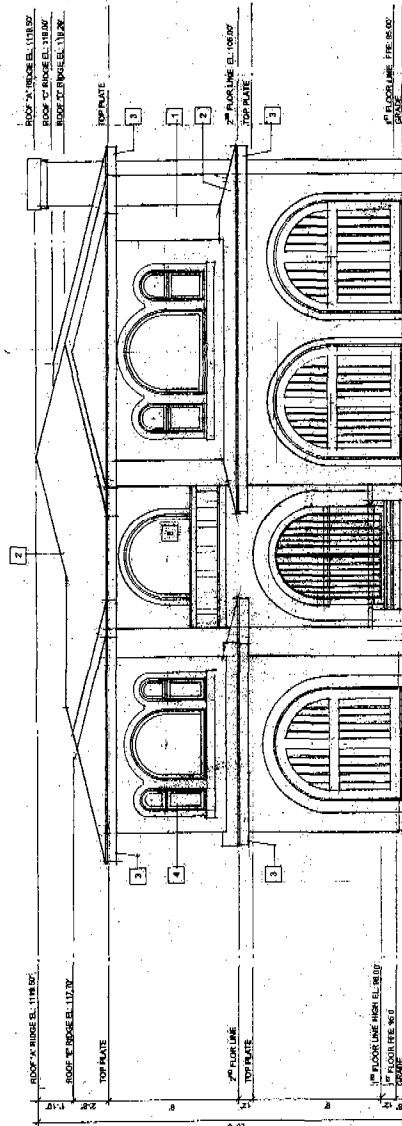
2001 Tully Rd., Suite 100
Laguna Hills, CA 92653
Phone (714) 761-1001

EXTERIOR ELEVATION KEY/NOTES:	
1	EXTERIOR PLASTER (STUCCO) WALL COVERING
2	TWO PCE GLAZED ROOF TILE ROOF COVERING CLASS "X" ROOF COVERING
3	WOOD SHAKES WITH FRAME GLAZED
4	W/OUTSIGHT IRON ENTRY GATES
5	W/OUTSIGHT IRON ENTRY GATES
6	PREFAB DOOR, PERSIAN/ARAB FRAME, DOUBLE GLAZED GLASS
7	PREFAB CONC. COLUMN DOWNS
8	W/OUTSIGHT CONC. COLUMN DOWNS
9	CORNER/4 WALLS STEEL POST, CAP AND BALLASTERS

NOTE: MAXIMUM ALLOWABLE ROOF RISE ABOVE DOTTING GRADE IS 30' 0". SEE ROOF RISE CALCULATIONS ON ROOF PLAN SHEET A-14



Left Side Elevation



Front Elevation

SCALE: 2" = 1' 7"

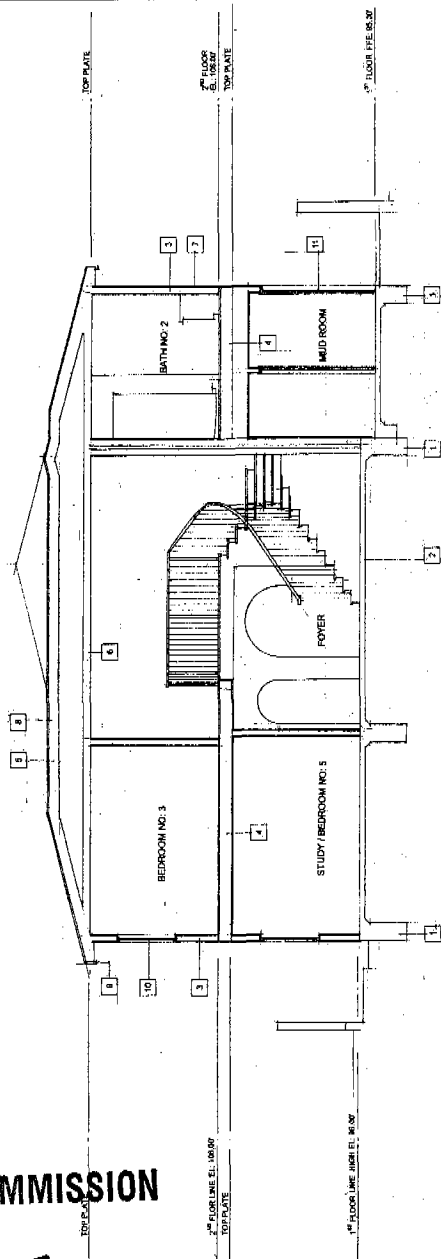
EXHIBIT # 7
PAGE 7 OF 16

COASTAL COMMISSION

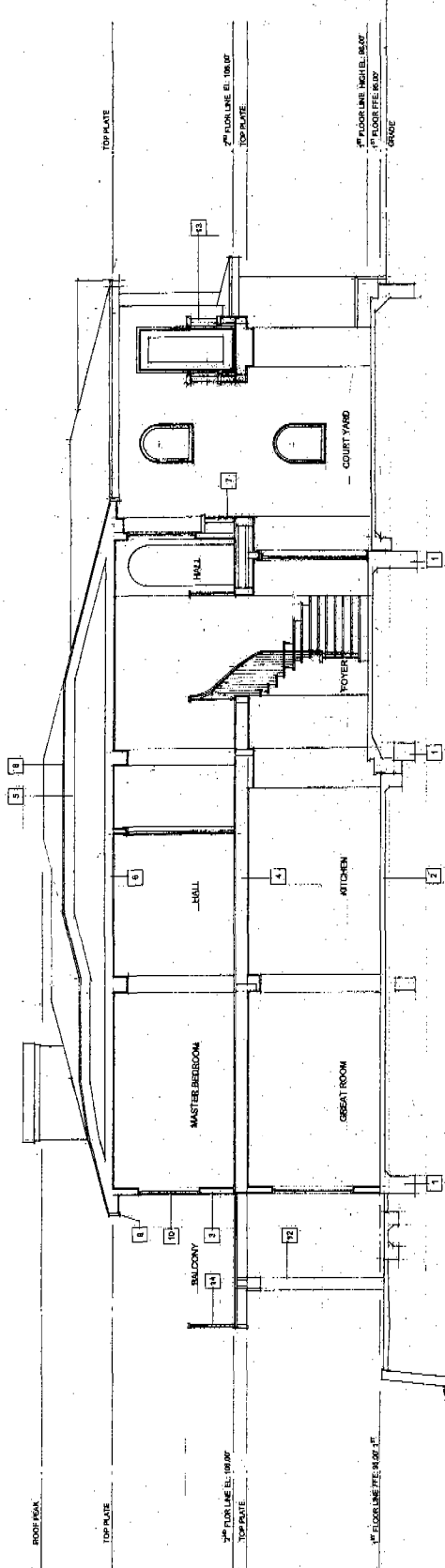
EXHIBIT # 7
PAGE 9 OF 16

BUILDING SECTION KEY NOTES:

- 1 CONCRETE FOOTING
- 2 CONCRETE SLAB ON GRADE
- 3 2" X 4" WOOD FRAMING JOISTS
- 4 1" X 6" WOOD FRAMING STUDS
- 5 WOOD FRAMING CEILING JOISTS
- 6 1" X 6" WOOD FRAMING STUDS
- 7 1" X 6" WOOD FRAMING STUDS
- 8 1" X 6" WOOD FRAMING STUDS
- 9 1" X 6" WOOD FRAMING STUDS
- 10 1" X 6" WOOD FRAMING STUDS
- 11 1" X 6" WOOD FRAMING STUDS
- 12 1" X 6" WOOD FRAMING STUDS
- 13 1" X 6" WOOD FRAMING STUDS
- 14 1" X 6" WOOD FRAMING STUDS

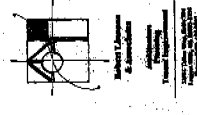


Building Section: B



Building Section: A

Site Development: Custom Home
Lot No: 5, Tract No: 887, Parcel 1
223 W. Ave. Valencia, San Clemente, CA



DATE

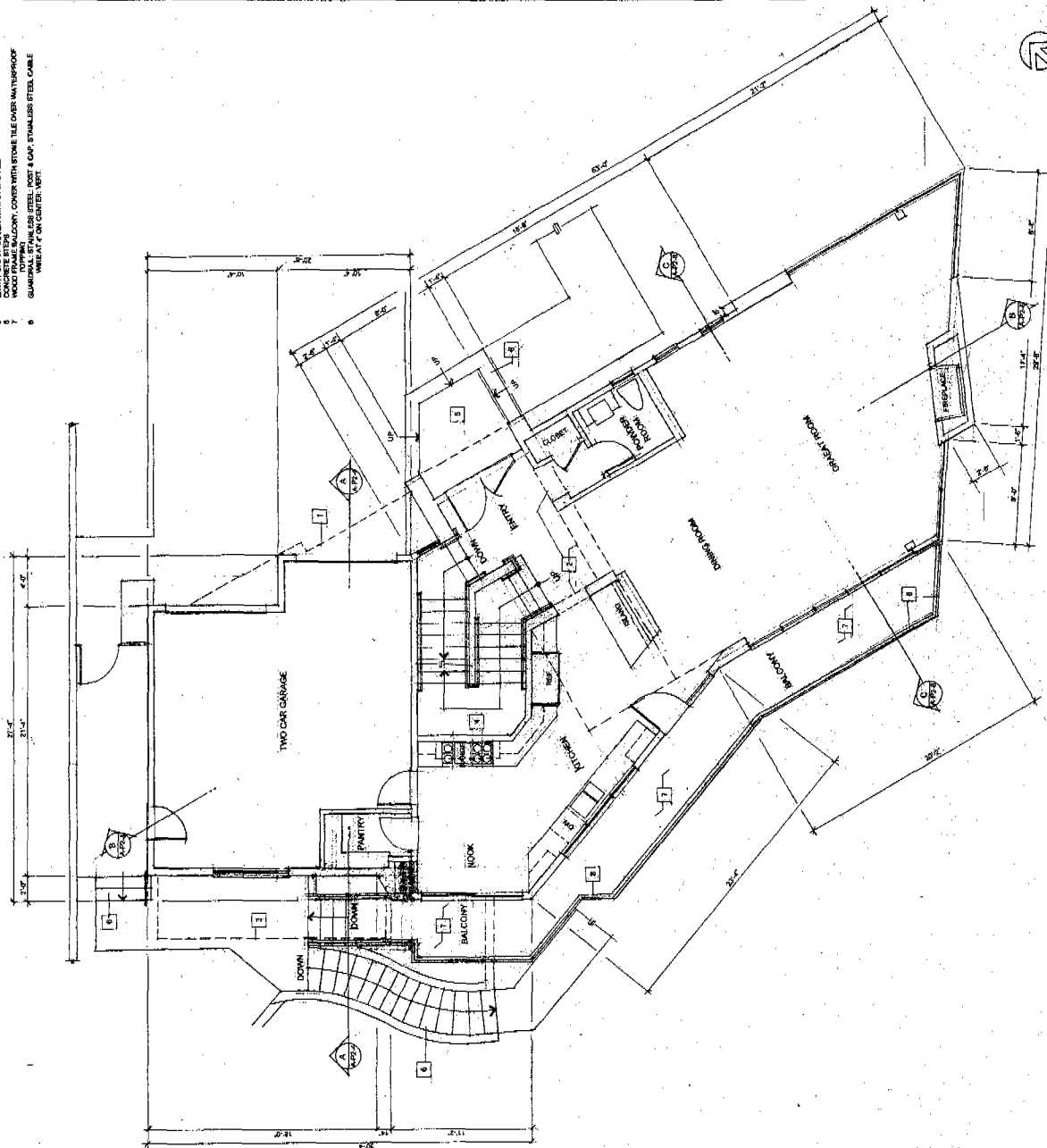
SHEET NO.

