

CALIFORNIA COASTAL COMMISSION

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Staff: Fernie Sy-LB
Staff Report: December 22, 2011
Hearing Date: January 11-13, 2012
Commission Action:

**STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Dana Point

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-DPT-11-299

APPLICANT: Robert Theel Company, Attn: Robert Theel

PROJECT LOCATION: 35141 Camino Capistrano
Dana Point, Orange County

PROJECT DESCRIPTION: Demolition and construction of a new 5,743 square foot, 24-foot high, two story single-family residence with an attached 632 square foot three-car garage on a 10,694 square foot coastal bluff lot. The dwelling meets front and side-yard setbacks of the RSF 3 Zoning District, but does not meet the 40-foot bluff edge setback required for bluffs in the Capistrano Beach area. The project also proposes retaining walls in excess of 42 inches in height.

APPELLANTS: Commissioners Brennan and Stone

IMPORTANT NOTE

The Commission will not take public testimony during this phase of the appeal hearing unless at least three (3) commissioners request it. If the Commission finds that the appeal raises a substantial issue, it will schedule the de novo phase of the hearing for a future meeting, during which it will take public testimony. Written comments may be submitted to the Commission during either phase of the hearing.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that a **SUBSTANTIAL ISSUE** exists with respect to the grounds on which the appeal has been filed. The appellants contend and that the project approved by the City is inconsistent with policies regarding development on coastal bluff faces and visual resources in the certified Local Coastal Program. The Dana Point Planning Commission approved the proposed project finding, amongst other things, that the proposed development would be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources, will minimize the alteration of natural landforms, and that approving the project (with variances) will not constitute a special privilege to the property owner. However, as

approved by the Planning Commission, the proposed development does not adhere to the 40-foot bluff edge setback normally required in the LCP, nor does it even adhere to the reduced minimum 25-foot setback that the City may authorize when adequate site stability is present. Inconsistency with these required setbacks can lead to exposure of the development to hazards, the creation of scenic view impacts and landform alteration of the coastal bluff. Additionally, the site is unstable and a stabilization system in the form of a sheer-pin, tie-back-supported foundation system, is necessary to protect the proposed development. The LCP requires the proposed project to be designed so as not to require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs and the proposed stabilization system raises an issue as to conformity with this policy.

Thus, the appeal raises a substantial issue regarding the conformity of the locally approved development with the City of Dana Point certified Local Coastal Program (LCP). Therefore, staff is recommending that the Commission find that a substantial issue exists with respect to the grounds upon which the appeal was filed.

The motion to carry out the staff recommendation is found on page 5.

SUBSTANTIVE FILE DOCUMENTS:

- 1) City of Dana Point Certified Local Coastal Program
- 2) Appeal of Commissioners Brennan and Stone
- 3) City Permit Record for Local Coastal Development Permit CDP11-0007, Variance: V11-0001, Site Development Permit: SDP11-00017(M), and Resolution No. 11-11-07-23
- 4) Local Coastal Development Permit CDP08-0008, Variance: V08-0003, Site Development Permit: SDP08-00019(M), and Resolution No. 08-06-24-16
- 5) Geofirm report (Project No. 71635-00/Report No. 06-5810) dated August 11, 2006
- 6) Geofirm report (Project No. 71635-01/Report No. 06-5925) dated November 22, 2006
- 7) Geofirm report (Project No. 71635-01/Report No. 06-6141) dated October 5, 2007
- 8) Geofirm report (Project No. 71635-01/Report No. 06-6173) dated November 14, 2007
- 9) Geofirm report (Project No. 71635-01/Report No. 08-6233) dated March 17, 2008
- 10) Geofirm report (Project No. 71902-00/Report No. 11-6906) dated May 5, 2011
- 11) Geofirm report (Project No. 71902-01/Report No. 11-7002R) dated September 16, 2011

I. APPELLANT'S CONTENTIONS

Summary of Appeal Contentions

The Local Coastal Development Permit: CDP11-0007 approved by the City of Dana Point Planning Commission, raises issues as to consistency with the certified Dana Point Local Coastal Program (LCP). The proposed development raises an issue as to consistency with the certified LCP policies regarding development and visual resources for the following reasons.

A. Development

The City's LCP defines the coastal bluff edge as the point at which the topography begins to slope downward continuously until it reaches the bluff face. The subject lot contains a unique topographic feature, a steep ravine that extends well into the interior of the lot. The City granted significant variances from the 25 to 40 foot bluff edge setback because they found that these setbacks would constrain the development potential of the property. While variances from the 40-foot bluff edge setback are allowed in the City's LCP (when there is adequate site stability), the proposed development still does not adhere to even the minimum 25-foot setback as required in the LCP. Inconsistency with these required setbacks can lead to exposure of the development to hazards, the creation of scenic view impacts and landform alteration of the coastal bluff.

Furthermore, the geotechnical reports state that the site is unstable. To achieve a 1.5 factor of safety, the project requires installation of a sheer pin, tie-back supported foundation system. This stabilization system may be considered a bluff protective device. Development needs to be sited and designed so that the construction of a bluff protective device is not necessary.

Therefore, the development approved by the City's approved Local Coastal Development Permit raises issues as to consistency with the development policies of the City's certified LCP.

B. Visual Resources

The City's certified LCP contains policies to protect visual resources. The project has been designed to rely upon a bluff stabilization system, a sheer pin, tie-back supported foundation system, due to the instability of the site. Since stability along this bluff has been an issue, there is potential for this new foundation system to become exposed and thus result in attendant visual impacts and landform alteration as seen from the roadway (Pacific Coast Highway) below the site, as well as, from the residences and beach between the toe of the bluff and the ocean

Therefore, the development approved by the City's approved Local Coastal Development Permit raises an issue as to consistency with the visual resource policies of the City's certified LCP.

