

CALIFORNIA COASTAL COMMISSION

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Filed: January 5, 2011
49th Day: February 23, 2011
180th Day: July 4, 2011
Staff: John Del Arroz-LB
Staff Report: January 17, 2011
Hearing Date: March 9-11, 2011
Commission Action:

W11a

STAFF REPORT: PERMIT AMENDMENT

AMENDMENT

APPLICATION No.: 5-05-459-A1

APPLICANT: Dennis and Susan Gertmenian

PROJECT LOCATION: 19 Bay Drive, Laguna Beach, Orange County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construct an approximately 30 foot-long landscape/retaining wall, ranging from 2'9" to 5'9" in height and an approximately 9'6" long, 2'7" high, wood fence along the southeasterly side of the property.

DESCRIPTION OF AMENDMENT: Amendment of permit 5-05-459 to allow for extension of an existing 29.85 ft. long property line retaining wall by a distance of 27.5 feet through construction of a new wall which ranges in height from approximately 4 feet to 4 feet 11 inches, along a private beach access stairway adjacent to 19 Bay Drive.

LOCAL APPROVALS RECEIVED: City of Laguna Beach Approval in Concept dated May 5, 2010.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-05-459 (Gertminian); City of Laguna Beach certified Local Coastal Program (as guidance only).

EXHIBITS:

1. Vicinity Map
2. Assessors Parcel Map
3. Site Plan

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed coastal development permit amendment with **Seven (7)** special conditions. The special conditions would: **1)** clarify that all conditions imposed under the original permit remain in effect unless modified by this amendment; **2)** require a Coastal Development Permit for future development; **3)** require conformance with geotechnical recommendations; **4)** require submittal of a final landscaping plan; **5)** require that the applicant assume the risk of development; **6)** clarify that the proposed retaining wall is not designed to provide structural support for future development, and **7)** require a deed restriction against the property, referencing all of the Special Conditions contained in this staff report

PROCEDURAL NOTE

The Commission’s regulations provide for referral of permit amendment requests to the Commission if:

- 1) *The Executive Director determines that the proposed amendment is a material change,*
- 2) *Objection is made to the Executive Director’s determination of immateriality, or*
- 3) *The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.*

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166. The Executive Director has determined that the proposed amendment is a material change to the development previously approved, therefore, pursuant to Section 13166 of the Commission’s regulations, the Executive Director is referring this application to the Commission.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-05-459 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended 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 amendment will expire two years from the date this permit is voted on by the Commission. 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. Conditions Imposed Under Original

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit No. 5-05-459 remain in effect. If the specifications of any plans approved to comply with permit 5-05-459 are inconsistent with either the project description submitted with this amendment or the conditions imposed by this amendment, the applicant shall submit new plans to the Commission, for the review and approval of the Executive Director, that are consistent with the terms and conditions of this permit as modified by this amendment 5-05-459 A1.

2. Future Development

This permit amendment is only for the development described in Coastal Development Permit amendment No. 5-05-459-A1. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit Amendment No. 5-05-459-A1. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-459 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

3. **Conformance with Geotechnical Recommendations**

- A. All final design and construction plans shall be consistent with all recommendations contained in the following geologic engineering investigations: Geotechnical Recommendations For Proposed Retaining Wall, prepared by Geofirm, dated 3/22/10; Structural Report, prepared by Structures, Inc., dated 3/19/10.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required

4. **Final Landscape Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT**, the applicant shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of landscaping plans prepared by an appropriately qualified professional which demonstrates the following:
 - (1) The plan shall demonstrate that:
 - (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 - (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
 - (c) Landscaped areas within the development footprint not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping within the development footprint shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist within the development footprint. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the development footprint. Any existing landscaping within the development footprint that doesn't meet the above requirements shall be removed.
 - (d) No permanent irrigation system shall be allowed within the development footprint. Any existing in-ground irrigation systems within the development footprint shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the

plantings is allowed within the development footprint. The landscaping plan shall show all the existing vegetation and any existing irrigation system (which shall be removed) within the development footprint.

- (2) The plan shall include, at a minimum, the following components:
 - (a) A map showing the type, size, and location of all plant materials that will be within the development footprint, any temporary irrigation system, topography of the developed site, and all other landscape features, and
 - (b) A schedule for installation of plants.

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

5. 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 erosion, landslide 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.