A-P1-8

SCALE 1/4\"/>

FLOOR PLAN KEY NOTES:

- 1 LINE OF FLOOR ABOVE SHOWN DASHED.
- 2 FRAMED WALL OPENING SHOWN DASHED.
- 3 LINE OF BALCONY ABOVE BROWN DASHED.
- 4 WOOD FRAMING STAIR.
- 5 WOOD FRAMING STAIR WITH STONE TILE.
- 6 CONCRETE STAIR.
- 7 WOOD FRAME BALCONY, COVER WITH STONE TILE OVER WATERPROOF TOPPING.
- 8 GLUMINAL, STAINLESS STEEL POST & CAP, STAINLESS STEEL CABLE WIRE AT 10" ON CENTER, VERT.



Main Level Floor Plan

COASTAL COMMISSION

EXHIBIT # 7
PAGE 11 OF 16

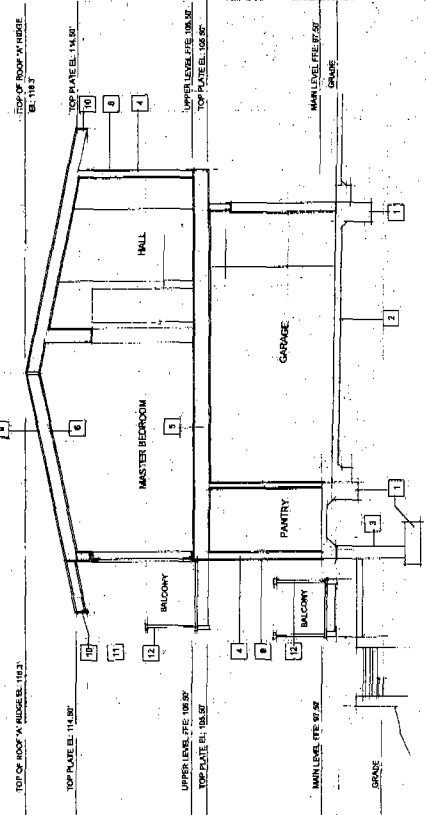
COASTAL COMMISSION

EXHIBIT # 7
PAGE 12 OF 16

BUILDING SECTION KEY NOTES:

1. CONCRETE FOOTING
2. CONCRETE BLOCK RETAINING WALL W/ WATERPROOFING & PERFORATED
3. WOOD FRAME WALL
4. WOOD FRAME ROOF JOISTS
5. WOOD FRAME ROOF TRUSSES
6. WOOD FRAME ROOF RAFTERS
7. WOOD FRAME ROOF SHEATHING
8. SLATE ROOF TILE ROOF COVERING CLASS 'A' ROOF COVERING
9. WOOD FRAME DOOR
10. WOOD FRAME WINDOW
11. GUARDRAIL
12. WOOD FRAME DOOR
13. WOOD FRAME WINDOW
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95. WOOD FRAME WINDOW
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97. WOOD FRAME WINDOW
98. WOOD FRAME DOOR
99. WOOD FRAME WINDOW
100. WOOD FRAME DOOR

NOTE: SEE ROOF RISE CALCULATIONS ON ROOF PLAN SHEET A-P-4

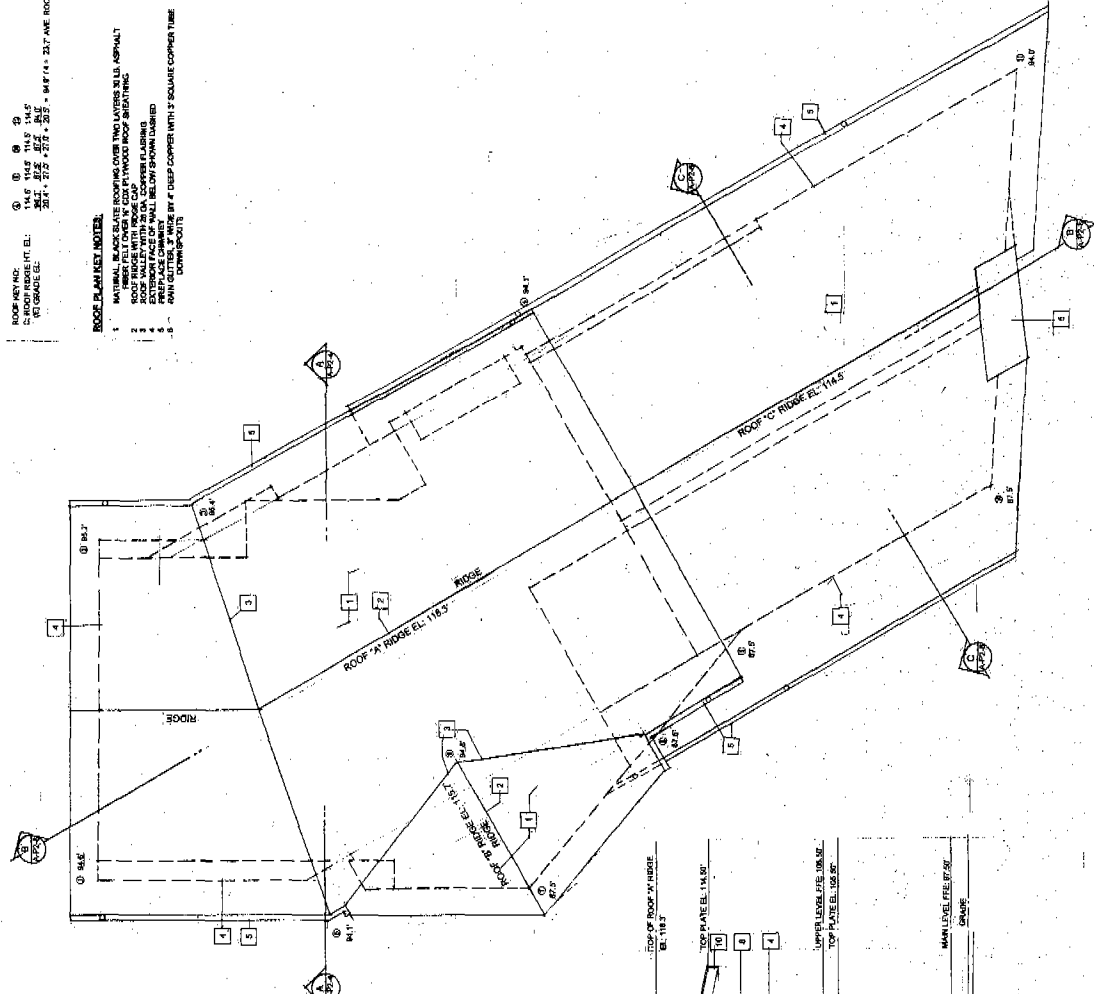


ROOF RISE CALCULATIONS FOR PARCEL NO. 2:

ROOF KEY NO.	1	2	3	4	5	6
A. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
B. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
C. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
D. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
E. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
F. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
G. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
H. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
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J. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
K. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
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M. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
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P. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
Q. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
R. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
S. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
T. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
U. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
V. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
W. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
X. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
Y. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7
Z. ROOF RISE HT. EL.	113.2	103.7	103.7	103.7	103.7	103.7

ROOF PLAN KEY NOTES:

1. NATURAL BLACK SLATE ROOFING OVER TWO LAYERS 3/4" L.S. ASPHALT
2. 1/2" X 1/2" X 1/2" WOOD ROOF SHEATHING
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Site Development: Custom Home
Lot No. 5, Tract No. 897, Parcel 2
323 W. Ayl. Valencia, San Clemente, CA



SHEET NO. A-P2-4

Roof Plan

Building Section: A

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

Site Development: Custom Home
Lot No: 5, Tract No: 897, Parcel: 2
323 W. Avd. Valencia, San Clemente, CA