II. LOCAL GOVERNMENT ACTION

Local Coastal Development Permit: CDP11-0007, Variance: V11-0001, Site Development Permit: SDP11-00017(M), and Resolution No. 11-11-07-23 (Exhibit #1), were approved by the Dana Point Planning Commission on November 7, 2011. Based on the date of receipt of the Notice of Final Action, the ten (10) working day appeal period for Local Coastal Development Permit: CDP11-0007, Variance: V11-0001, and Site Development Permit: SDP11-00017(M) began on November 28, 2011 and ran through December 12, 2011. An appeal of Local Coastal Development Permit: CDP11-0007, Variance: V11-0001, and Site Development Permit: SDP11-00017(M) was received from Commissioners Brennan and Stone on December 12, 2011 (Exhibit #2), within the allotted ten (10) working day appeal period.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on Coastal Development Permits. Developments approved by cities or counties may be appealed if they are located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, or within 100-feet of any wetland, estuary, or stream, or within 300-feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a)(1) and (a)(2) of the Coastal Act establishes the project site as being in an appealable area because it is located within 300-feet of the inland extent of the beach and within 300-feet of the top of the seaward face of a coastal bluff .

Section 30603 of the Coastal Act states, in part:

- (a) *After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:*
 - (1) *Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
 - (2) *Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

The grounds for appeal of a local government action approving a Coastal Development Permit for development in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) *The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.*

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires the Commission to hold a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo portion of the public hearing on the merits of the project. The de novo portion of the hearing may be scheduled at the same hearing or a subsequent Commission hearing. The de novo hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The Chair will set the time limit for public testimony at the time of the hearing. As noted in Section 13117 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing regarding whether the appeal raises a substantial issue, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

If the appeal is found to raise a substantial issue, at the de novo hearing, the Commission will hear the proposed project de novo and all interested persons may speak. The de novo hearing will occur at a subsequent meeting date. All that is before the Commission at this time is the question of substantial issue.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-5-DPT-11-299 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-5-DPT-11-299 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The subject site is located in the Capistrano Beach residential community, an established neighborhood of single-family residences of similar size and scale in the Capistrano Beach area of Dana Point (Exhibit #3). The site is considered a coastal bluff lot in the Local Coastal Program (LCP), because the toe was once subject to wave action (marine erosion) but no longer is due to the presence of a roadway (Pacific Coast Highway) and residences between the toe of the bluff and the ocean. The coastal bluff affords scenic quality as a natural landform that is visible from Pacific Coast Highway and the shoreline. The subject lot has a unique topographic feature (a steep ravine) that punctuates the center of the property and has lush native and non-native landscaping found throughout the site. According to the City, the site comprises of a legal lot on a coastal bluff totaling .25 acres (10,694 square feet) and per adopted City zoning maps, the subject property is zoned as Residential Single-Family 3 (RSF-3), located within the City's Coastal Overlay District, as well as the Appeal Jurisdiction of the California Coastal Commission.

The subject address is currently developed with a two-story, single-family residence dating to the early 1950's, as well as accessory development including attached decks, hardscape and a swimming pool.

The proposed project consists of demolition of the existing residence and construction of a new 5,743 square foot, 24-foot high, two story single-family residence with an attached 632 square foot three-car garage on a 10,694 square foot coastal bluff lot (Exhibit #4). The dwelling meets front and side-yard setbacks of the RSF 3 Zoning District, but does not meet the 40-foot bluff edge setback required for bluffs in the Capistrano Beach area. The project also proposes retaining walls in excess of 42 inches in height.

As stated above, the subject lot has a steep ravine that punctuates the center of the property. This steep ravine forms a "V" like feature onsite with the most seaward ends located on the east and west ends of the site and the most landward portion located at the property's midpoint (Exhibit #4). This landward extent of this ravine serves as the coastal bluff edge. Due to significant geologic hazards known to be present along these coastal bluffs in the southerly part of the City, the LCP requires a 40-foot bluff edge setback for all new development. Where geologic conditions allow, that 40-foot setback can be reduced to 25-feet, but no less, through a Variance procedure. The City of Dana Point, through a Coastal Development Permit: CDP11-0007, Variance: V11-0001, and Site Development Permit: SDP11-00017(M), conditionally authorized the construction of a single-family residence and appurtenances seaward of the bluff edge, rather than applying the 25-40 foot bluff edge setback (Exhibit #4). Through this approval, the City found that this ravine renders the lot all but undevelopable when the otherwise required 40-foot bluff edge setback is applied. Additionally, even with a reduced 25-foot setback, the line of that setback would be only 3-feet seaward of the 10-foot front front-yard setback at the property's midpoint. Furthermore, the City's approval states that the Variance request would accordingly then: "...provide necessary relief from a clear topographic hardship, and as enumerated herein, allow the property owner to develop

their lot in a manner and scale afforded to similar properties along the bluff.” The dwelling would also be sited no further seaward than its’ adjacent neighbors. In conclusion, the City states that other than relief from the setback from the bluff edge, the residence would comply with all standards of development.

B. Previous Local Coastal Development Permit

In June 2008, Local Coastal Development Permit: CDP08-0008, Variance: V08-003, Site Development Permit: SDP08-0019, and Resolution No. 08-06-24-16 were approved by the City of Dana Point Planning Commission. The approved project consisted of demolition of an existing two-story single-family residence and construction of a new 5,064 square foot two-story single-family residence with a 440 square foot attached garage and associated improvements with an accompanying Variance to allow construction on a coastal bluff and within the required coastal bluff edge setback and a Minor Site Development Permit for a retaining wall 8.3 feet high in the required side yard setback. The Notice of Final Action was received and no appeal was filed within the allotted ten (10) working day appeal period. The project was never constructed and consequently ownership of the property changed hands. Thus, the new owner applied for new local approvals. The currently proposed project is similar to the 2008 project.

C. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with the certified Local Coastal Program or the public access policies of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appellant raises no significant questions”. In previous decisions on appeals, the Commission has been guided by the following factors.

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the Local Coastal Program;
2. The extent and scope of the development as approved by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

As stated in Section III of this report, the grounds for appeal of a Coastal Development Permit issued by the local government after certification of its Local Coastal Program are specific. In this case, the Local Coastal Development Permit may be appealed to the

Commission on the grounds that it does not conform to the certified Local Coastal Program. The Commission must then decide whether a substantial issue exists with respect to the grounds on which an appeal has been filed in order to decide whether to hear the appeal de novo.

In making the substantial issue assessment, the Commission typically considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP raise significant issues in terms of the extent and scope of the approved development, the support for the local action, the precedential nature of the project, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

In this case, the appellants contend that the City's approval of the proposed project does not conform to the requirements of the certified LCP regarding development and visual impacts.

Staff is recommending that the Commission find that a **SUBSTANTIAL ISSUE** does exist with respect to whether the approval of the project is consistent with the provisions of the certified Local Coastal Program for the reasons set forth below.

D. Substantial Issue Analysis

1. Development

***LAND USE PLAN/Conservation and Open Space Element
(COSE)/Conservation of Significant Natural Features/***

GOAL 2: Conserve significant topographical features, important watershed areas, resources, soils and beaches.

Policy 2.2: Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact. (Coastal Act/30250)

Policy 2.8: Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)

Policy 2.9: Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms. (Coastal Act/30240, 30250, 30251, 30253)

Policy 2.10: Adopt setback standards which include, at a minimum, a 25 foot setback from the bluff edge or which take into consideration fifty years of bluff erosion, whichever is most restrictive for a particular blufftop site. When necessary, require additional setbacks of buildings and site improvements from bluff faces

which will maximize public and structural safety, consistent with detailed site-specific geotechnical report recommendations. (Coastal Act/30253)

Policy 2.11: *Preserve Dana Point's bluffs as a natural and scenic resource and avoid risk to life and property through responsible and sensitive bluff top development including, but not limited to, the provision of drainage which directs runoff away from the bluff edge and towards the street, where feasible, and restricting irrigation and use of water-intensive landscaping within the setback area to prevent bluff erosion. (Coastal Act/30251, 30253)*

Policy 2.12: *New bluff top development shall minimize risks to life and property in geologically sensitive areas and be designed and located so as to ensure geological stability and structural integrity. Such development shall have no detrimental affect, either on-site or off-site, on erosion or geologic stability, and shall be designed so as not to require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs. (Coastal Act/30253)*

Policy 2.13: *Bluff repair and erosion control measures such as retaining walls and other similar devices shall be limited to those necessary to protect existing structures in danger from erosion to minimize risks to life and property and shall avoid causing significant alteration to the natural character of the bluffs. (Coastal Act/30251, 30253)*

IMPLEMENTAION PLAN/Chapter 9.27/Coastal Overlay District

Pages 9.27-15 to16

- (c) **Development Adjacent to Coastal Bluffs.** *Development adjacent to coastal bluffs shall minimize hazards to owners, occupants, property, and the general public; be environmentally sensitive to the natural coastal bluffs; and protect the bluffs as a scenic visual resource. The minimum setback from the bluff edge of a coastal bluff shall be established by the underlying zoning district. However, in no case shall the minimum setback be less than 25 feet or one which provides for 50 years of erosion, whichever is most restrictive [Emphasis added].*

In addition, should the geotechnical report indicate bluff stabilization is required to ensure proposed development is safe from a threat of erosion and bluff failure for fifty years, additional setbacks will be required. Any approved slope stabilization measures shall be the least environmentally damaging feasible alternative and shall be designed to minimize alteration of the bluffs and be subordinate to the natural character of the bluffs.

Development setbacks from coastal bluff edges may not be the same due to varying geologic conditions and environmental conditions. The following provisions detail the items required for filing, the means by which coastal bluff edges are measured, criteria for review, development standards, and the potential development that may be permitted within the coastal bluff setback area.

Page 9.27-17

(3) Development Standards.

- (A) *Drainage. All surface and subsurface run-off shall be directed to a public street or an approved drainage facility to the satisfaction of the Director of Public Works. Transportation of said run-off may require area drains, roof drains, reductions in grading, appropriate pumping mechanisms, and other similar measures. Where feasible, said run-off shall be directed to sewer systems rather than storm drains which lead directly to the ocean.*

(4) Requirements for Setback Deviation. *A State Licensed Civil Engineering Geologist shall prepare a site specific geotechnical and soils report to address and explain any proposed deviation from the minimum setbacks from the coastal bluff edge in the Zoning Map, and the Draft Dana Point General Plan Coastal Erosion Technical Report dated July 11, 1990. The report shall include:*

- (A) *An explanation and calculation of the deviations, if any, in the setback from the coastal bluff edge.*
- (B) *If caissons are not recommended, the report shall explain why caissons are not needed. If caissons are recommended in the report, the following additional information shall be provided:*
1. *Indicate the angle of repose.*
 2. *Depth of caisson required for the structure and limits of caissons.*
- (C) *Requirements for Setback Deviation. Should an analysis of the geotechnical report conclude that a greater or lesser setback may be necessary than that required by this Code, the Planning Commission can make a finding that it is in the interest of the public safety to approve an additional or lesser setback as recommended. However, in no case shall a setback of less than 25 feet or less than 50 years of bluff erosion, whichever is most restrictive, be permitted [Emphasis added].*

Due to the location of the bluff edge (which here is the landward extent of the ravine) on the lot, the City allowed development that would extend past the bluff edge and be inconsistent with the required 25 to 40-foot bluff edge setback in the Capistrano Beach area. The LCP states that in no case shall the minimum setback from the bluff edge be less than 25-feet or less than 50 years of erosion, whichever is most restrictive. Thus, the approved development raises issues as to conformity with Policy 2.10 among other LCP provisions noted above.

