

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CALIFORNIA COASTAL COMMISSION
AND
ERNEST F. ALVAREZ, JR. AND PAULETTE M. ALVAREZ, AS TRUSTEES OF THE
ALVAREZ FAMILY TRUST, DATED SEPTEMBER 23, 2000, MARK D. CRAGUN,
DAVID YESKIN, RACHEL STAVER, DAVID SCHNEIDER, HADI FAKOURI, AND
CARL GREWE
REGARDING
PROVISION OF OFF-SITE ACCESS AND
DEVELOPMENT PHASING OF LOTS 7, 8, 9, 10, AND 11, TRACT 4947,
SAN CLEMENTE, CALIFORNIA**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the California Coastal Commission ("Commission"), a public agency, the owner/coastal development permit ("CDP") applicants of Lot 5, Tract 4947 (Alvarez) and Lot 6, Tract 4947 (Cragun) and prospective CDP applicants and all owners of Lots 7, 8, 9, 10 and 11 of Tract 4947. Lots 5, 6, 7, 8, 9, 10 and 11 will be referred to collectively as The Lots. The Commission and the owners of The Lots are hereinafter referred to collectively as the Parties.

I. RECITALS

- A. WHEREAS, Ernest F. Alvarez, Jr. and Paulette M. Alvarez as Trustees of the Alvarez Family Trust, dated September 23, 2000 and Mark D. Cragun (collectively, "Applicants") are the owners of and have filed Application No. 5-07-070 and Application No. 5-07-056 for CDPs for the construction of single family residences on respectively, Lot 5, Tract 4947 and Lot 6, Tract 4947, in the City of San Clemente;
- B. WHEREAS, the Applicants and the owners/prospective CDP applicants of Lots 7, 8, 9, 10 and 11, Tract 4947, while not agreeing that there is substantial public use of any of the referenced properties, have sought to address Public Resources Code Section 30211 by providing alternative beach access and a permanent public viewpoint location;
- C. WHEREAS, Coastal Act Section 30211 provides, in part, that, "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization ..."
- D. WHEREAS, The Lots are currently undeveloped, but there are numerous informal dirt footpaths that cross The Lots.
- E. WHEREAS, the Parties have agreed that the provision and construction of a public viewpoint and accessway thereto, on and across Lots 7, 8, and 9, in connection with the development of such lots and in conjunction with the review and approval of a CDP for

such lots, will provide a public viewpoint and accessway that is equivalent in time, place and manner to the existing public accessway and viewpoint in this location;

- F. WHEREAS, the Parties have agreed that a beach access across Lot 11, via a public accessway from La Rambla to Lot 11 that is on and across Lots 5, 6, 7, 8, and 10 and is adjacent and contiguous to Boca del Canon, will provide a public accessway that is equivalent in time, place and manner to the existing public accessway along Boca del Canon and an informal dirt footpath across Lot 11, and will address the Commission's goal of achieving enhanced coastal access at Boca del Canon;
- G. WHEREAS, on November 14, 2007, the Commission approved CDP No. 5-07-070 (Alvarez) and CDP No. 5-07-056 (Cragun) subject to several conditions, including Special Condition No. 6 which requires the Parties' execution of the MOU;
- H. WHEREAS, the Executive Director of the Commission is authorized to enter into this agreement on behalf of the Commission by CDP No. 5-07-070 and CDP No. 5-07-056.

Now, therefore, in consideration of the owner of The Lots' agreement to cooperate in the dedication and improvement of the alternative beach access and public viewpoint and accessway referenced herein, the Commission's agreement that the viewpoint and accessways are equivalent in time, place and manner to existing views and accessways, and the issuance of CDP No. 5-07-070 and CDP 5-07-056 by the Commission, the Parties do hereby agree, as follows:

II. DEFINITIONS

"Public Viewpoint" shall mean an improved and all-weather viewing area that shall be located in Lot 9, providing views to and along the beach and ocean, with public access thereto via a Public Accessway.

"Public Accessway" shall mean a 5 foot-wide corridor that is open to the public 24 hours per day, including a 4 (four) foot-wide sidewalk. The owners of The Lots shall record easements on each of their respective lots offering to dedicate to the public the Public Accessway(s) located on their lot, pursuant to paragraph 7 of this MOU.

"Beach Access" shall mean a corridor that is open to the public 24 hours per day, connecting to the Public Accessway along Boca Del Canon St., including an all-weather walkway plus area for a bench and trash receptacle. The Beach Access shall be located on the southern perimeter of Lot 11 adjacent to Lot 12, extending from the Public Accessway along Boca del Canon to the seaward side of the lot. The owner of Lot 11 shall record an easement on Lot 11 offering to dedicate to the public the Beach Access, pursuant to paragraph 7 of this MOU.

III. TERMS AND CONDITIONS

1. This Memorandum of Understanding ("MOU") is executed as of the date on which it has been signed by the authorized representatives of all the Parties;
2. Upon receipt of a copy of this MOU executed by all the Parties, and final completion and approval of all other requirements of Special Condition No. 6 and all other conditions that the Applicants must satisfy prior to issuance of CDPs No. 5-07-070 and No. 5-07-056, the Executive Director of the Commission ("Executive Director") shall issue the CDPs for Application No. 5-07-070 and Application No. 5-07-056;
3. The owners of The Lots ("Landowner(s)") shall agree to provide the Public Viewpoint, as defined, upon the bluff top within Lot 9, providing views to and along the beach and ocean with public access thereto via a Public Accessway from La Rambla on and across Lots 7 and 8 to the Public Viewpoint within Lot 9;
4. The Landowner(s) shall agree to provide a Public Accessway along an improved easement from the existing access point at the intersection of Boca del Canon and La Rambla down Boca del Canon and connecting to the Beach Access across Lot 11. This Public Accessway shall be located upon Lots 7, 8, 10 and 11, connecting to the Public Accessway upon Lots 5 and 6 imposed on CDP No. 5-07-070 and 5-07-056 through Special Condition No. 2 of these permits;
5. The Landowner(s) shall agree to provide the Beach Access across Lot 11 to the beach;
6. The Public Viewpoint and each of the Public Accessways and the Beach Access required by this MOU shall be maintained in perpetuity, and if the Public Viewpoint or any of the Public Accessways is threatened from geological hazard, the affected Public Viewpoint or Public Accessway(s) shall be relocated inland within the required easements.
7. Prior to any development on Lots 7, 8, 9, 10 and 11, the owners of each of these lots shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or non-profit entity acceptable to the Executive Director, an easement for public pedestrian access and passive recreational use of the Public Viewpoint and/or Public Accessway and/or Beach Access located on their respective lots. These recorded document(s) shall reflect the following restrictions: i) The Public Accessway, Public Viewpoint and Beach Access shall be open to the general public for use for up to 24-hours per day; ii) The owners of each lot shall, or, at the election of the easement holder, the easement holder shall, maintain the easement area; iii) Any development, as defined in Section 30106 of the