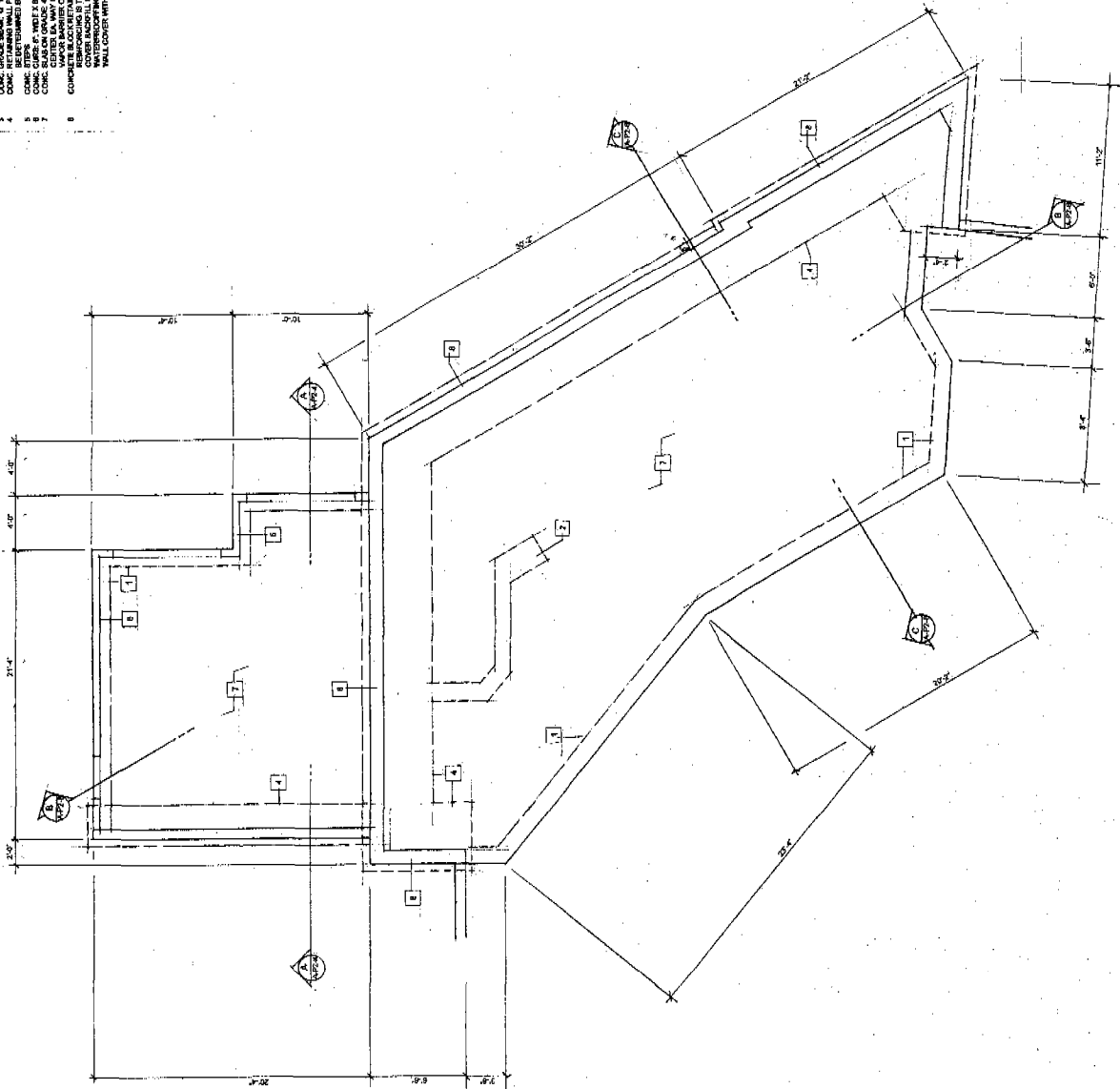
**Robert E. Bennett
& Associates**
Architects
Planning
Project Management

DATE:

SHEET NO.:

FOUNDATIONS/PLAIN KEY NOTES:

- [illegible]

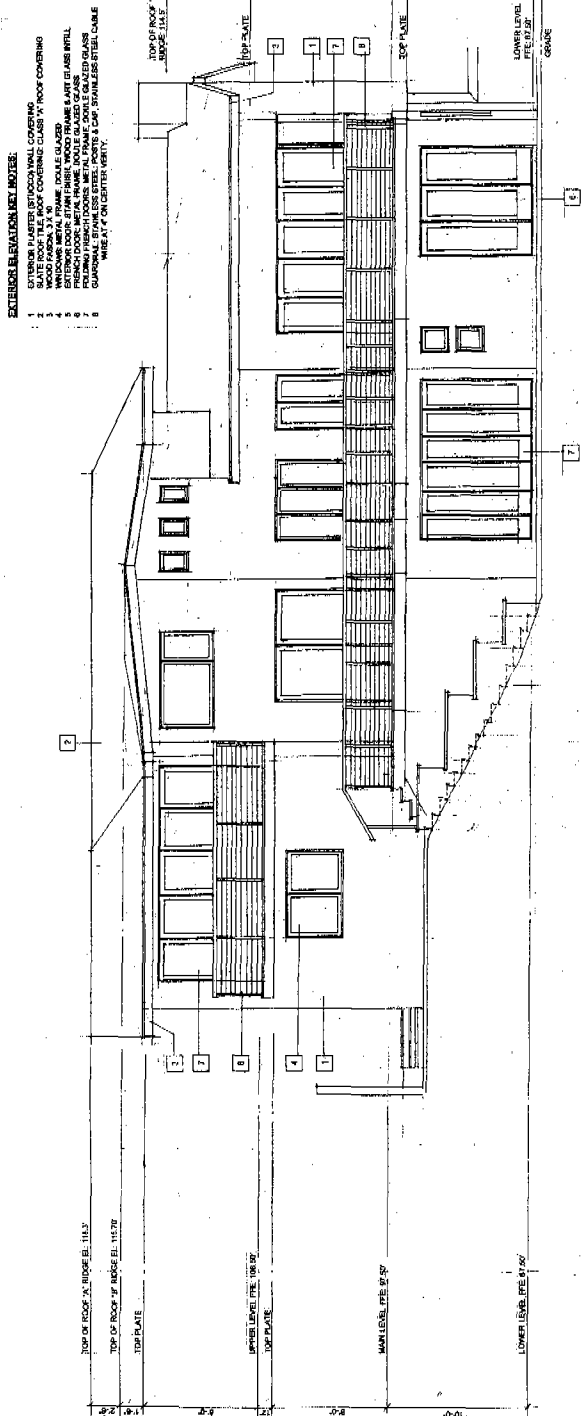


COASTAL COMMISSION

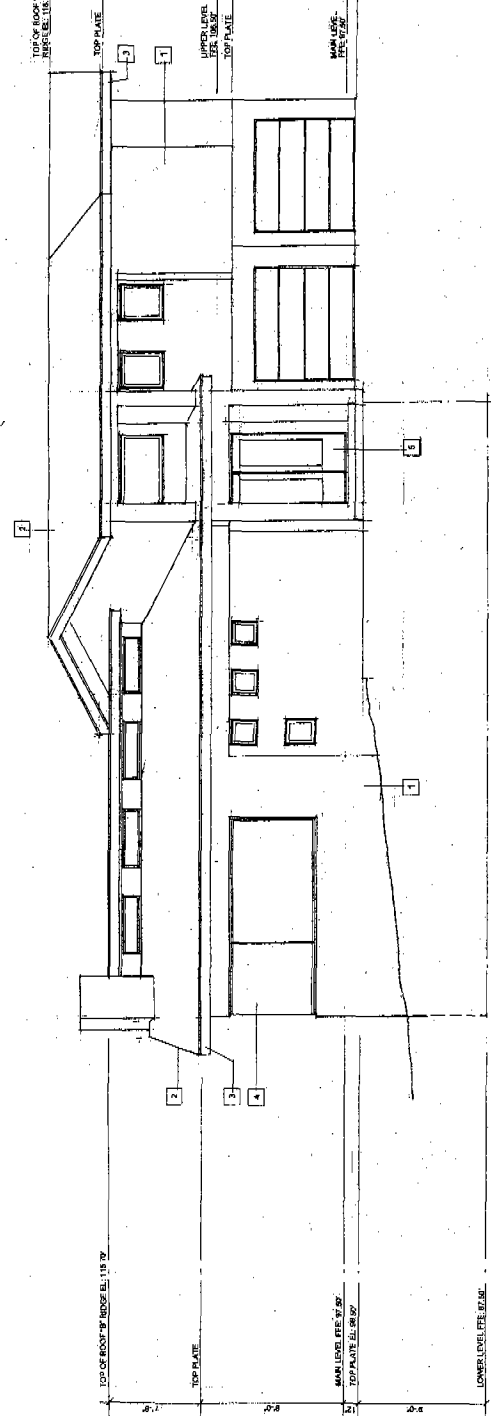
EXHIBIT # 7
PAGE 13 OF 16

COASTAL COMMISSION

EXHIBIT # 7
PAGE 14 OF 16



Rear Elevation



Front Elevation

Site Development Custom Home
Lot No. 6, Tract No. 887, Parcel 2
325W. Ave. Valencia, San Clemente, CA