As determined by previous geotechnical reports for the site, the 1.5 factor of safety line extends far inland and thus the area beneath most of the proposed site improvements has an existing factor of safety below 1.5. Also, the rate of erosion has not been clearly identified, but, based on the 40-foot setback requirement, has historically been relatively high. Because of this site instability, the applicant proposes a stabilization system, the proposed sheer-pin, tie-back-supported foundation system, in order to protect the proposed development and have the site be within in a 1.5 factor of safety. This is confirmed in two (2) geologic reports prepared by Geofirm: *“Updated slope stability analyses indicate the bedrock material backing the bluff are anticipated to remain grossly stable behind the “Remediated 1.5 Factor of Safety Line”, considering the installation of a shear pin array as recommended. The slopewash-talus-weathered bedrock mantling the bluff face is considered unstable.”* Thus, installation of the bluff protective device would make the site have a 1.5 factor of safety.

Any development on site must be designed to ensure geological stability and structural integrity and avoid reliance on bluff protective devices. The proposed project has not been designed to be consistent with either of those goals, as it has been designed with reliance upon a bluff stabilization device. In this case, that would be the sheer-pin, tie-back-supported foundation system. Thus, the approved development raises issues as to conformity with several LCP policies including but not limited to COSE 2.12.

Therefore, for the reasons cited above, the appeal raises a substantial issue regarding whether the development as approved by the City is inconsistent with the development policies of the City’s certified LCP.

2. Visual Resources

LAND USE PLAN/Conservation and Open Space Element (COSE)/Conservation of Significant Natural Features/

GOAL 2: Conserve significant topographical features, important watershed areas, resources, soils and beaches.

Policy 2.9: *Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms. (Coastal Act/30240, 30250, 30251, 30253)*

Policy 2.12: *New bluff top development shall minimize risks to life and property in geologically sensitive areas and be designed and located so as to ensure geological stability and structural integrity. Such development shall have no detrimental affect, either on-site or off-site, on erosion or geologic stability, and shall be designed so as not to require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs. (Coastal Act/30253)*

The City authorization of the proposed development raises concerns with regard to the City’s interpretation of its LCP visual resource policies and potential

cumulative impacts associated with this type of development. The City makes findings that the proposed development is consistent with LCP requirements regarding the protection of the scenic quality of coastal bluffs. However, the project's inconsistency with the required setbacks in the area, even the minimal setback, can lead to exposure of the development and visual impacts. In this case, instead of adhering to the required setbacks, the project was designed to rely upon a bluff stabilization device. Due to the instability associated with this site, there is concern that this bluff stabilization device will become exposed once the unstable soils erode and/or fall away, resulting in attendant visual impacts and landform alteration. The natural character of the bluff and its visual resources would be adversely and permanently impacted. Furthermore, encouraging such development reliant upon bluff stabilization devices on this site and surrounding sites would lead to cumulative adverse visual impacts that would degrade the scenic quality of this coastal area. Thus, the approved development raises issues as to conformity with several LCP policies including but not limited to COSE Policy 2.9 and 2.12.

Therefore, for the reasons cited above, the appeal raises a substantial issue regarding the conformity of the development as approved by the City with the visual resource policies of the City's certified LCP.

3. Additional Substantial Issue Assessment

In considering whether an appeal raises a substantial issue one factor the Commission considers is the significance of the coastal resources affected by the decision. In this case, the coastal resource affected is the coastal bluff, which is a significant visual resource. At the base of this bluff is a roadway (Pacific Coast Highway), as well as, residences and beach between the toe of the bluff and the ocean and public views of the coastal bluff would be adversely impacted with the proposed development. Therefore, the resource affected area is indeed significant and the adverse impacts created by the proposed development upon the significant resources are considerable.

Another factor the Commission considers in determining whether an appeal raises a substantial issue is whether the appeal raises local issues, or those of regional or statewide significance. In this case, the appeal raises issues of at least regional, and possibly statewide, significance. A bluff stabilization system is being proposed with the project because of the instability associated with this site. Such development raises issues as to conformity with LCP and Coastal Act policies requiring that development avoid reliance on such protective devices. Allowing such development would also set a precedent for allowing similar types of development statewide and thus resulting in impacts to coastal bluff resources. Thus, the appeal raises issues of regional and statewide significance.

4. Conclusion

For the reasons described above, the appeal raises a substantial issue regarding whether the development approved by the City is consistent with the development and visual resource policies of the City's certified LCP. Further, the inconsistencies raise issues with regard to significant coastal resources. Finally, the inconsistencies are of regional and statewide, not just local, concern. As

described above, these issues raise a substantial issue with regard to the grounds upon which the appeal was filed. Therefore, the Commission finds that the appeal raises a substantial issue.

RESOLUTION NO. 11-11-07-23

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP11-0007, VARIANCE V11-0001 AND MINOR SITE DEVELOPMENT PERMIT SDP11-0017(M) TO ALLOW THE DEMOLITION OF AN EXISTING, SINGLE-FAMILY DWELLING, THE CONSTRUCTION OF A NEW, TWO-STORY, SINGLE-FAMILY DWELLING AS WELL AS A NEW RETAINING WALL PROPOSED IN EXCESS OF 30 INCHES IN HEIGHT ON A COASTAL BLUFF LOCATED AT 35141 CAMINO CAPISTRANO. A VARIANCE IS REQUESTED TO PERMIT DEVELOPMENT WITHIN A COASTAL BLUFF EDGE SETBACK.