Coastal Act, that diminishes permanent public pedestrian access and passive recreational use of the easement is prohibited; iv) No development, as defined in Section 30106 of the Coastal Act, shall occur within the Public Accessway or Public Viewpoint or Beach Access except for the following development: grading and construction necessary to construct the viewpoint, public access walkway and appurtenances, underground utilities to serve the proposed development on the lots, vegetation removal and planting, construction of drainage devices, and maintenance and repair of the approved development within the easement. The recorded document(s) shall include legal descriptions and graphic depictions, prepared by a licensed surveyor, of both the entire project site and the area of the offered easement(s). The offer(s) shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The offer(s) shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

8. The owners of Lots 7, 8, 9, 10 and 11 shall, prior to issuance of any CDP for residential development of Lots 7, 8, 9, 10 or 11 (including any preparation of said lots for residential development), provide a comprehensive plan for and agree to construct all improvements necessary to make the Public Viewpoint, Public Accessways and Beach Access on these lots safely usable by the public prior to or concurrent with development of Lots 7, 8, 9, 10 and 11;
9. Regardless of the status or timing of any CDPs for residential development on Lots 7, 8, 9, 10 and 11, the comprehensive plan required pursuant to paragraph 8 shall be submitted to the Executive Director for his or her approval no later than three (3) years after execution of this MOU. The comprehensive plan shall provide for dedication and construction of the Public Accessways, Public Viewpoint and Beach Access within five (5) years of the execution of this MOU. The construction of the Public Accessways, Public Viewpoint and Beach Access requires a CDP. Once the comprehensive plan has been approved by the Executive Director, the owners of Lots 7, 8, 9, 10 and 11 may include the construction of the Public Accessway, Public Viewpoint and/or Beach Access located on each of their lots as part of an application for a CDP for residential development, or they may apply for a separate CDP solely for construction of the Public Accessway, Public Viewpoint and/or Beach Access on their individual lot, as long as construction of the Public Accessways, Public Viewpoint and Beach Access takes place within five (5) years of execution of this MOU;
10. The MOU shall be binding on the Landowner(s) and all successors and assigns of each and every Landowner(s) and shall be disclosed in any real estate transaction involving any of The Lots. The MOU shall also be recorded against The Lots through a deed

restriction on each of The Lots, subject to the review and written approval of the Executive Director, recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction;

11. Each Landowner(s) must obtain all necessary regulatory permits and approvals, including, but not limited to, a CDP, prior to commencement of any development on the Landowner(s) own lot;
12. Lots 7, 8, 9, 10 and 11 shall be developed in a comprehensive manner consistent with the comprehensive plan submitted by the owners/prospective CDP applicants of Lots 7, 8, 9, 10 and 11 and approved by the Executive Director of the Commission, although CDPs for Lots 7 and 8 may be submitted separately from CDP applications for Lots 9, 10 and 11;
13. Until a comprehensive plan for the Public Viewpoint, Public Accessways, Beach Access and development is implemented on Lots 7, 8, 9, 10 and 11, the Landowner(s) and any successors and assigns shall not interfere with any existing public use of Lots 7, 8, 9, 10 and 11. Subject to applicable coastal development permit requirements, the applicants and/or Landowner(s) may take reasonable steps to prevent any dangerous conditions on Lots 7, 8, 9, 10 or 11, the exposure to which could foreseeably result in landowner third party liability;
14. The MOU is executed in counterparts, each of which shall be considered a duplicate original;
15. Notices: Any demand upon or notice required or permitted to be given by one party to the other shall be in writing, shall be made in the following manner, and shall be effective (a) upon receipt if given by personal delivery, (b) on the date indicated on the receipt if given by certified or registered mail, return receipt requested, or (c) on the succeeding business day after mailing or deposit if given by Express Mail or by deposit with a private delivery service of general use (e.g. Federal Express), postage or fee paid, as appropriate, addressed to the parties in paragraph 14. Notice of a change of address shall be given by written notice in the manner set forth in this section;
16. For the purposes of this MOU, all information, requests, or other business including any demand upon or notice required shall be coordinated through the following representatives:

*Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr. and Paulette M. Alvarez as
Trustees of the Alvarez Family Trust, dated September 23, 2000.
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,*

Ernest F. Alvarez Jr. and Paulette M. Alvarez, Trustees of the
Alvarez Family Trust, dated September 23, 2000
19551 Elderwood Circle
Huntington Beach, CA 92648

Mark D. Cragun
28 Via Divertirse
San Clemente, CA 92673

David Yeskin
52 Burning Tree
Newport Beach, CA 92660

Rachel Staver
189 Grandview
Encinitas, CA 92024

David Schneider
1801 Avenida Salvador
San Clemente, CA 92672

Hadi Fakouri
20845 Canada Road
Lake Forest, CA 92630

Carl Grewe
13 Camino Lienzo
San Clemente, CA 92673

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Trustees of the Alvarez Family Trust, dated September 23, 2000,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,*

California Coastal Commission
Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

with copy to: California Coastal Commission
South Coast District Office
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-4325

Written notification of any changes to the individuals, entities and/or addresses listed above by the individual or entity making such change, including but not limited to changes of property ownership, shall be provided within 30 days of such change to all of the Parties.

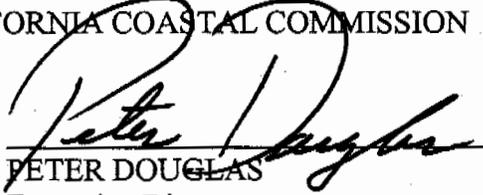
17. This MOU shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties;
18. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California;
19. The terms of this MOU shall become effective upon execution by both Parties. The MOU may be altered, changed, or amended by mutual consent of the Parties. Any changes or amendments must be in writing and signed by the Parties before such change or amendment shall take effect; and
20. Should any provision of this MOU be found void or unenforceable, it shall be severable from the rest of the MOU and the remaining terms shall be enforced as if the unenforceable term had not existed.
21. Each of the signatories to this MOU, with the exception of the Executive Director of the California Coastal Commission, hereby certifies that he or she owns in fee title the real property identified by the lot number listed underneath his or her signature on this agreement and/or that he or she is authorized to execute contracts on behalf of, and

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Ernest F. Alvarez, Jr. and Paulette M. Alvarez as
Trustees of the Alvarez Family Trust, dated September 23, 2000.
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

otherwise bind all of the owners of the lot number listed underneath his or her signature
with regard to the relevant property (herein "Authorized Signatory").

STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION

By:

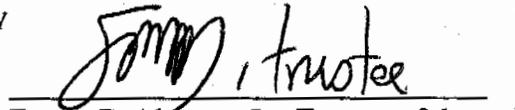

PETER DOUGLAS
Executive Director

Date:

6/17/08

Owner and/or Authorized Signatory of Lot(s) 5
of Tract 4947, City of San Clemente, Orange
County

By:


Ernest F. Alvarez, Jr., Trustee of the
Alvarez Family Trust, dated September
23, 2000

Date:

5-29-08

Owner and/or Authorized Signatory of Lot(s) 5
of Tract 4947, City of San Clemente, Orange
County

By:


Paulette M. Alvarez, Trustee of the
Alvarez Family Trust, dated September
23, 2000

Date:

5-29-08

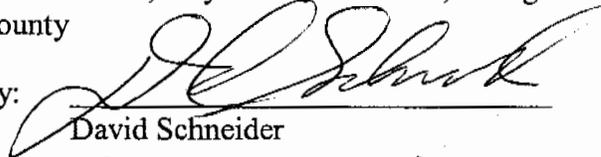
Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr., Paulette M. Alvarez,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

Owner and/or Authorized Signatory of Lot(s) 6
of Tract 4947, City of San Clemente, Orange
County

By: 
Mark D. Cragun

Date: May 29, 2008

Owner and/or Authorized Signatory of Lot(s) 9
of Tract 4947, City of San Clemente, Orange
County

By: 
David Schneider

Date: May 23, 2008

Owner and/or Authorized Signatory of Lot(s) 7
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Yeskin

Date: _____

Owner and/or Authorized Signatory of Lot(s)
10 of Tract 4947, City of San Clemente,
Orange County

By: 
Hadi Fakouri

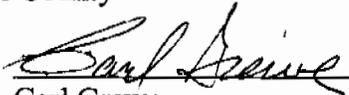
Date: 5/23/08

Owner and/or Authorized Signatory of Lot(s) 8
of Tract 4947, City of San Clemente, Orange
County

By: _____
Rachel Staver

Date: _____

Owner and/or Authorized Signatory of Lot(s)
11 of Tract 4947, City of San Clemente,
Orange County

By: 
Carl Grewe

Date: 5-23-08

Memorandum of Understanding
between the California Coastal Commission and
Ernest F. Alvarez, Jr., Paulette M. Alvarez,
Mark D. Cragun, David Yeskin, Rachel Staver,
David Schneider, Hadi Fakouri and Carl Grewe,

Owner and/or Authorized Signatory of Lot(s) 6
of Tract 4947, City of San Clemente, Orange
County

By: _____
Mark D. Cragun

Date: _____

Owner and/or Authorized Signatory of Lot(s) 9
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Schneider

Date: May 23, 2008

Owner and/or Authorized Signatory of Lot(s) 7
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Yeskin

Date: 5-22-08

Owner and/or Authorized Signatory of Lot(s)
10 of Tract 4947, City of San Clemente,
Orange County

By: _____
Hadi Fakouri

Date: 5/23/08

Owner and/or Authorized Signatory of Lot(s) 8
of Tract 4947, City of San Clemente, Orange
County

By: _____
Rachel Staver

Date: _____

Owner and/or Authorized Signatory of Lot(s)
11 of Tract 4947, City of San Clemente,
Orange County

By: _____
Carl Grewe

Date: 5-23-08

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Owner and/or Authorized Signatory of Lot(s) 6
of Tract 4947, City of San Clemente, Orange
County

By: _____
Mark D. Cragun

Date: _____

Owner and/or Authorized Signatory of Lot(s) 9
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Schneider

Date: May 23, 2008

Owner and/or Authorized Signatory of Lot(s) 7
of Tract 4947, City of San Clemente, Orange
County

By: _____
David Yeskin

Date: _____

Owner and/or Authorized Signatory of Lot(s)
10 of Tract 4947, City of San Clemente,
Orange County

By: _____
Hadi Fakouri

Date: _____

Owner and/or Authorized Signatory of Lot(s) 8
of Tract 4947, City of San Clemente, Orange
County

By: _____
Rachel Staver

Date: 5-24-08

Owner and/or Authorized Signatory of Lot(s)
11 of Tract 4947, City of San Clemente,
Orange County