Sheet No. A-P2-6

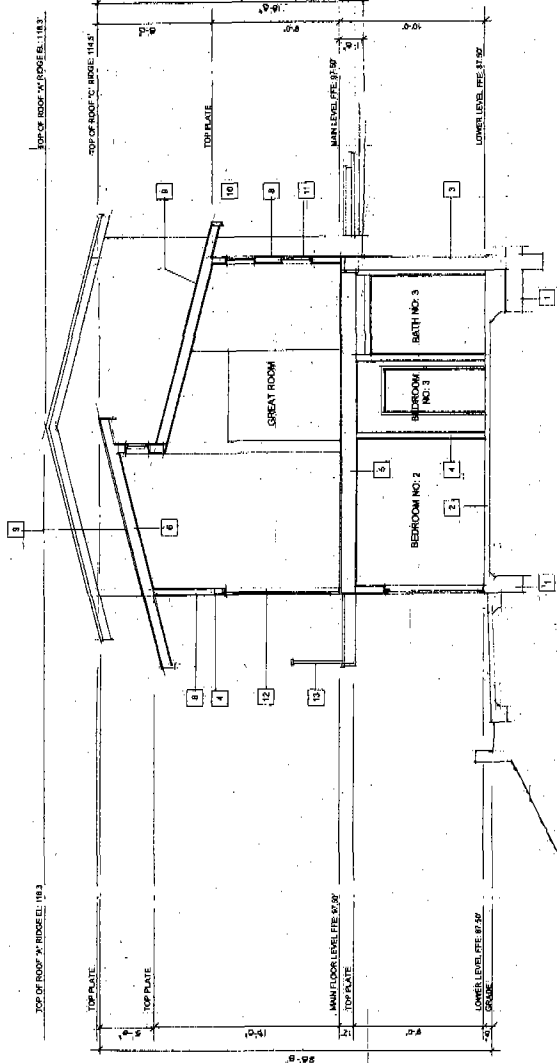
EXHIBIT # 7
PAGE 15 OF 16

COASTAL COMMISSION

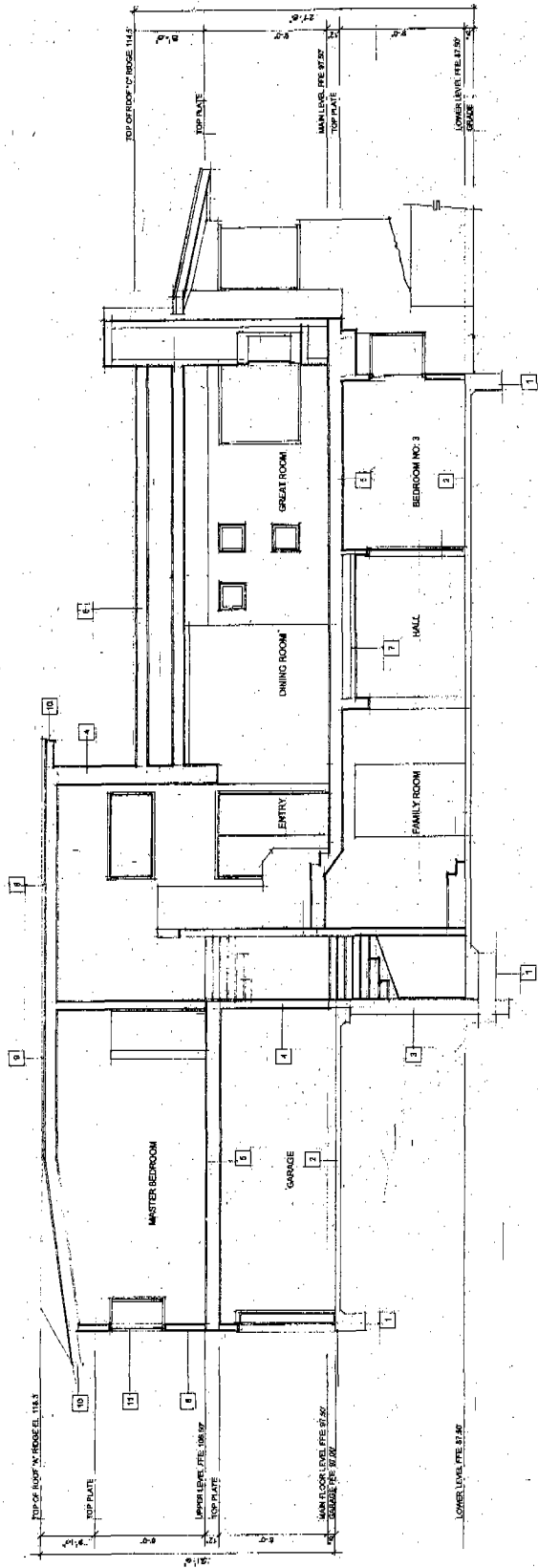
EXHIBIT # 7
PAGE 16 OF 16

- BUILDING SECTION KEY NOTES:**
1. CONCRETE FOOTING
 2. CONCRETE GRADE
 3. CONCRETE BLOCK RETAINING WALL W/ WATERPROOFING & REINFORCED
 4. WOOD FRAME WALL
 5. WOOD FRAME FLOOR JOISTS
 6. WOOD FRAME CEILING JOISTS
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NOTE: MAXIMUM ALLOWABLE ROOF HEIGHT ABOVE EXISTING GRADE IS 25'-0" SEE ROOF JOINT CALCULATIONS ON ROOF PLAN SHEET 14-04



Building Section: A



Building Section: B

Site Development: Custom Home
Lot No. 5, Tract No. 897, Parcel 2
323 W. Ave. Valencio, San Clemente, CA



Project: Valencio
Architect: [Faint text]
Date: [Faint text]

DATE:

SHEET NO:

A-P2-8

[illegible][illegible]

NEW CONSTRUCTION TYPES

[illegible]

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 1



Legend

- TPM 2009-141 Boundary
- 15.1 - Urban
- 15.5 - Parks and Ornamental Plantings
- 2.1 - Southern Coastal Bluff Scrub
- 3.12 - Toyon-Sumac Chaparral



TPM 2009-141

Vegetation Map

GLENN LUKOS ASSOCIATES

Exhibit 1

Map of the City of San Diego, California, showing the location of the City of San Diego, California, and the City of San Diego, California.

October 9, 2011

EXHIBIT # 10
PAGE 1 OF 19

Liliana Roman

Subject: re Kramer application before the Coastal Commission

Dear Ms. Roman,

John and Betty White
319 W Ave Valencia
San Clemente
(949) 369-0216

My main concern is the over intensification of the neighborhood that already taxes the ancient drainage system that flows beneath our home. I do not know exactly when it was placed on the property but it is assumed by our City staff that this pipe was installed in the mid 1920's when the town was founded. The material is old and may have leaks and corrosion already, placing the whole canyon at risk (not to mention my home that sits above it). The city has done a quick inspection of it and say it is in adequate condition but is undersized. The drain has already backed up once this year. More water volume could easily undermine the property and that may have a major impact on the city of San Clemente because of the knowledge of this ongoing problem. We had to go out and manually unplug the drain a few years ago as the water was way across our front lawn and rising quickly. The city did add a couple of more drain openings at the street but they all drain into the same existing old undersized pipe.

The 300 block of Gaviota & Valencia; the 200 block of Princessa, Merina & Valencia; the So. end of Toledo and the No. end of Los Alamos all drain into this system, terminating at the pipe that runs directly under my house. Obviously more homes would add to the existing problem.

The open space on the Kramer lot is the logical, and possibly the only place to design a new system when this one fails in the future. If there are improvements and a new home built on the newly created lot, it would be really expensive for the city to deal with the problem. It could eventually mean that a portion if not all of our house would need to be torn down.

We feel that this situation is a ticking time bomb and that it is not a matter of if the pipe under our house will fail but when. It is close to 100 years old and we all know that these things do not last forever. The City wisely replaced all of the old storm drains in our neighborhood because they were both undersized and ageing rapidly. The only portion of this system that was not replaced was the 100 foot section that passes directly under our house. We are more than concerned we are afraid for our safety. Should this pipe fail and we believe that that is just a matter of time; our house would be only one that would be in danger. We sit at the top of the canyon, actually our house is in the canyon; the lot was filled in the late 1960's. Several houses such as 1704 and 1706 and 1708 Calle de los Alamos abut our property and they would surely be in danger as they are only feet away from our home and border the canyon edge. Also there are 4 houses below the canyon that would be the recipients of our sliding home. When you look at the potential damage to all of these homes as well as the destruction of the canyon as we know it, it just seems irresponsibly to not take advantage of relocation of this pipe to the Kramer property

which could be done should you not approve this subdivision application. We want this option to be left on the table; there is property and potentially lives at stake.

Thank you for all your time and consideration of our concerns. We appreciate the work that goes into these decisions that impact all of us. Please recommend denial of this application,

Sincerely,

John and Betty White

COASTAL COMMISSION

EXHIBIT # 10
PAGE 2 OF 19

October 9, 2011

EXHIBIT # 10
PAGE 3 OF 19

Liliana Roman

Subject: re Kramer application before the Coastal Commission

Dear Ms. Roman,

I am sorry that we missed the opportunity to speak with you directly when Dr. Prime and I visited your office last week.

With respect to the Kramer application I would like to underscore several of our concerns. Don Prime and I spoke with Ms. Henry and Mr. Schwing on September 27, and at that time we presented a number of issues that we felt supported the Coastal Commission's denial of the Kramer application. I would like to highlight these issues for your review.

The four topics are

1. The history of the bordering canyon
 2. The existence of an unpermitted caisson wall
 3. Concerns about appropriate set backs on the proposed newly created lot
 4. Public views
-
1. The lot that borders the Kramer application is 319 Avenida Valencia. In the late 1960's there was a desire to build on that lot which was created in the 1940's. This lot, 319, was part of the Boca Del Canyon subdivision. This subdivision would never be approved today with the Coastal Act in place because the entire lot was canyon; the canyon at that time came all the way up to the curb edge. When this house was in the construction phase there was a need to fill the canyon in, so the entire lot is filled canyon. As a result of this fill, it became necessary to fill the portion of the Kramer lot. This filled area constitutes the entire building envelop of the newly created lot to the south. For the last 50 years it has been the local conventional wisdom that this area could not be built upon because it was canyon area. Many people have looked at purchasing the property at 323 Avenida Valencia, with the hopes of expanding the existing house, and were consistently told by both realtors and architects that this area was off limits with respect to any form of building.
 2. In 1980 the property at 323 Avenida Valencia (not the Kramer property) was owned by the Browns. They were experiencing serious movement of the land around the canyon. At that time they installed a caisson wall in an effort to keep the entire house from sliding into the canyon. This wall has a city permit on record but no Coastal Commission permit. The existing caisson wall is built in the canyon, and does not respect the required 15 foot minimum setback required by both the City of San Clemente and the Coastal Commission. Not only was it not permitted but this caisson wall, which encroaches into the canyon, daylights and is visible for its entire length of approximately 70 feet. Given its location and its encroachment into the canyon, it is not possible to bury the existing wall as an effort to make it more compliant. If there was an attempt to remedy the encroachment and the daylight issue, the canyon and basic landform would be seriously altered in that attempt. To complicate this issue, if the Kramer subdivision is approved, the caisson wall would

straddle both newly created lots, creating a host of other issues such as maintenance, ownership and long term responsibility. Should additional caissons be required for both of the newly created lots, and the applicant is on record as agreeing that they will, the stability of the existing caisson wall could become an issue. Should its stability be compromised, its failure could have a devastating impact on the canyon landform, forever destroying the natural slope. The creation of the southern lot would force development into this filled area and exacerbate all of the existing conditions. If the subdivision is denied, Dr Kramer has the ability to build a large home on the existing lot, with no need to come close to the filled canyon area and all the problematic conditions that exist there.