Applicant: Robert Theel (Robert Theel Company)
Property Owner: Daniel Rodriguez and Debra Liebert

The Planning Commission for the City of Dana Point does hereby resolve as follows:

WHEREAS, the applicant filed a verified application for a Coastal Development Permit to allow demolition of an existing single-family dwelling and the construction of a new single-family dwelling and retaining wall, as well as a Variance to allow development within a coastal bluff-edge setback and; a Minor Site Development Permit to allow the construction of a new retaining wall in excess of 30 inches in height at 35141 Camino Capistrano (APN 691-172-03), and;

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, the Planning Commission did, on the 7th day of November, 2011, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP11-0007, Variance V11-0001 and Minor Site Development Permit SDP11-0017(M).

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning Commission of the City of Dana Point as follows:

- A. That the above recitations are true and correct.
- B. Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and approves CDP11-0007 and related requests subject to conditions:

Findings:

EXHIBIT # 1
PAGE 1 OF 13

COASTAL COMMISSION

Coastal Development Permit CDP11-0007

1. That the proposed project is consistent with the Dana Point General Plan and Local Coastal Program in that with the exception of the requested variance from standards, the subject project complies with all standards and intent of the referenced documents, including (City of Dana Point General Plan) Conservation/Open Space Element Goal No. 1: ***"Reduce the risk to the community from geologic hazards including bluff instability, seismic hazards and coastal erosion."*** The subject project proposes a sheer-pin/tie-back foundation to provide the appropriate geotechnical factors of safety - subsequently minimizing alteration of the site seaward of the proposed dwelling.
2. That the proposed development is not located between the nearest public roadway and the sea or shoreline of any body of water, and is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act in that the subject project would not change the intensity of surrounding uses, block or impede public access to the beach or other recreation area, and accordingly, is not required to implement the public access requirements of Chapter Three of the Coastal Act.
3. That the proposed development conforms with Public Resources Code Section 21000 (the California Environmental Quality Act) and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment in that the project qualifies for a Class 3 Categorical Exemption pursuant to Section 15303 (a) (New Construction or Conversion of Small Structures) of the CEQA Guidelines.
4. That the proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any existing public views to and along the coast from any public road or from a recreational area in that no public accessways exist on the subject property and so none would be adversely affected with implementation of the proposed project. The property contains a coastal bluff that affords no public access and accordingly would not result in adverse impacts to any existing public views of or along the coast and as viewed from a public road or recreation area.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 13

5. That the proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources **in that the subject property is not located adjacent to any parks or recreation areas, nor cited as supporting environmentally sensitive habitats or scenic resources; accordingly, no adverse impacts are anticipated with implementation of the proposed scope-of-work and no buffer areas are required.**
6. That the proposed development will minimize the alterations of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards **in that while implementation of the subject project would result in minor grading of the site, the new structure's foundation (a sheer-pin/tie-back design) would serve to minimize alteration of the bluff to the greatest extent feasible. All geotechnical documentation submitted by the applicant has been reviewed and conditionally approved by City Engineering staff as well as a third-party geotechnical engineer. Compliance with all contemporary fire and building code requirements as well as proposed, onsite drainage improvements, will serve to mitigate potential fire and/or flood hazards.**
7. That the proposed development will be visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas **in that the subject application proposes construction of a new single-family dwelling within an established community of identical uses. The surrounding neighborhood is comprised of widely varying architectural styles – a design aesthetic the proposed dwelling will wholly complement.**
8. That the proposed development will conform with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or other applicable adopted plans and programs **in that the subject project has been reviewed by Planning and Building/Safety Division staffs as well as the Public Works/Engineering Department and (with the exception of the Variance request discussed elsewhere in this document) been found to conform to all applicable standards of development.**

COASTAL COMMISSION

EXHIBIT # 1
PAGE 3 OF 13

Variance V11-0001

- 1) That strict or literal interpretation and enforcement of the specified regulation(s) would result in practical difficulty or unnecessary physical hardships inconsistent with the objectives of this Chapter **in that the limitations imposed by the site's dominant topographical feature (a steep ravine at the approximate center of the property), when coupled with structure setbacks that reduce the potential area for development as little three feet in depth at the property's midpoint, render the property undevelopable without the granting of the requested variance.**
- 2) That there are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use of the property which do not apply generally to properties in the same zoning district, **in that the subject site contains a significant topographical feature (a ravine), the top of which defines a bluff-edge not generally found on other RSF-3 zoned properties. When required structure setbacks are applied, the subject property is rendered undevelopable without the granting of the requested variance from bluff edge setbacks.**
- 3) That the strict or literal interpretation and enforcement of the specified regulation(s) would deprive the applicant of privileges enjoyed by the owners of other properties in the same zoning district with similar constraints **in that there are very few properties in the area with similar significant topographical features establishing a required coastal bluff edge setback near or beyond the front property boundary with none approved for development without the relief granted via approval of a variance from the requirements of Zoning Code/Local Coastal Program Section 9.27.030(c) and; the location of the proposed dwelling enables the applicant to enjoy same seaward development limit (stringline) as properties immediately bordering the site.**
- 4) That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zoning district with similar constraints **in that the topography of the subject property, and its resulting, prohibitively reduced potential building area, precludes development of the lot in a manner afforded to neighboring properties of similar zoning designation.**