By: _____
Carl Grewe

Date: 5-23-08

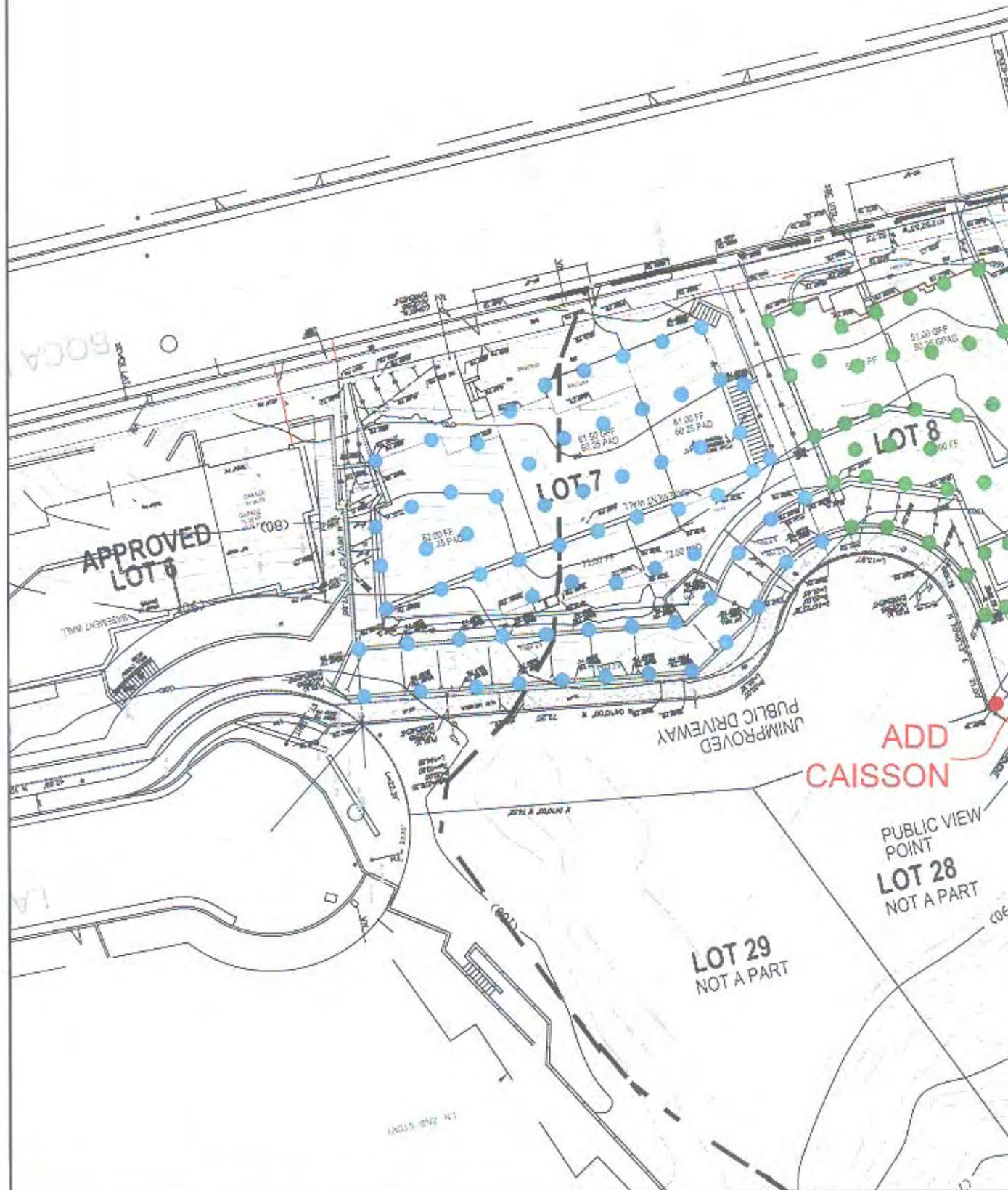
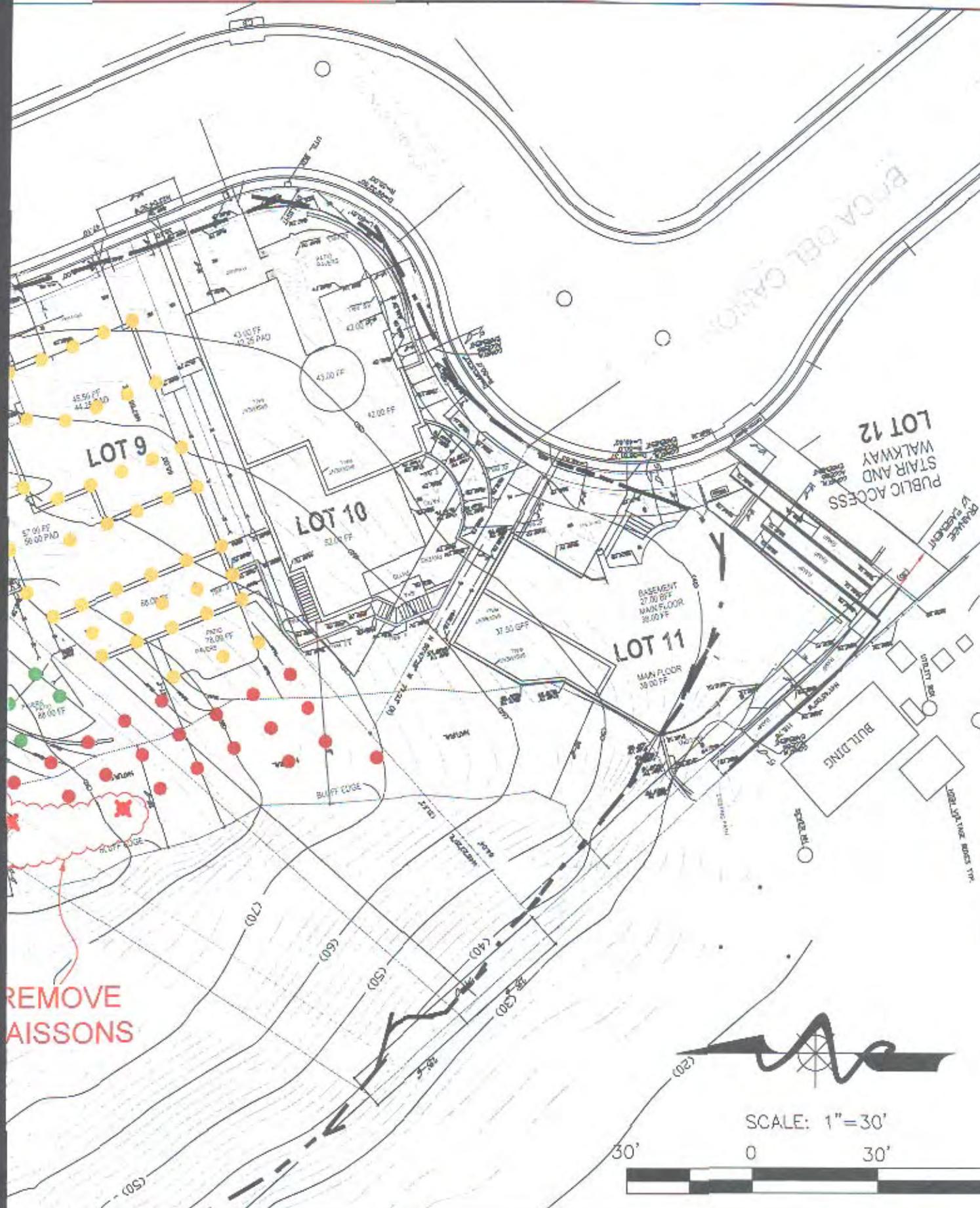


FIGURE 1
Caisson Location Map
with Nonstructural Viewpoint



CLIENT:
 The Estates
 La Salvador
 San Clemente, CA 92672

ARCHITECT:
 David York, Architect
 #12 W. San Gabriel
 San Clemente, CA 92672

PROJECT NAME	Boca Del Canon
PROJECT NO.	051109-01
ENG. / GEOL.	TJL
SCALE	1 inch : 30 feet
DATE	November 2010

Stabilization Plan

5-10-125
 Exhibit 8

DAVID YORK, ARCHITECT

(949)887-8034

RECEIVED
South Coast Region

APR 1 2010

CALIFORNIA
COASTAL COMMISSION

VIEW ANALYSIS
FOR
LOTS 7-11 TRACT 4947
SAN CLEMENTE, CA.

DATE
3-30-10
BY
DAVID YORK, ARCHITECT

REPORT COMPARES 3D COMPUTER MODEL
WITH
SITE PHOTOGRAPH FROM SAME POSITION

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DAVID YORK, ARCHITECT #12 W. AVE. SAN GABRIEL, SAN CLEMENTE, CA 92672
LIC # C24906