3. Dr. Prime sent you an e-mail speaking in detail about the applicable codes that deal with canyon edge setbacks. I have included an excerpt from that letter below. I want to underscore that the creation of new lots should comply with the most restrictive setback requirements which would be the 30% application. This criteria was clearly developed to best protect the landforms in their natural state. The application of the 15 foot rule is a clear compromise as an effort to prevent potential takings on pre existing lots. The more liberal application is not designed to protect the land form; it is only a compromise to allow for an individual to enjoy a property right with respect to development of an existing lot. Dr. Kramer has that right to fully develop his existing lot. The application for a subdivision should be viewed as a privilege not a right. Applying the more restrictive 30% criteria is the only appropriate application to a newly created lot if the Commissions intent is the protection of the canyons.
4. A public view of the ocean exists from the 200 and 300 blocks of Avenida Valencia. Also there is a regular stopping point from the street in front of the proposed new lot to the south for hundreds of people a week, an opening in the wall of development at affords a view to the ocean and a defining feature to the entire neighborhood. Should the Kramer subdivision be approved, the window to the sea that currently exists will forever go away. I know that the Coastal Commission has a strong focus on access; I would assume that visual access is of great importance to the Commission as well. In San Clemente, as in many other coastal communities, due to previously designed and permitted subdivisions, a wall of development has been built along our coastlines which does not allow for any type of visual enjoyment by the public. The only views of the sea are enjoyed by those lucky few that own property at the ocean's edge. Clearly, all of these property owners that bought these lots have every right to build their dream homes and enjoy that view that the rest of the public can only dream of. I have a friend that has a saying with respect to views: "May the best man get closest to the water". So good for them, that they are fortunate enough to be able to afford these priceless views. They have every right to these views. But do they have the right to take away one of the last remaining windows to the sea that the public currently enjoys in? We are not asking for a taking of a property right, we are asking for the denial of a privilege, a privilege that would transfer a priceless public view to a single private individual. Dr Kramer can build his dream house and enjoy his priceless view and leave that window to the see open to everyone, for now and for future generations.

As I mentioned I regret that we were not able to talk with you in person at the meeting last week but I am hopeful that my comments will help you with your review of this application and that you will recommend denial of this application to the Coastal Commission when it meets in November. Should you have any questions or if I can be helpful to you in any way please do not hesitate to call or e-mail me. Also if you could take the time to let me know that you received this e-mail I would greatly appreciate it. When a staff recommendation is complete could you let me know your recommendation? Thanks so much,

Sincerely
Michael Kaupp
949-492-4130

Excerpt from Prime letter

Municipal Code section 17.56.050 sub (D2) states: "Coastal Canyon setback. New development shall not encroach into the coastal canyons and shall be set back:

a) A minimum of 30% of the depth of the lot and not less than fifteen (15) feet **from the canyon edge.**" (bolding is mine)

This is not an either or proposition. San Clemente Municipal Code 17.88.020 states "Unless the context clearly indicates to the contrary the following conjunctions shall be interpreted as follows: "And" indicates that ALL connected items or provisions apply."

Therefore the setback from the canyon edge must be 30% the depth of the lot AND a minimum of 15 feet. One cannot choose to apply one of the measurements; both must be met.

30% of the depth of the lot for Parcel 1 is 80 feet and for Parcel 2 it is 93 feet. That would make building on the proposed southernmost parcel virtually if not completely impossible. There is no language in our codes that states that the 30% of the depth of the lot setback is from the rear property line; it says "thirty percent of the depth of the lot **...from the canyon edge.**" (bolding mine). If city staff has not been interpreting the language thusly that is not relevant here because this proposal is creating **new** lots, not evaluating an already existing canyon lot. City staff went back ten years and found no similar coastal canyon lot split. In fact this proposal is unique because of the unique topography of the lot itself. The current Kramer lot has coastal canyon not just at its rear but also along its side. All of the examples of proper coastal canyon setback given in our city documents show drawings of the typical lot with the canyon at the back. We do not really even have the applicable language to adequately assess this proposal. When assessing the proper setback from the side canyon, what is the proper depth of the lot to be entered into the equation: the front to rear measurement or the side to side measurement (the width)? Based upon the **language in our codes**, the 80 foot and 93 foot setbacks have to be applied not only as a setback from the rear canyon but also as a setback from the edge of the **side** canyon.

It may be that our City Staff has in the past been using a more liberal and lenient interpretation of the above language as it applies to currently existing lots bordering on and involving coastal canyon land. If that is the case, that would be somewhat understandable as pertaining to currently existing canyon lots. Nobody, whether it be the City of San Clemente or the Coastal Commission, wants to be involved in a taking and therefore a more lenient application of the language in the codes may be justifiable for pre-existing lots. However,

what is being proposed here is the **creation of two lots**. These are **new lots**. That is a very different situation. Dr. Kramer can already build upon the current lot according to applicable codes. A lot split is not a right; it is a privilege. Since it is a privilege and since this lot involves coastal canyon land, we would argue that the most restrictive language (the language most protective of the canyon resources) should be applied to assessing this proposal. We are confident that doing so will result in denial of this proposed lot split by the California Coastal Commission. Denying the lot split would in no way be a taking. Denying a right would be a taking but denying a privilege, the granting of which is discretionary, is NOT one.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 5 OF 19

From: Donald Prime <djprime@cox.net>
Subject: **re Kramer application before the Coastal Commission**
Date: October 9, 2011 9:19:45 PM PDT
To: Liliana Roman <lroman@coastal.ca.gov>
Cc: Teresa Henry <thenry@coastal.ca.gov>, Karl Schwing
<kschwing@coastal.ca.gov>
Bcc: Kaupp Michael <jbcpa99@aol.com>, Darden Julia
<jdarden@ardenlantz.com>, Lentz Cathy <clentz@ardenlantz.com>

Dear Ms. Roman,

I was very sorry that you had an emergency and could not attend our meeting last week. I hope everything turned out alright. Both Michael Kaupp and I want to express our appreciation that both Ms. Henry and Mr. Schwing met with us and listened attentively to our concerns. Our concerns reflect those of a significant portion of our community over our City Council's approval of the Kramer lot split. Since you were not able to attend our meeting, I want to put in writing some bullet points which we all feel are critical to your thorough evaluation of the Kramer proposal. Ms. Henry stated that for the Coastal Commission to approve the proposal the Kramer project must comply fully with the language in our city codes as a starting point. It does NOT comply with that language in several very important aspects.

1) The issue of proper setback from the canyon:

Municipal Code section 17.56.050 sub (D2) states: "Coastal Canyon setback. New development shall not encroach into the coastal canyons and shall be set back:

a) A minimum of 30% of the depth of the lot and not less than fifteen (15) feet **from the canyon edge.**" (bolding is mine) This is not an either or proposition. San Clemente Municipal Code 17.88.020 states "Unless the context clearly indicates to the contrary the following conjunctions shall be interpreted as follows: "And" indicates that ALL connected items or provisions apply."

Therefore the setback from the canyon edge must be 30% the depth of the lot AND a minimum of 15 feet. One cannot choose to apply one of the measurements; both must be met. 30% of the depth of the lot for Parcel 1 is 80 feet and for Parcel 2 it is 93 feet. That would make building on the proposed southernmost parcel virtually if not completely impossible. There is no language in our codes that states that the 30% of the depth of the lot setback is from the rear property line; it says "thirty percent of the depth of the lot **...from the canyon edge.**" (bolding mine). If city staff has not been interpreting the language thusly that is not relevant here because this proposal is creating **new** lots, not evaluating an already existing canyon lot. City staff went back ten years and found no similar coastal canyon lot split. In fact this proposal is unique because of the unique topography of the lot itself. The current Kramer lot has coastal canyon not just at its rear but also along its side. All of the examples of proper coastal canyon setback given in our city documents show drawings of the typical lot with the canyon at the back. We do not really even have the applicable language to adequately assess this proposal. When assessing the proper setback from the side canyon, what is the proper depth of the lot to be entered into the equation: the front to rear measurement or the side to side measurement (the width)? Based upon the **language in our codes**, the 80 foot and 93 foot setbacks have to be applied not only as a setback from the rear canyon but also as a setback from the edge of the **side** canyon. It may be that our City Staff has in the past been using a more liberal and lenient interpretation of the above language as it applies to currently existing lots bordering on and involving coastal canyon land. If that is the case, that would be somewhat understandable as pertaining to currently existing canyon lots. Nobody, whether it be the City of San Clemente or the Coastal Commission, wants to be involved in a taking and therefore a more lenient application of the language in the codes may be justifiable for pre-existing lots. However, what is being proposed here is the **creation of two lots**. These are **new lots**. That is a very different situation. Dr. Kramer can already build upon the current lot according to applicable codes. A lot split is not a right; it is a privilege. Since it is a privilege and since this lot involves coastal canyon land, we would argue that the most restrictive language (the language most protective of the canyon resources) should be applied to assessing this proposal. We are confident that doing so will result in denial of this proposed lot split by the California Coastal Commission. Denying the lot split would in no way be a taking. Denying a right would be a taking but denying a privilege, the granting of which is discretionary, is NOT one.