6. Future Stability of Subject Site

By acceptance of this permit, the applicant acknowledges and agrees that the proposed retaining wall is not designed as structural support for future development on the subject site. Any determinations regarding the safety or stability of future development on the subject site shall not rely on the proposed wall.

7. Generic Deed Restriction

PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT AMENDMENT (5-05-459-A1), the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit

amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit amendment, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Previously Approved Project and Description of Proposed Amendment

The subject site is an oceanfront bluff top lot, located at 19 Bay Drive, Laguna Beach (Three Arch Bay), Orange County. The lot slopes gently seaward between the road and the bluff edge, and then slopes to the sandy beach below. A one-story single-family residence and attached garage occupies the pad portion of the 10,629 square-foot lot. The land use designation for this lot is Village Low Density and adjacent lots are also developed with single-family residences (Exhibit #2). Although the Local Coastal Program for Laguna Beach has been certified by the Commission, certification of the Three Arch Bay area was deferred due to the locked nature of the community. The proposed project is located within a deferred certification area, and is located within 50 feet of a coastal bluff; therefore the project requires a coastal development permit from the Coastal Commission. At the southeastern property line of 19 Bay Drive there is a private stairway which provides beach access from Bay Drive. The Three Arch Bay Association has stated that the stairway was originally constructed in the early 1950's.

Coastal Development Permit 5-05-459 authorized the installation of an approximately 30 foot-long garden/retaining wall, ranging from 2'9" to 5'9" in height and an approximately 9'6" long, 2'7" high, wood fence along the southeasterly property line, adjacent to the beach access path. The purpose of the project was to control erosion problems caused by the change in topography between the subject lot and the adjacent beach access way. The wall and fence are oriented approximately perpendicular to the bluff edge, along the southeastern property line of the subject property, and extend no further seaward than the seaward face of the existing residence. Additionally authorized was removal of ivy and replacement with prostrate rosemary, minor excavation for construction and limited backfill for the wall. Prior to the approval of CDP 5-05-459, the applicant indicated that they may desire to extend the garden wall by a total of 20 feet along the property line. The Commission found that the extension had the potential to pose additional impacts to coastal resources, and imposed a condition requiring an amendment or additional permit for any future development on site.

In October, 2005 the Three Arch Bay Association began work on reconstruction of the access stairway with a City of Laguna Beach building permit, but without obtaining a Coastal Development Permit. After the Commission requested work to be stopped, the Three Arch Bay Association applied for a Coastal Development Permit, and on August 8, 2007 the Commission approved the above reconstruction of the accessway. The applicant has stated that the reconstruction of the stairway resulted in grading which reduced the elevation of the beach access pathway and reducing the support for the slope on the southeastern corner of the property. The applicant has stated that the extension of the existing southeastern property line wall is necessary to prevent sloughage from the slope from covering the beach access path.

The applicant proposes to extend the existing 29.85 ft.-long property line retaining wall by a distance of 27.5 feet through construction of a new wall which ranges in height from approximately 4 feet to 4 feet 11 inches. The proposed wall would extend from the end of the previously approved wall to the edge of the slope, and be constructed of concrete patterned and colored to appear as natural rock. Minor grading is proposed, consisting of excavation for installation of the wall, backfill of sediments behind the proposed wall, and 0.5 cubic yards of cut to create a more gradual slope. The applicant proposes the removal of existing invasive ivy, iceplant, and pampas grass, and their replacement with native, drought-tolerant, non-invasive species, and removal of existing concrete blocks located on the slope adjacent to the accessway.

B. Visual Resources

Coastal Act Section 30251 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 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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. As described more fully below, the proposed project would be located within the blufftop setback or beyond the bluff edge. However, due to the orientation of the lot, the undulations along the bluff, and the existing development on and adjacent to the subject site, the proposed retaining wall is not visible from the beach or ocean. The beach accessway that is adjacent to the project site is not accessible to the public, due to the locked gate nature of the Three Arch Bay community. In the event that public access to this beach accessway is at some point opened to the public, public views from the accessway down to the ocean and beach below would not be impacted by the proposed project. The proposed wall is located against an existing slope, is low, and will be colored to blend with the surrounding materials. Additionally, the face of the wall is designed to incline back away from the accessway and towards the slope, resulting in a much less obtrusive structure (Exhibit 3). The applicant is proposing to remove invasive plants located on the project site, and to replace them with a selection of native plants, which will enhance the natural appearance of the coastal bluff. Additionally, the use of native and/or non-invasive drought-tolerant species will reduce the amount of infiltration on site and the risk of erosion of the coastal bluff. To ensure that the proposed landscaping does not result in additional geologic risks, the Commission imposes **Special Condition 4**, which requires the submittal of a final landscaping plan. Therefore, the Commission finds that the proposed amendment is consistent with Section 30251 of the Coastal Act with regard to protection of public views.