COASTAL COMMISSION

EXHIBIT # 1
PAGE 4 OF 13

- 5) That the Variance request is made on the basis of a hardship condition and not as a matter of convenience **in that limitations imposed by the site's dominant topographical feature (a steep ravine at the approximate center of the property), when coupled with strict application of development standards enumerated in Section 9.27.030 of the City's Municipal Code/Local Coastal Program, would render the lot undevelopable without the granting of the requested variance.**
- 6) That the granting of the Variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity **in that the proposed dwelling will be constructed using contemporary materials in compliance with current building codes. Geotechnical documentation has been submitted, reviewed and conditionally approved by both City staff as well as a third-party geotechnical consultant.**
- 7) That the Variance approval places suitable conditions on the property to protect surrounding properties and does not permit uses which are not otherwise allowed in the zone **in that specific conditions of approval have been included herein to ensure that geotechnical and general site stability are maintained for the long term and accordingly, that no deleterious impacts would result to surrounding properties or development. All development proposed onsite is permitted pursuant to the property's RSF-3 Zoning District.**
- 8) That granting of the Variance will not result in adverse impacts, either individually or cumulatively, to coastal access, public recreation opportunities, or coastal resources, and the development would be consistent with the policies of the Local Coastal Program certified land use plan **in that the subject project proposes demolition of an existing, and the construction of a new single family residence located where no public access-way or recreation areas exist, and so would not result in either individual or cumulative adverse impacts. With the exception of the subject variance request, the proposed scope of work conforms to all applicable standards of development.**

Minor Site Development Permit SDP11-0017(M)

1. That the site design is in compliance with the development standards of the Dana Point Zoning Code **in that the proposed retaining wall is permitted development in the property's RSF-3 Zoning District (subject to approval of this Minor Site Development Permit) and has been reviewed by City staff and found to conform to both the standards and**

2. That the site is suitable for the proposed development in that the subject application proposes the construction of a retaining wall that would facilitate improved access to an existing, rear-yard patio.
3. That the project is in compliance with all elements of the General Plan and all applicable provisions of the Urban Design Guidelines in that the proposed scope-of-work does not conflict with any goal or policy (of the General Plan); the proposed retaining wall is found to comply with the standards and intent of the referenced documents subject to approval of this Minor Site Development Permit.
4. That the site and structural design is appropriate for the site and function of the proposed use in that the proposed wall would utilize a design and materials wholly compatible with the property's proposed single-family dwelling and more broadly, with surrounding vicinity development.

Conditions:

A. General:

1. Approval of this application permits the demolition of an existing single-family dwelling, the construction of a new, two-story, single-family dwelling, as well as the construction of a new retaining wall (in the property's rear-yard not to exceed four feet in height) at 35141 Camino Capistrano. Subsequent submittals for this project shall be in substantial compliance with the plans presented to the Planning Commission, and in compliance with the applicable provisions of the Dana Point General Plan, Local Coastal Program and Zoning Code.
2. Approval of this application is valid for a period of 24 months (two years) from the noted date of determination. If the development approved by this action is not established, or a building permit for the project is not issued within such period of time, the approval shall expire and shall thereafter be null and void.
3. The application is approved as a plan for the location and design of the uses, structures, features, and materials shown on the approved plans. Any demolition beyond that described in the approved plans or any relocation, alteration, or addition to any use, structure, feature, or material, not specifically approved by this application, will nullify this approving action. If any changes are proposed regarding the location or alteration to the appearance or use of any structure, an amendment to this permit shall be submitted for approval by the Director of Community Development. If the Director of Community Development determines that the proposed change

COASTAL COMMISSION

EXHIBIT #

1

PAGE 6 OF 13

complies with the provisions and the spirit and intent of this approval action, and that the action would have been the same for the amendment as for the approved plot plan, he may approve the amendment without requiring a new public hearing.

4. Failure to abide by and faithfully comply with any and all conditions attached to the granting of this permit shall constitute grounds for revocation of said permit.
5. The applicant or any successor-in-interest shall defend, indemnify, and hold harmless the City of Dana Point ("CITY"), its agents, officers, or employees from any claim, action, or proceeding against the CITY, its agents, officers, or employees to attack, set aside, void, or annul an approval or any other action of the CITY, its advisory agencies, appeal boards, or legislative body concerning the project. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding.

The applicant or any successor-in-interest shall further protect, defend, indemnify and hold harmless the City, its officers, employees, and agents from any and all claims, actions, or proceedings against the City, its officers, employees, or agents arising out of or resulting from the negligence of the applicant or the applicant's agents, employees, or contractors. Applicant's duty to defend, indemnify, and hold harmless the City shall include paying the CITY's attorney's fees, costs and expenses incurred concerning the claim, action, or proceeding. The applicant shall also reimburse the City for City Attorney fees and costs associated with the review of the proposed project and any other related documentation.

The applicant and owner, and their successors in interest shall be fully responsible for knowing and complying with all conditions of approval, including making known the conditions to City staff for future governmental permits or actions on the project site.

6. The applicant and applicant's successors in interest shall be responsible for payment of all applicable fees along with reimbursement for all City expense in ensuring compliance with these conditions.
7. The project shall meet all water quality requirements.

COASTAL COMMISSION 8. A grading permit shall be obtained prior to any work including demolition activities.

EXHIBIT # 1 9. An Encroachment Permit shall be obtained prior to any work within the City Right-of-Way.
PAGE 7 OF 13

10. New curb and gutter shall be installed along the entire frontage of the property. Transitions to existing curb and gutter shall be made beyond the property line extensions of the subject property.
11. All concrete shall be removed from the parkway (area between the sidewalk and the curb) with the exception of the driveway apron. The parkway shall be landscaped per the approved Landscape Plan and to the satisfaction of the City Engineer.
12. All sidewalks shall be removed and replaced along the entire frontage of the subject property.
13. The applicant shall exercise special care during the construction phase of this project to prevent any off-site siltation. The applicant shall provide erosion control measures of a type, size and location as approved by the Director of Public Works. The erosion control measures shall be shown and specified on the grading plan and shall be constructed to the satisfaction of the Director of Public Works prior to the start of any other grading operations. Prior to the removal of any erosion control devices so constructed, the area served shall be protected by additional drainage facilities, slope erosion control measures and other methods as may be required by the Director of Public Works. The applicant shall maintain the erosion control devices until the Director of Public Works approves of the removal of said facilities.
14. All existing, "historic" sidewalk and/or curbs (defined as those containing an original date or other stamp) shall be identified (using construction tape or similar) and protected-in-place until direction is received from the Planning Division regarding appropriate preservation and/or transfer to another locale.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 8 OF 13