2) The proper definition of "development" to be used within the coastal zone:

The definition of "development" in San Clemente's Coastal Element as well as section 17.88.20 (A) of the Municipal Code is exactly the same definition that is in the California Coastal Act and includes the language "development means ... change in density or intensity of land use, including but not limited to, subdivisions pursuant to the Subdivision Map Act and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use." About 70% of the current Kramer lot is actually within the Coastal Canyon and lot 2 of the newly created lots is almost entirely within the canyon. Creation of 2 lots from 1 is an increase in density and is therefore "development." By the usual meaning of the word "new" it is obviously "new development" involving coastal canyon land and therefore is prohibited by the language in our codes.

Based upon these issues and others the City Council initially wisely denied the Kramer project on a vote of 3 to 1, with one recusal. The City Attorney argued that the proper definition of "new development" to be applied was a definition pertaining only to structures.

After the City Council denied the project, he continued to make that argument behind the scenes and eventually got the City Council to agree to reopen the matter.

The City Attorney argued in the Rattan and Tucker memo of June 21, 2010 that the word "development" should be understood to mean "new development" as defined in Section 17.88.030 of the Municipal Code, a definition limited to construction of structures and not including changes in density or intensity of land use. However, the problem with that argument, as pointed out by attorney Ronald Redcay in his letter of December 3, 2010 (a copy of which was provided Mr. Schwing at our meeting) is that the definition of new development meaning only structures is NOT applicable within our Coastal Zone but only elsewhere in the city.

San Clemente Municipal Code section 17.88.020 (A) states that "the word 'shall' is mandatory and not discretionary." section 17.88.030 sub (C) states: "Coastal Zone definitions. For purposes of the Coastal Zone Overlay, the following definitions shall apply." Subsection 7 under that states: "development means ... change in density or intensity of land use, including but not limited to, subdivisions pursuant to the Subdivision Map Act ...and any other division of land, including lot splits ..." There is no other definition of "development" within that section. Therefore, the ONLY definition of development that MUST be applied within our Coastal Zone Overlay is the all-encompassing definition of "development" that is contained in the California Coastal Act, our own Coastal Element and our Municipal Code section giving definitions that must be applied to anything within our Coastal Overlay Zone. The Kramer project is within the Coastal Zone and is subject to this more restrictive and all-encompassing definition of "development," not the more permissive definition meaning only structures.

Eventually the City Attorney was able to convince one Councilmember who had voted to deny to accept the argument that only construction of structures represents the "new development" that is prohibited from encroaching into our Coastal Canyons. At the time of the Council meeting where Kramer was voted on a second time, the Councilmember who had recused from the first vote (very vehemently) decided to participate the second time around and it was her vote for approval that led to the City Council's approval of the Kramer project. Without her vote, the vote would have stood at 2 to 2 and a tie vote would have been denial.

The approval of the Kramer project by our City Council means that the majority of the Council agreed with and accepted as policy the interpretation of our City Attorney that the only type of new development prohibited from encroaching into coastal canyon lands is construction of structures. Make no mistake about it, this is a **devastating policy** that has been set. Any type of new development other than construction of structures will now have to be allowed by our City Council; that is the policy they set by approving Kramer. That means that grading, removing natural vegetation, planting non-native vegetation, etc will all have to be allowed. A very real world possibility is that people living along these canyons will now have the ability to grade private paths down to the beach. In fact this has already happened within the past 6 months on a parcel fronting Avenida de los Alamos. Our City Council now has no ability to prevent this type of activity, as long as it does not entail the laying down of a structure. Grading a dirt path does not involve construction of a structure and therefore is obviously allowable unless the Kramer project is denied by the Coastal Commission. Under the policy set up by the

Kramer approval, there will be no way to prevent new development within the canyons that does not involve structures.

The above is why this case is so precedent setting. It certainly sets a precedent in San Clemente. Approval of Kramer by the Coastal Commission may set this precedent for the entire California coastline. Is that what the California Coastal Act was all about or was it concerned with protecting the coastal landforms from rampant development? Increasing human activity

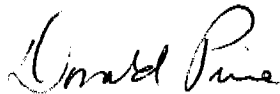
along the canyon margins is what leads to increased erosion and change in landform elements for these very precious resources. We delivered to Ms. Henry and Mr. Schwing at the time of our meeting last week a letter from Dotty Prohaska, former Chair of the San Clemente Planning Commission and Vice-Chair of the former General Plan Advisory Committee who testified before our City Council, stating that it was the precise intent of the GPAC at that time to prevent just this sort of lot split from occurring. They did not want to infringe on anyone's property rights as far as already existing lots were concerned and felt that the owners of existing coastal canyon lots should be able to develop them according to the codes. However, they did not want additional lots created by lot split or lot subdivision because they realized that increased density along the canyons would exacerbate erosion. The current Chair of our Coastal Advisory Committee, who is a member of the current General Plan Advisory Committee, testified before the City Council that we needed to strengthen and clarify the language in our codes so that there is absolutely laser-like clarity that the goal is to protect the coastal bluffs and canyons from further development.

The policy definition adopted by our City Council by their approval of Kramer will definitely prejudice San Clemente's ability to develop our own Local Coastal Plan and will mean that the California Coastal Commission will forever need to review every single project within the coastal zone in the City of San Clemente. Additionally, because our City Council has adopted the view that only the new construction of structures can be prevented within coastal canyon land, the Coastal Commission will now have to become the "policeman," enforcing the California Coastal Act's ban on all other types of new development within the coastal canyons.

We urge the California Coastal Commission staff to recommend denial of the Kramer application for the above reasons and many others. You will be receiving an additional E-mail on some other very important aspects of this proposed project, such as its potential impact on a currently existing caisson wall on the property that was built in the 1980s, permitted by the City but never approved by the Coastal Commission.

Approval of this project by the California Coastal commission will set a huge precedent and will, in essence, eviscerate the definition of "development" in our city's Coastal Element and in the California Coastal Act. Please recommend that the full Coastal Commission deny the Kramer application.

Sincerely,
Donald Prime
182 West Avenida Junipero
San Clemente, California 92672



Tel 949-366-6977
E-mail diprime@cox.net

PS. I know you are very busy but I would greatly appreciate knowing that you received this E-mail.
We would also appreciate hearing about the initial staff evaluation. Thank you.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 8 OF 19

COASTAL COMMISSION

October 11, 2011

Liliana Roman
California Coastal Commission

EXHIBIT # 10
PAGE 7 OF 19

Subject: Kramer Sub-division
323 Ave. Valencia
San Clemente

Dear Ms. Roman:

I have many concerns about the impact the proposed sub-division could have on our community's diminishing coastal resources, namely our coastal canyons and public views. This precedent-setting project will set policy that will diminish the ability of our City Council to protect the canyons from future development. While I have a range of concerns about the numerous ways this project violates both our municipal codes and the Coastal Act, I know that others in our community have articulated these concerns clearly in other correspondence, so I shall focus my remarks on the issue that first sent up a red flag on this issue for me—causing me to email you on May 27, 2010 (I have copied that correspondence for you as an attachment).

Existing, Unpermitted Retaining Wall Spanning Both Proposed Lots

In 1981, a retaining wall was built on the current lot and that wall encroaches into the canyon setback. My email to you 18 months ago sought to determine whether this retaining wall had been permitted by the Coastal Commission. You kindly responded with the results of a search of your records: You had no record of such a permit.

It is easy to see why a permit was not sought for this wall: I'm sure the Commission would not have supported a wall that is visible for its entire 70ft length, encroaches on the set back, and alters the canyon landforms. It's unfortunate that this wall was illegally built. But, the issue that concerns me today is that the sub-division of this lot will magnify the impact the wall has had on the canyon—and increase its non-compliance.

The wall straddles what will become the property line of the two proposed lots. This is not permitted in San Clemente—no structure is allowed to sit on two separate, legal lots. Because of this issue, the wall will need to be removed or modified. Of course, additional retaining walls are probably necessary to protect the expanded building pad area that two structures on two separate lots will require—especially because much of the intended building pad of the southern lot is fill. The applicant has recognized on record that additional caissons will be required for stability. One way or another, removal, modification, expansion, and or reconstruction will be necessary. This would require construction within the canyon—as the wall is **within** the canyon. The impacts on the canyon would be significant.

Ms. Roman, San Clemente's coastal canyons have been whittled away over the years—we're approaching death by a thousand cuts. Many of these "cuts" were inflicted before the Coastal Act. Some "cuts" were made on existing lots after the Coastal Act to avoid a taking. In this case, there is no risk of a taking, as even our City Attorney, who has been very supportive of the project, has acknowledged that denying the subdivision would not be a taking. It would simply be a decision not to grant a privilege.

And, finally, some "cuts," such as the private beach access path built just a few lots down from the Kramer property this summer, were made without permits. Unfortunately, as things currently stand in San Clemente, our City can take no action to prevent this sort of development—as it is "non-structural" (I know others have addressed with you the fact that the City Council's adoption—as part of this subdivision application—of a definition that includes only structures—will make it impossible for them to prevent such paths or other terrain-changing development in the future.)

A decision to deny this application would be a decision that would provide our City Council with grounds to revisit the definition of development within the coastal zone—preventing additional cuts and certain death of the canyons.

Please help us stop this sub-division. Please help us prevent setting a precedent that our City Council will follow. Please recommend to the Commission that they deny this application.

Thank you for your consideration,



Julia Darden
319 W. Ave. Gaviota
San Clemente, CA 92672
949 361 2807
jdarden@dardenlantz.com

COASTAL COMMISSION

EXHIBIT # 10
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Ms. Roman:

I ask that you recommend denial of the Kramer sub-division in San Clemente when you submit your staff report to the Coastal Commission.

Overall, this lot split impacts our coastal canyons because it increases density along the canyon edge, encroaches into the canyon, and sets a dangerous precedent. We ask that staff and the commission consider the following points when making their respective determinations.