VIEW FROM THE
END OF LA RAMBLA
1





PANORAMIC
FROM
VIEW POINT 3

LOT 8

LOT 9

LOT 10

25' VIEW
CORRIDOR

4

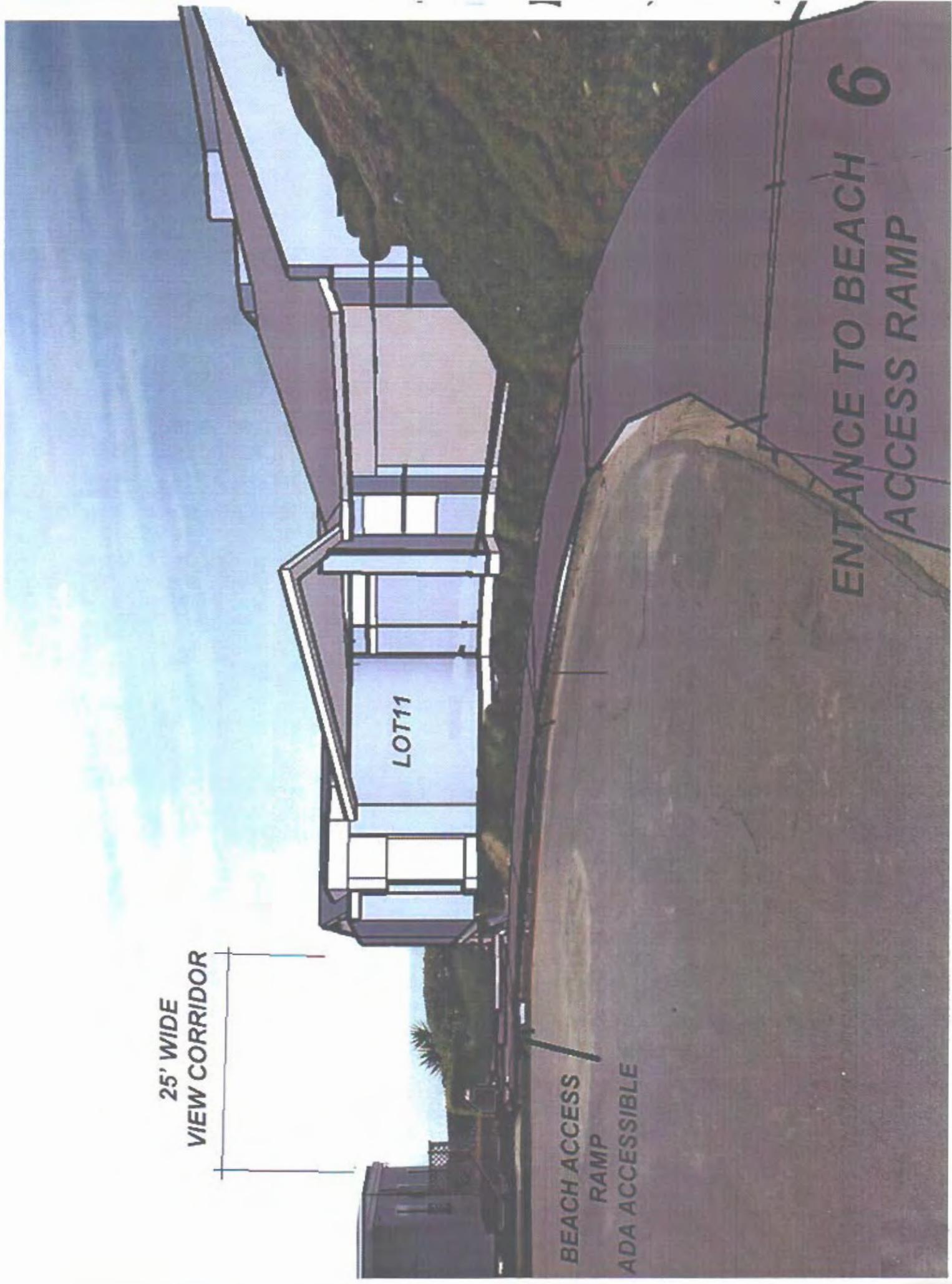


25' WIDE
VIEW CORRIDOR

LOT11

BEACH ACCESS
RAMP
ADA ACCESSIBLE

ENTRANCE TO BEACH 6
ACCESS RAMP