C. Development Within Blufftop Setback

Coastal Act Section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Coastal Act Section 30253 states:

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.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.

The Commission has previously found that the existing retaining wall approved under Coastal Development Permit 5-05-459 is located within the blufftop setback or at the bluff edge; that the wall was not designed to retain any structures and can be characterized as more of a minor accessory structure or landscape feature. The proposed wall is approximately of the same dimensions and structure, and is designed to achieve the same function as the original wall – preventing debris from falling down onto the beach access path. As with the existing wall, the proposed wall is not designed to retain any structures, including the single family residence, and can be characterized as more of a landscape feature. As a minor structure, the proposed wall is not subject to the prohibitions contained in Coastal Act Section 30253 concerning the use of protective devices, and would not warrant protection pursuant to Coastal Act Section 30235 should the wall be threatened in the future by natural processes such as erosion or landslides. To further clarify that the proposed wall is a minor accessory structure and not a protective device, the Commission imposes **Special Condition 6**, which states that future development on the site shall not rely on the proposed wall for structural stability or support. The proposed condition will ensure that future development on the site will not rely on the proposed development, and will therefore not contribute to geologic instability on the subject site, in conformance with Coastal Act Section 30253.

The applicant's geologic and structural consultants have concluded that the proposed project is suitable to address the erosion concerns on site, and that the proposed project is considered geotechnically feasible and safe, so long as their recommendations are integrated into design and construction. Therefore, the Commission imposes **Special Condition 3**, which requires that the project conform to these geotechnical recommendations. In case an unexpected event occurs on the subject property, the Commission imposes **Special Condition 5**, which requires the landowner to assume the risk of geologic hazards of the property. The Commission's staff geologist has reviewed the proposed project and visited the site, and has determined that the proposed project is fully consistent with Section 30253 of the Coastal Act.

As described above, the proposed retaining wall is located within the blufftop setback or beyond the bluff edge. Typically, the Commission has not approved structures within blufftop setbacks due to concerns regarding the potential for visual impacts, and that natural bluff erosion processes would result in the undermining of the structure and the potential for collapse of the structure onto the beach below. However, due to the special circumstances involved, the proposed project can be considered consistent with the Commission's typically applied requirement regarding blufftop setbacks. As specified above, the proposed wall would not be visible from the beach or ocean, and would not result in significant visual impacts to pedestrians descending to the beach below. Furthermore, as described above, the proposed wall would not be considered a protective device, but would instead be considered as a minor accessory structure, or a landscaping feature. The proposed wall is located on the landward side of the bluff, rather than the seaward face, and would not be subject to processes of bluff erosion resulting from wave attack. The proposed wall is not necessary for the stability of existing or future development on the subject site. In the event that natural bluff erosion were to undermine the proposed retaining wall, the proposed development could be removed without resulting in impacts to the existing single family residence on the subject site.

The Commission finds that only as conditioned as described above, can the proposed development be found consistent with Sections 30251 and 30253 of the Coastal Act which require that landform alteration be minimized, scenic coastal views be protected, and geologic stability be assured.

D. PUBLIC ACCESS

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach (Exhibit #1). Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. No public access exists in the immediate vicinity because the site is located within a locked gate community. The nearest public access exists at 1000 Steps County Beach approximately one half mile up-coast of the site. The proposed development will not affect the existing public access conditions. It is the locked gate community, not this development, that impedes public access. Therefore, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission

concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit-issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