- 1) **Utilize the correct and intended meaning of our set back requirements.**
- 2) **Utilize the correct definition of "development" for the coastal zone—as defined in our Coastal Element.**
- 3) **Prevent the evisceration of our coastal zone policies and prejudice our ability to develop a Local Coastal Plan.**
- 4) **Weigh the impact of an illegally constructed retaining wall that spans the property line between the two split lots and resides within the canyon—even according to the most permissive set-back interpretation.**

In greater detail, I ask that you:

- 1) **Utilize the correct and intended meaning of our set back requirements:** SC code requires a minimum of 30% of the depth of the lot **and** not less than 15 feet from the canyon edge—both conditions must be met. We understand that SC city staff has been consistently misinterpreting this statement as a choice between the two, meaning they could choose the least restrictive definition for existing lots and existing development. We understand their position in these cases—they do not want to define a set back that results in a "taking" for owners existing lots. But, in granting the privilege of a lot split, there is no risk of a taking, so the most restrictive interpretation should be used to ensure preservation of the canyons. This definition would render a second Kramer lot unbuildable.
- 2) **Utilize the correct definition of "development" for the coastal zone—as defined in our Coastal Element:** Despite the fact that our Coastal Element clearly defines "development" as including lot splits and other changes in the density or intensity of land use, our City Attorney errantly persuaded City Council to utilize a definition intended to apply to other sections of the city—not coastal canyons. That definition limited development to "structures" only. Thus, our City Council determined that our Coastal Element prohibited only the building of structures in the canyon—errantly setting policy that permits grading, removing of natural vegetation, planting non-native vegetation, and more. Several Council Members felt that, given legal council's advice, they had no choice but use this definition and will likely continue to use it in the future. Action by the Coastal Commission could give them the

grounds they need to revisit this policy and make a choice more in tune with the community's wishes.

3) Prevent the evisceration of our coastal zone policies and prejudice our ability to develop a Local Coastal Plan.

4) Weigh the impact of an illegally constructed retaining wall that spans the property line between the two split lots and resides within the canyon—even according to the most permissive set-back

interpretation: Built in 1981 without a Coastal Permit, this wall has exposed caissons and encroaches into the canyon beyond the setback by at least 2 feet. As a structure is not permitted to span two lots, the wall would need to be removed or rebuilt in order to conform to city code.

Deconstructing this wall and building two retaining walls to protect both lots would require construction within the canyon—as the wall is **within** the canyon.

I respectfully request that you recommend to the commission that they deny this project.

Thank you,



Cathy Lentz
319 Ave. Gaviota
San Clemente, CA

COASTAL COMMISSION

EXHIBIT # 10
PAGE 12 OF 19

Liliana Roman

From: Michael Kaupp [mwkaupp@cox.net]
 Sent: Wednesday, October 12, 2011 3:37 PM
 To: Karl Schwing
 Cc: Teresa Henry; Liliana Roman; jdarden@dardenlantz.com; 'Cathy Lentz'
 Subject: Kramer photos

COASTAL COMMISSION

EXHIBIT # 10
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Karl,

Please find attached several photos of the views of the ocean from the 200 and 300 blocks of Avenida Valencia. Also find photos of the view from the public right of way in front of the Kramer property. I will be sending two sets of photos, several in this e-mail as well as a few in a follow up e-mail due to the limits of your system. Over the last year and a half, Mr. Kramer has allowed much of the vegetation to become overgrown which obscures some of the view both from the 200 block as well as the ones that are close up. In taking the up close views today, I was able to clearly see white water and waves breaking. This is not as clear in the photos as I had hoped, but the real world experience is one of a beautiful window to the sea, very refreshing in a neighborhood where the virtual wall of development in front of the sea exists.

I am also including some language written by a well respected CEQA consultant. The consultant was retained by the Valencia neighborhood group, made up of roughly 200 petitioners, that is opposed to the Kramer subdivision. The consultant referenced all of our applicable codes and guiding documents in his comments and I have included his comments below that are most germane to the view issue. I hope you will find his comments helpful in evaluating the view aspect of the Kramer application.

Another significant and unique characteristic with respect to the Kramer lot is the generous public right of way that exists along the street edge. The depth of the right of way from the curb face is 15 feet. Should the Kramer subdivision be denied the City would have an opportunity to create a vista point at the very location where the public has been stopping to view the ocean and canyon view for over 75 years. If the subdivision with its inevitable development were approved it would obviously take this option from the table. This forward thinking solution would protect this significant public view and increase public visual access in perpetuity. The window to the sea that would remain open for ever.

If you have any questions please do not hesitate to contact me and I will do my best to provide you with any information I have that may be of value to you in your review process.

CEQA consultant comments,

Staff acknowledges that a public view of the ocean exists from Ave. Valencia, but rejects the notion that it warrants consideration based on two arguments. The first is the opinion that it is not significant because it is not a 'designated view corridor' (at 107.56). However, designation of a view corridor is only one of several ways in which the GP identifies significant views. The General Plan assigns significance to coastal canyons not only as natural features, but also as significant visual features. The visual character of the canyons themselves (one can argue) can be effectively preserved through the application of appropriate development setbacks. But coastal canyons also provide significant 'visual buffers' and, in very unique cases, public ocean views. The uniqueness of this condition is sufficient to invoke several policies of the General Plan which guard against the creation of new building sites at the expense of significant visual resources. Among these are:

XII.5: Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views.

XII.9: Promote the preservation of significant public view corridors to the ocean.

11/17/2011

COASTAL COMMISSION

These policies have an equal footing with those that also establish designated view corridors and scenic highway corridors. The Coastal Element does not qualify them by limiting their application to the visual resources identified in other GP elements.

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The overarching Goal of these policies is to "Maintain the visual quality, aesthetic qualities and scenic public views in the Coastal Zone." The intent of this goal and its associated policies is clear, and the fact that the Urban Design Element also identifies view corridors does not in any way detract from the force of these policies.

Staff's second argument is that "no view analysis has ever been required of single family residences along coastal canyons within this community." Staff's position is that this property should be treated consistently with other neighboring properties in terms of analysis of view corridors. But this argument fails to recognize that this site is unique (or in the term of the Exception to the CEQA Exemption, 'unusual') in that unlike most canyon-side lots, it is sited at the head of the coastal canyon; and it is by virtue of this unique location and the existing undeveloped condition of the portion of the site proposed for development on the new Lot 2 -- and the alignment of Ave. Valencia in line with the canyon -- that the public view to the ocean now exists.

- Intensification through subdivision and the subsequent construction of an additional dwelling unit would result in obstruction of the public view to the ocean that presently exists from an extensive length of the 200 block of West Avenida Valencia. The existence of this public view is directly linked to the existence of a single lot on the site and the site's consequent existing low intensity of development. Approval of the proposed subdivision would be inconsistent with Policy 10.2.7 of the General Plan: "Promote the preservation of significant public view corridors to the ocean."

- The Master Environmental Impact Report for the City's General Plan, identifies the visual importance of coastal canyons in its discussion of Aesthetic Resources. The General Plan EIR applies the following significance threshold to identify adverse impacts to aesthetic resources:

Induce growth that will have a demonstrative negative aesthetic impact by blocking view corridors and destroying prominent visual characteristics of the community.

Application of this threshold, consistent with the City's General Plan EIR, leads to the finding that the proposed subdivision, is a vehicle of direct growth inducement through the intensification of development, and would have a negative aesthetic impact by (1) blocking significant view corridors adjacent to designated coastal canyons and (2) destroying the visual experience of natural open space. Both effects relate directly to resources identified as significant aesthetic characteristics of the community in the General Plan EIR.

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XII.9: Promote the preservation of significant public view corridors to the ocean.