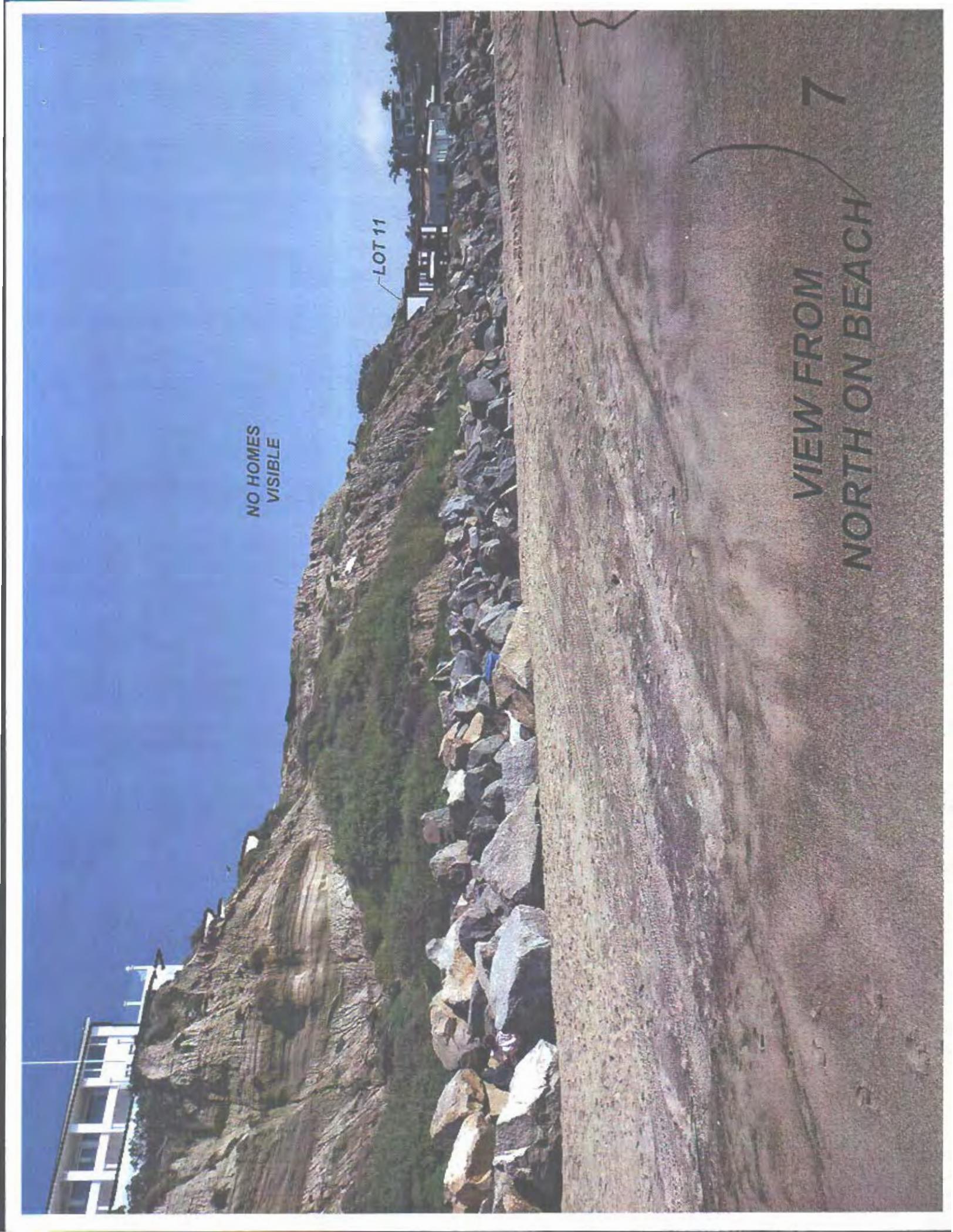


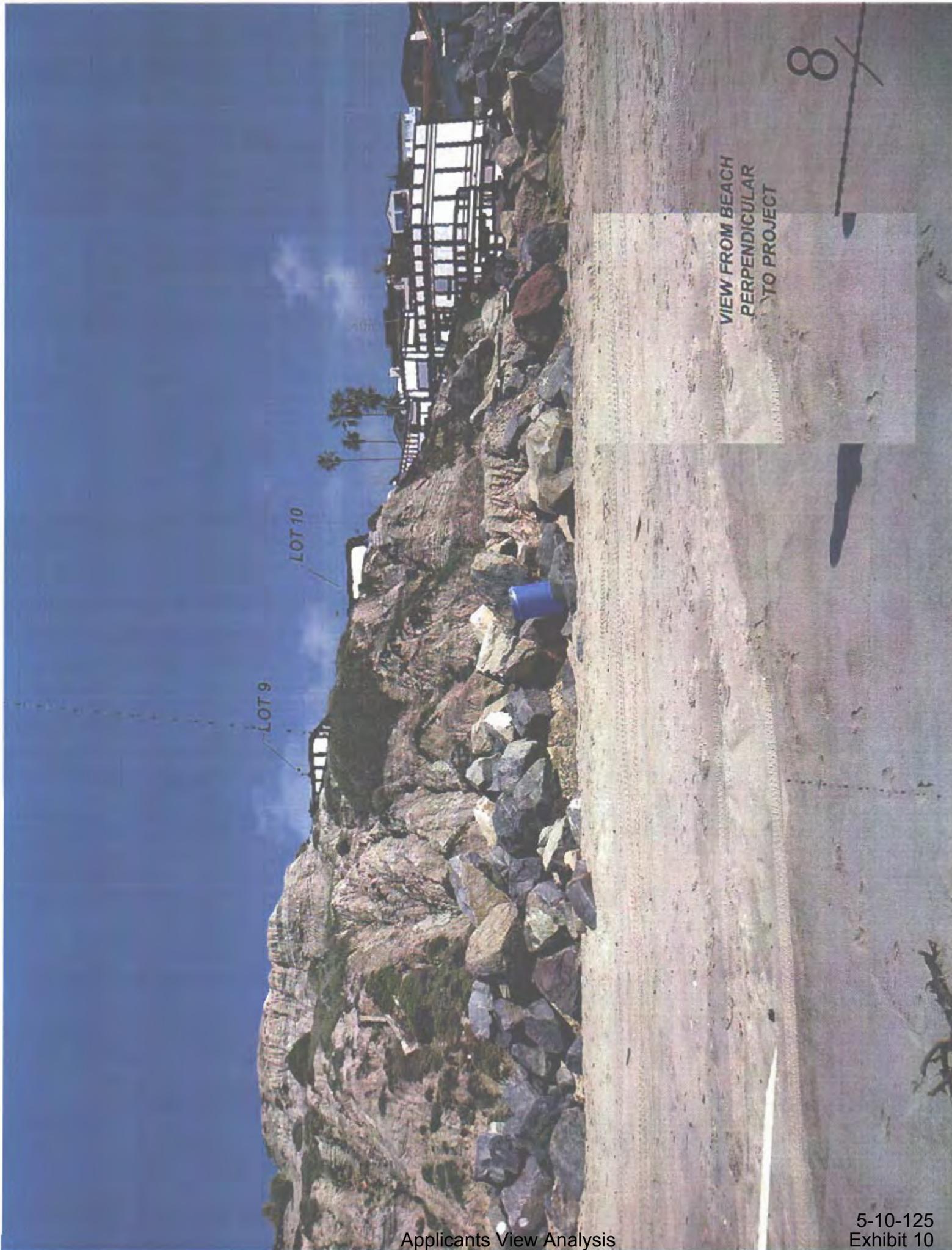
NO HOMES
VISIBLE

LOT 11

VIEW FROM
NORTH ON BEACH

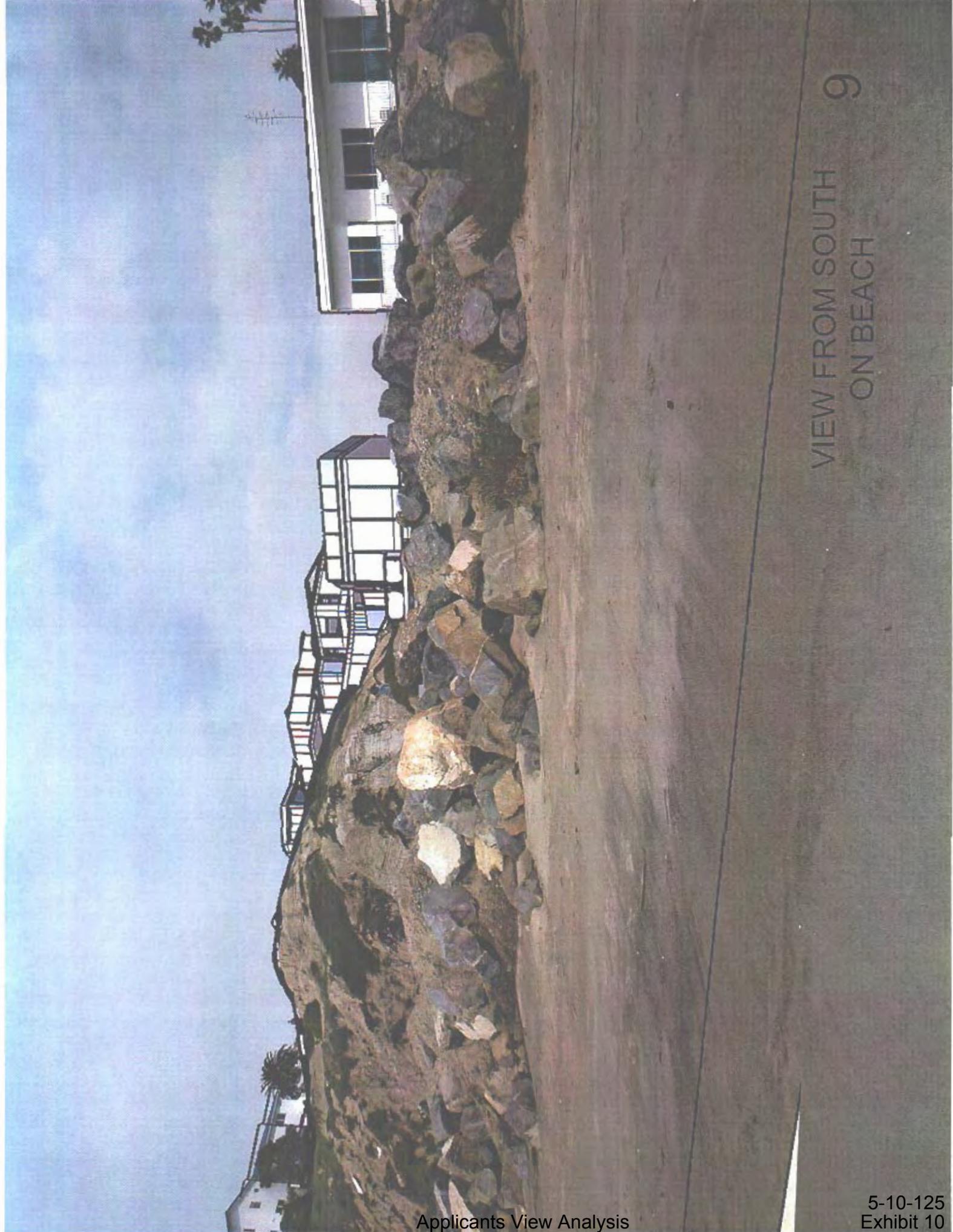
7



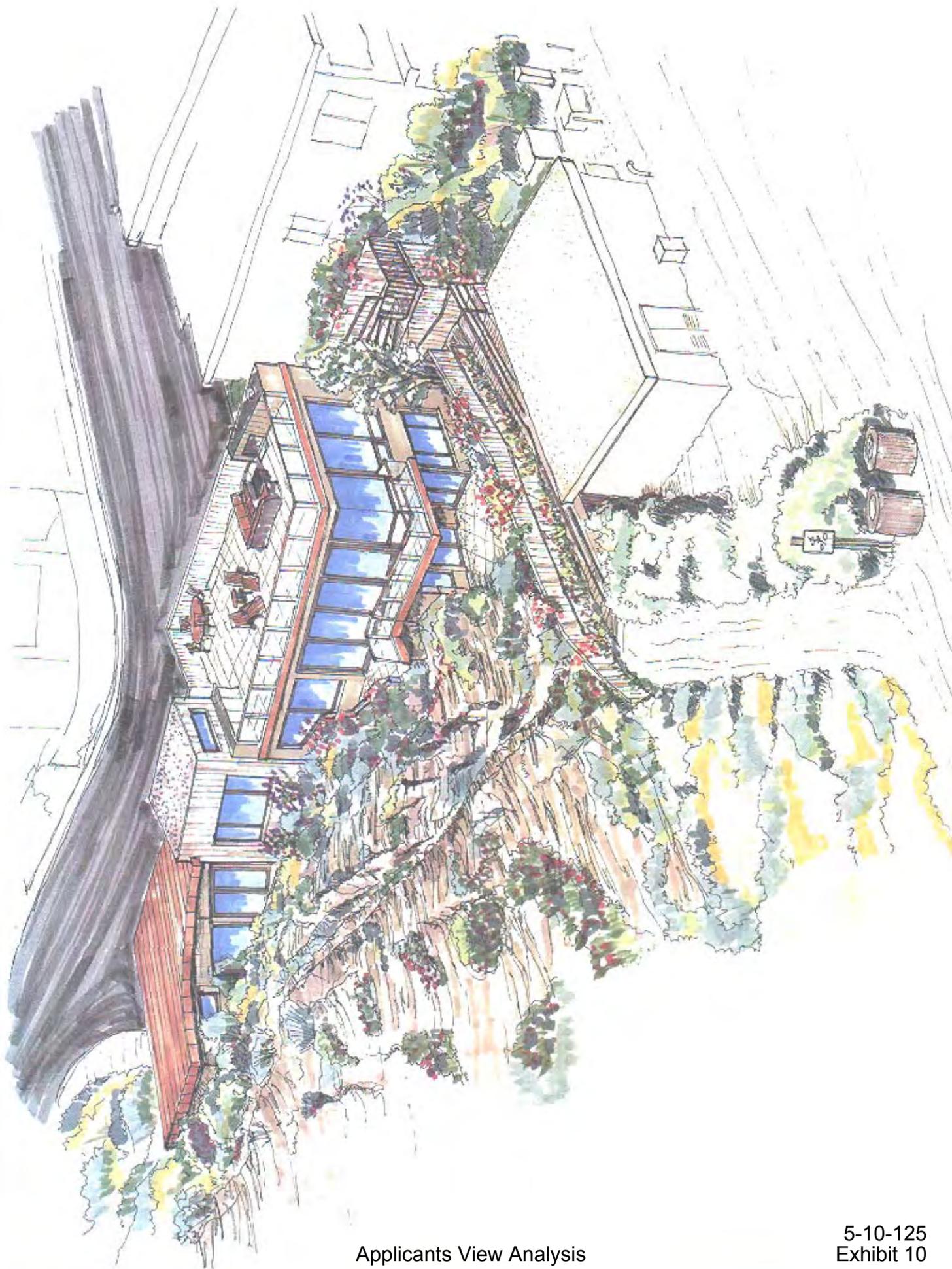


VIEW FROM BEACH
PERPENDICULAR