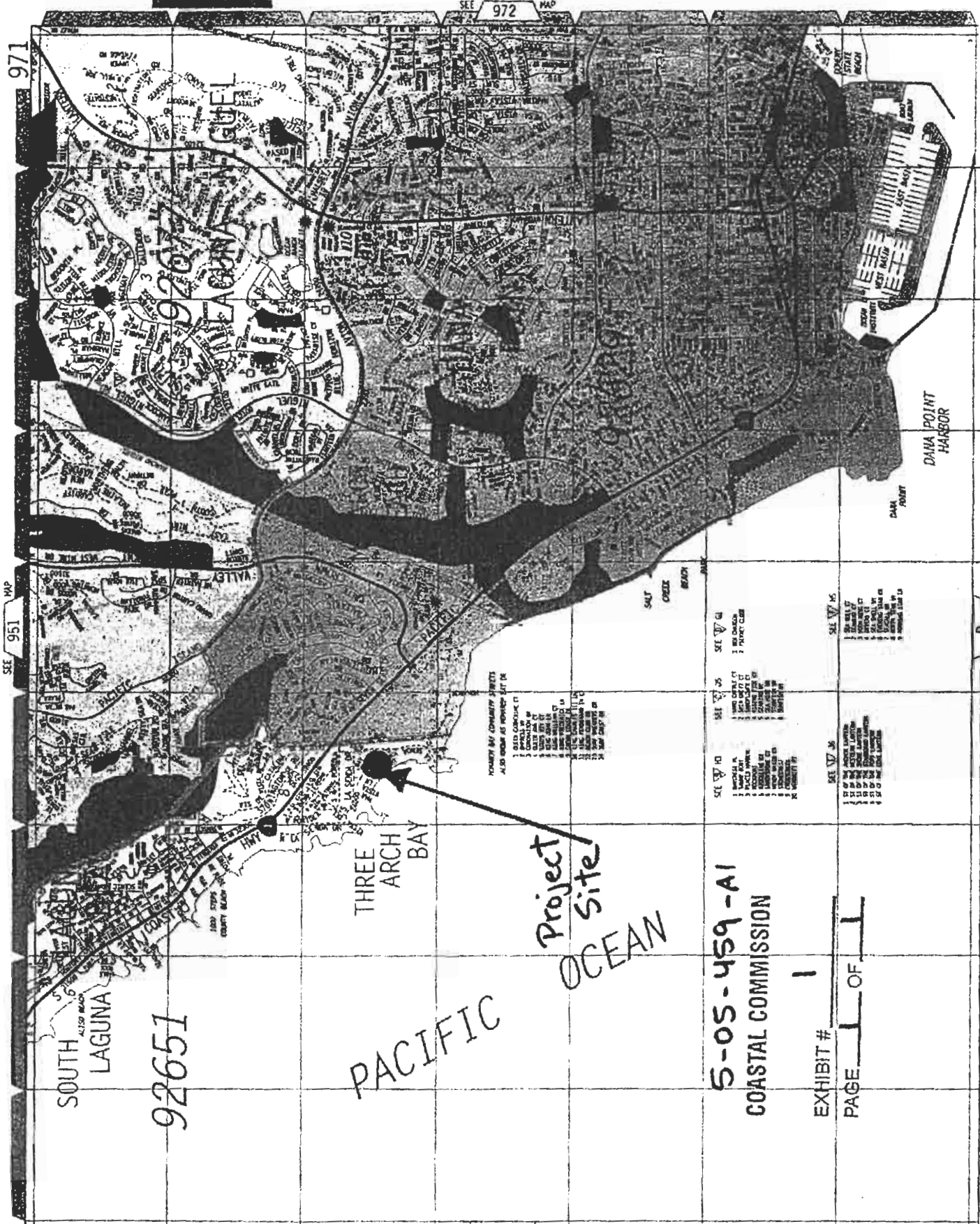
F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes an additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

In this case, the City of Laguna Beach is the lead agency and the Commission is the responsible agency for the purposes of CEQA. The City of Laguna Beach issued a determination that the project was ministerial or categorically exempt on May 5, 2010. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



SOUTH LAGUNA

92651

PACIFIC

THREE ARCH BAY

Project Site
OCEAN

S-05-459-A1
COASTAL COMMISSION

EXHIBIT #

PAGE 1 OF 1

971

SEE 951 MAP

SEE 972 MAP

SEE D MAP

DANA POINT HARBOR

DANA POINT



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5-05-459-A1
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APN: 056-180-31 100' radius (excluding roads)	Subject Address: 19 Bay Drive Laguna Beach, CA 92651	EXHIBIT # <u>2</u> PAGE <u>1</u> OF <u>1</u>
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