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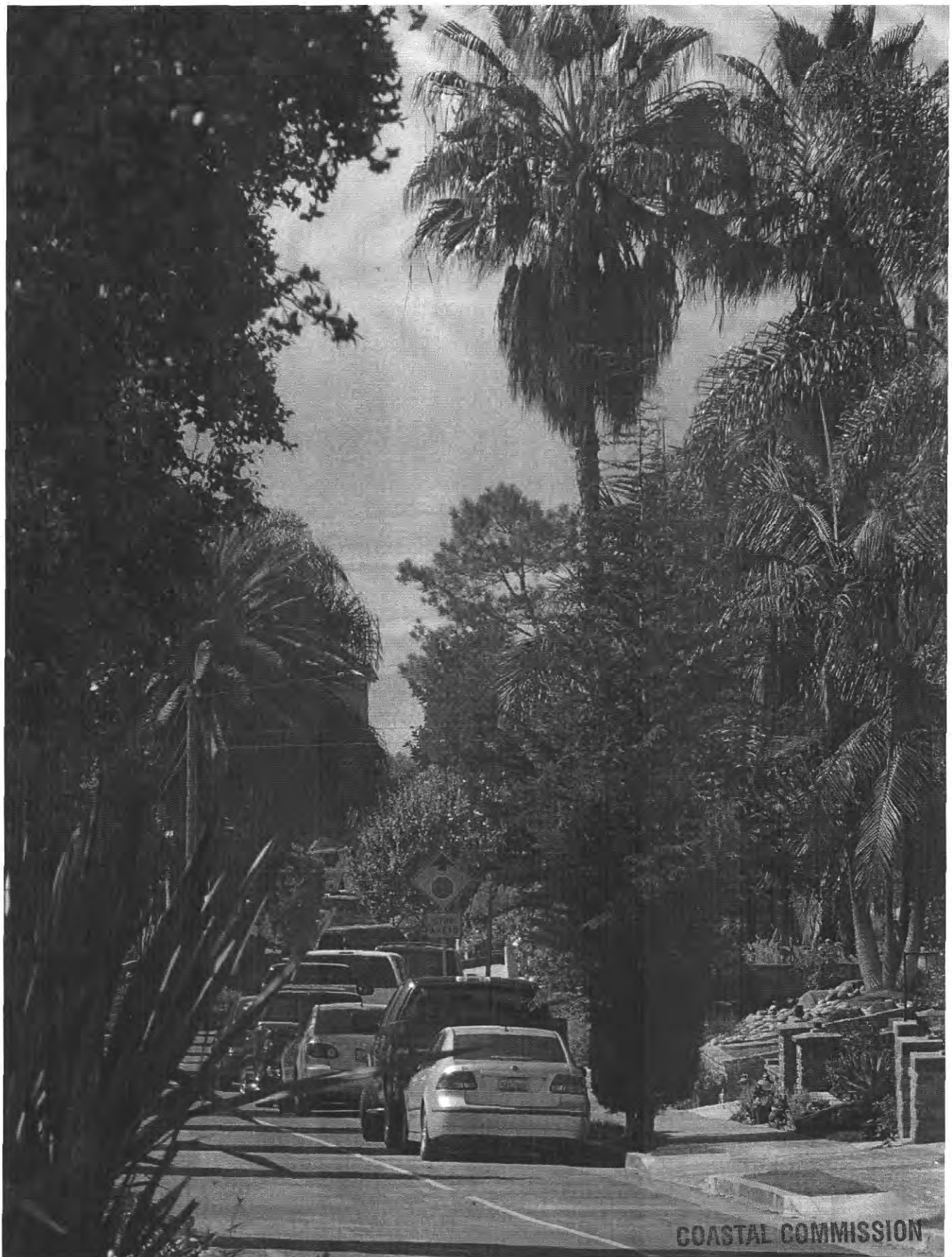
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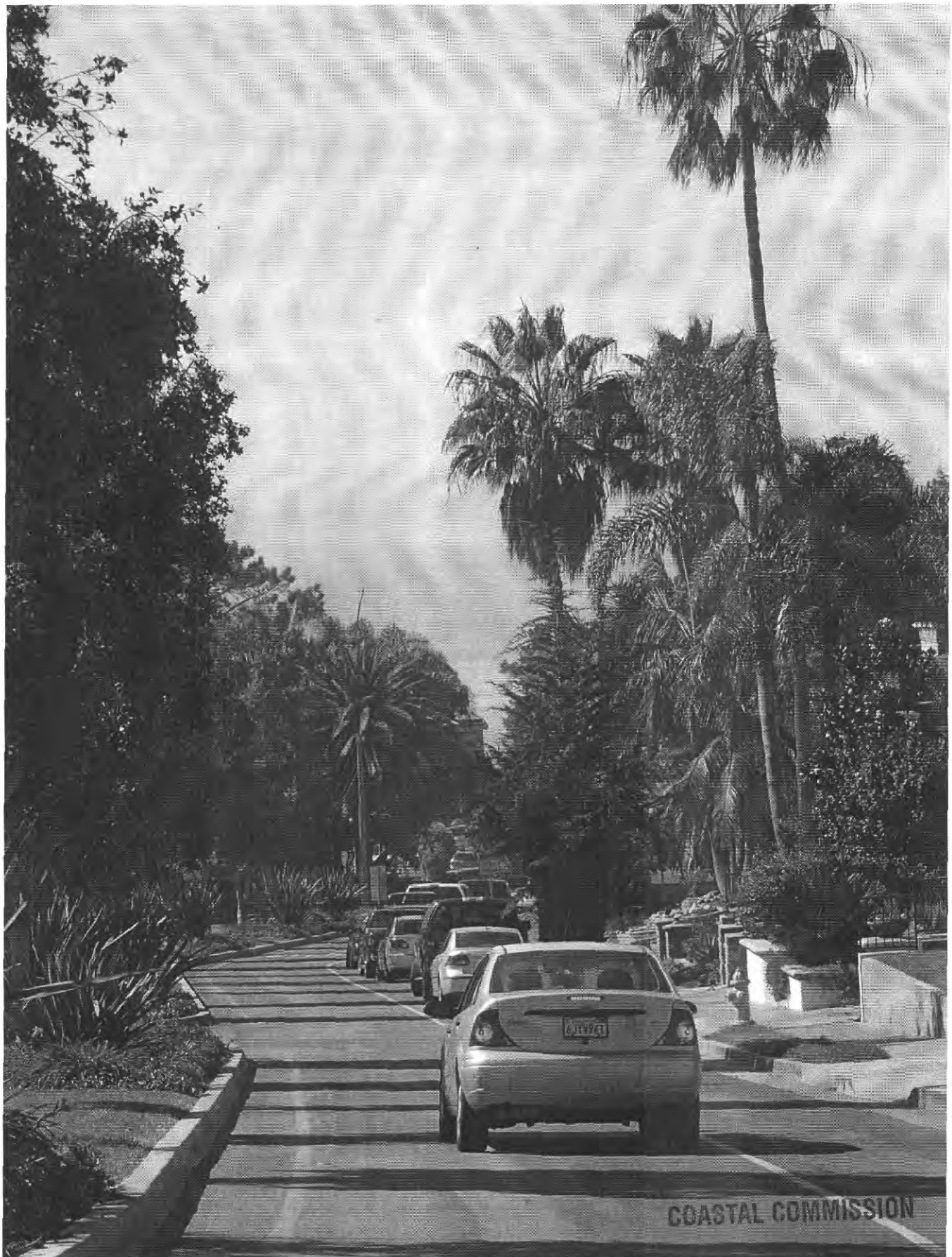
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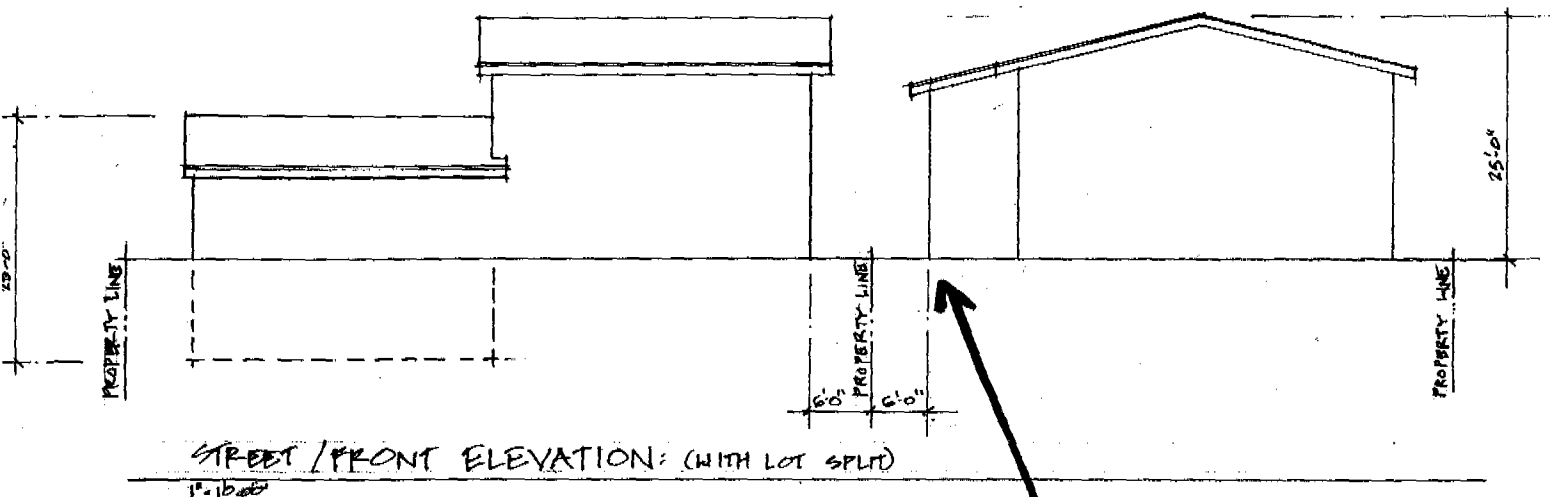
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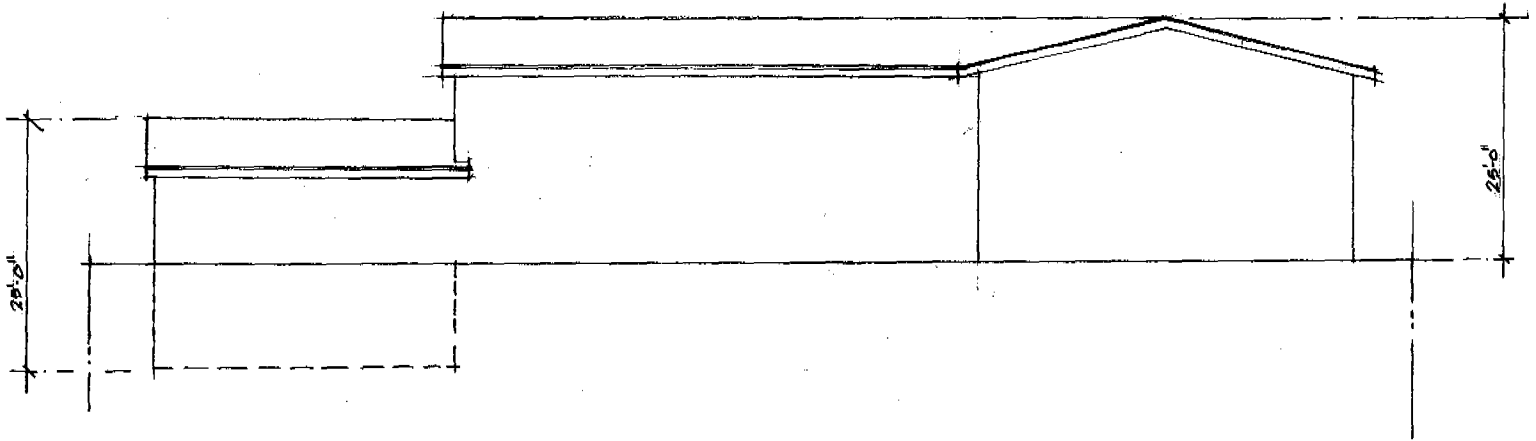
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COASTAL COMMISSION

EXHIBIT # 11
PAGE 1 OF 2



STREET / FRONT ELEVATION : (WITHOUT LOT SPLIT)

1" = 10.00'

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