TO PROJECT

8



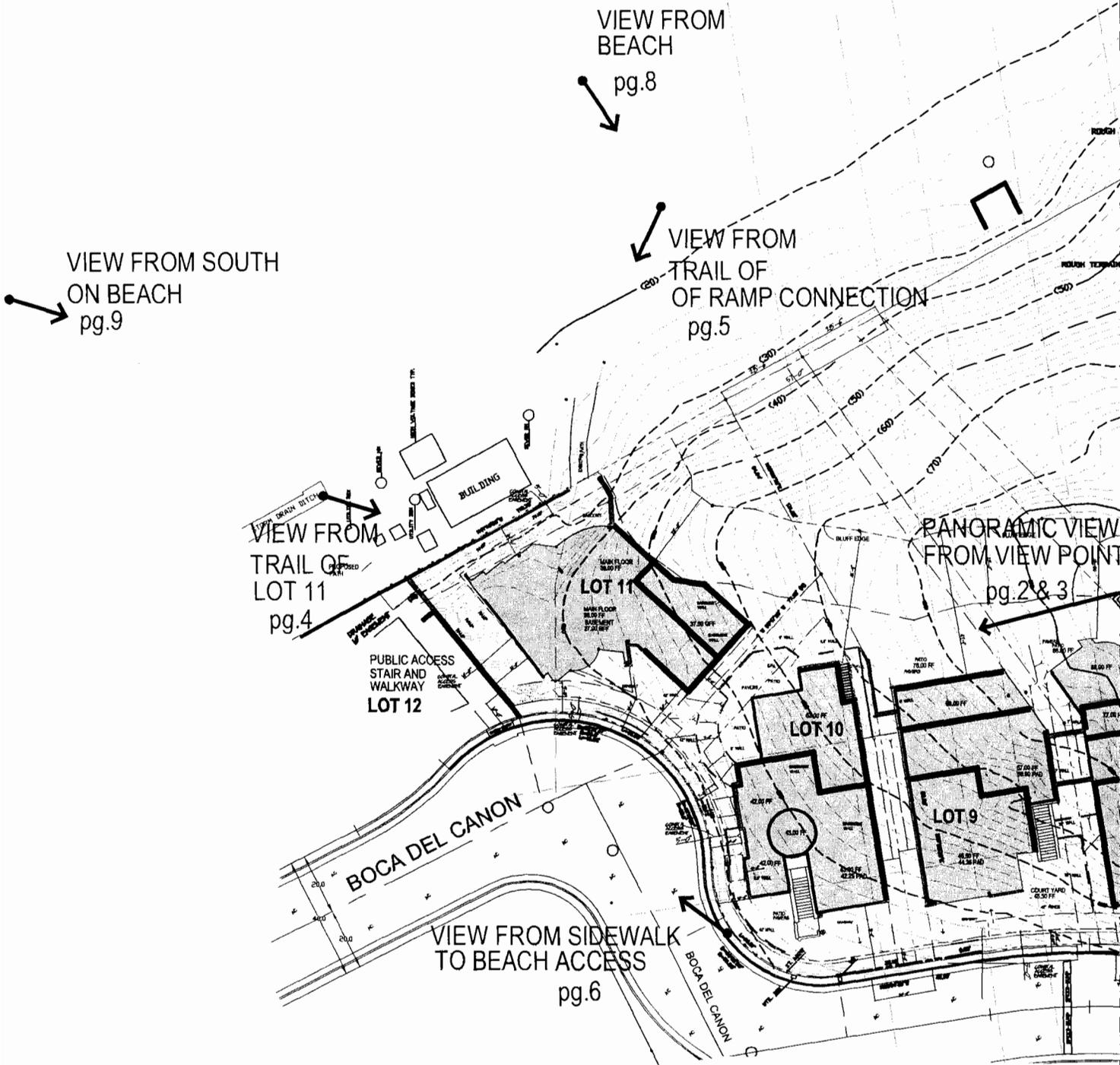
VIEW FROM SOUTH
ON BEACH 9





11
STORY POLES
FOR LOT 8





VIEW FROM SOUTH
ON BEACH
pg.9

VIEW FROM
BEACH
pg.8

VIEW FROM
TRAIL OF
RAMP CONNECTION
pg.5

VIEW FROM
TRAIL OF
LOT 11
pg.4