B. Prior to Issuance of a Grading Permit

15. The applicant shall submit a final landscape and irrigation plan for review and approval by both the Public Works/Engineering Department and the Planning and Building/Safety Divisions. The plan shall be prepared by a State licensed landscape architect and shall include all proposed and existing plant materials (location, type, size, quantity), an irrigation plan (if irrigation utilized), note wall/fence locations, a grading plan, an approved site plan and a copy of the entitlement conditions of approval. The plan shall be in substantial compliance with the applicable provisions of the Zoning Code, the preliminary plan approved by the Planning Commission and further, recognize the principles of drought tolerant landscaping and shall incorporate the use of landscape materials to screen retaining walls as deemed necessary by the Community Development Department. Landscaping shall be maintained and installed so as to ensure that, during growing stages as well as at maturity, the landscaping will not obstruct public views along the coast. The plan shall be in substantial compliance with the applicable provisions of the Zoning Code, the preliminary plan approved by the Planning Commission and further, recognize the principles of drought tolerant landscaping - notably within the bluff edge setback - and provide specific notation that no irrigation (temporary or otherwise) shall be permitted seaward of the required property's front yard setback.
16. The applicant shall execute the City's standard deed restriction or, if prepared by the owner(s), shall be submitted for review and approval by both the Planning Division and the City Attorney. The deed restriction shall stipulate the following:
 - *That the applicant understands that the subject site is subject to bluff retreat and that the owner(s) assumes the liability from these hazards;*
 - *That the owner(s) unconditionally waive any claim of liability on the part of the City or any other public agency from any damage from such hazards;*
 - *That the owner(s) assume all liability for damages incurred as a result of any required off-site grading.*

The deed restriction shall be recorded, free of prior liens, to bind the owner(s) and any successors in interest or otherwise recorded to the satisfaction of the City Attorney.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 9 OF 13

17. The applicant shall submit a grading plan, in compliance with City standards, for review and approval by the Director of Public Works. The applicant shall include all plans and documents in their submittal as required by the current Public Works Department's plan check policies, City of Dana Point Municipal Code and the City of Dana Point Grading Manual and City's Municipal Separate Storm Sewer Systems (MS4s) Permit requirements.
18. The applicant shall submit a geotechnical report in compliance with all the City of Dana Point standards for review and approval.

C. Prior to Building Plan Check Submittal and/or prior to Issuance of a Building Permit or release on certain related inspections:

19. Prior to commencement of framing, the applicant shall submit a foundation certification, by survey that the structure will be constructed in compliance with the dimensions shown on plans approved by the Planning Commission, including finish floor elevations and setbacks to property lines included as part of DISCRETIONARY ACTION NUMBER(S). The City's standard "Line & Grade Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval.
20. Prior to release of the roof sheathing inspection, the applicant shall certify by a survey or other appropriate method that the height of the structure is in compliance with plans approved by the Planning Commission and the structure heights included as part of DISCRETIONARY ACTION NUMBER(S). The City's standard "Height Certification" form shall be prepared by a licensed civil engineer/surveyor and be delivered to the City of Dana Point Building and Planning Divisions for review and approval before release of final roof sheathing is granted.
21. The applicant shall obtain a grading permit and complete rough grading (establishment of building pads) in accordance with the approved grading plans and reports.
22. The applicant shall submit a rough grade certification for review and approval by the City Engineer by separate submittal. The rough grade certification by the civil engineer (along with the City's standard Civil Engineer's Certification Form for Rough Grading) shall approve the grading as being substantially completed in conformance with the approved grading plan and shall document all pad grades to the nearest 0.1-feet to the satisfaction of the City Engineer the Director of Community Development. The civil engineer and/or surveyor shall specifically certify that the elevation of the graded pad is in compliance with the vertical (grade) position approved for the project.

COASTAL COMMISSION

EXHIBIT #

PAGE 10 OF 13

23. An as graded geotechnical report shall be prepared by the project geotechnical consultant following grading of the subject site. The report should include the results of all field density testing, depth of reprocessing and recompaction, as well as a map depicting the limits of grading. Locations of all density testing, restricted use zones, settlement monuments, and geologic conditions exposed during grading. The report should include conclusions and recommendations regarding applicable setbacks, foundation recommendations, erosion control and any other relevant geotechnical aspects of the site. The report shall state that grading of the site, including associated appurtenances, as being completed in conformance with the recommendations of the preliminary geotechnical report.
24. Building plan check submittal shall include two sets of the following construction documents:
 - *Building Plans*
 - *Energy calculations*
 - *Structural Calculations*
 - *Soils/Geology Report*
 - *Drainage Plan*
25. All documents prepared by a professional shall be wet-stamped and signed.

D. Prior to issuance of a Certificate of Occupancy

26. All landscaping within the front-yard of the subject project (as illustrated on the submitted Final Landscaping Plan) shall be installed.
27. Prior to issuance of a Certificate of Occupancy, the applicant shall ensure that, at a minimum, the front-yard of the subject property has been planted in accordance with the approved, Final Landscaping Plan.
28. A Final Geotechnical Report shall be prepared by the project geotechnical consultant in accordance with the City of Dana Point Grading Manual.

COASTAL COMMISSION

A written approval by the Geotechnical Engineer of Record approving the grading as being in conformance with the approved grading plan from a geotechnical standpoint.