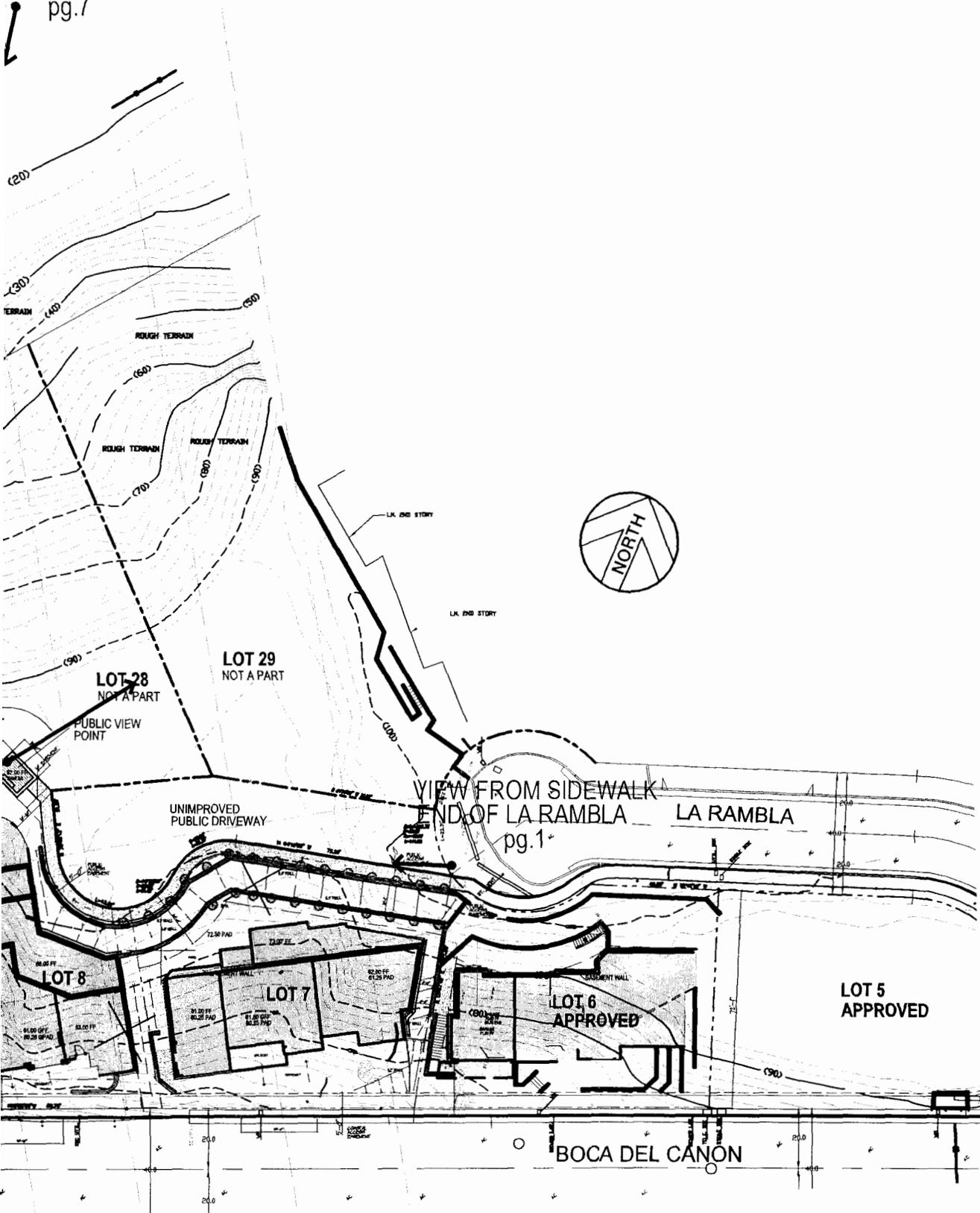
PANORAMIC VIEW
FROM VIEW POINT
pg.2 & 3

PUBLIC ACCESS
STAIR AND
WALKWAY
LOT 12

VIEW FROM SIDEWALK
TO BEACH ACCESS
pg.6

VIEW FROM NORTH
ON BEACH

pg.7



VIEW LOCATION MAP

Applicants View Analysis

10

M-1

5-10-125
Exhibit 10