EXHIBIT #

1

PAGE 11 OF 13

30. A written approval by the Civil Engineer of Record approving the grading as being in conformance with the approved grading plan and which specifically approves construction of line and grade for all engineered drainage devices and retaining walls.
31. All work in the right-of-way shall be completed in conformance with the Encroachment Permit conditions to the satisfaction of the City Engineer.
32. An As-Built Grading Plan shall be prepared by the Civil Engineer of Record.
33. All landscaping and irrigation shall be installed per the approved final landscape and irrigation plan. A State licensed landscape architect shall certify that all plant and irrigation materials have been installed in accordance with the specifications of the final plan and shall submit said certification in writing to the Director of Community Development.
34. The applicant shall schedule a final inspection with the Community Development Department at the site that shall include a review of, among other things, landscaping, finish architecture/materials, approved through discretionary action, and compliance with any outstanding project conditions of approval.
35. All permanent BMP's shall be installed and approved by either the project Landscape Architect or the Civil Engineer of Record.

COASTAL COMMISSION

EXHIBIT # 1
PAGE 12 OF 13


PASSED, APPROVED, AND ADOPTED at a regular meeting of the
Planning Commission of the City of Dana Point, California, held on this 7th day of
November, 2011 by the following vote, to wit:

AYES: Claus, Denton, Newkirk, O'Connor, Preziosi

NOES: None

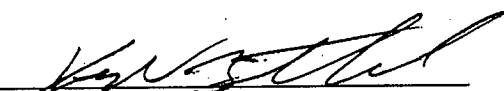
ABSENT: None

ABSTAIN: None



April O'Connor, Chairwoman
Planning Commission

ATTEST:



Kyle Butterwick, Director
Community Development Department

COASTAL COMMISSION

EXHIBIT # 1
PAGE 13 OF 13

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

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South Coast Region

DEC 12 2011

CALIFORNIA
COASTAL COMMISSION

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: _____

Appellant or Agent

Date: _____

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

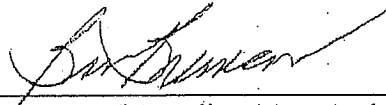
COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 2

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date:

12/12/2011

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

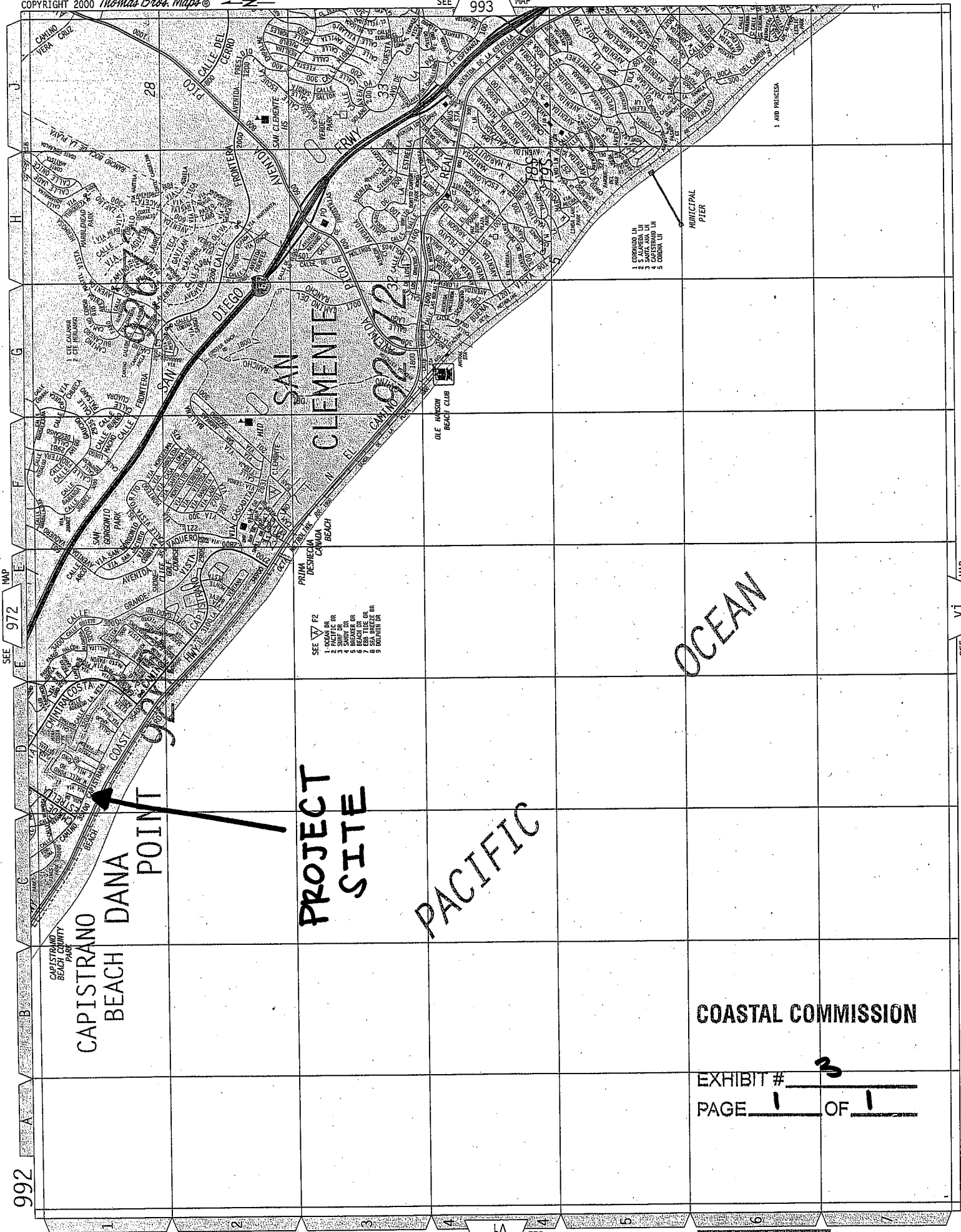
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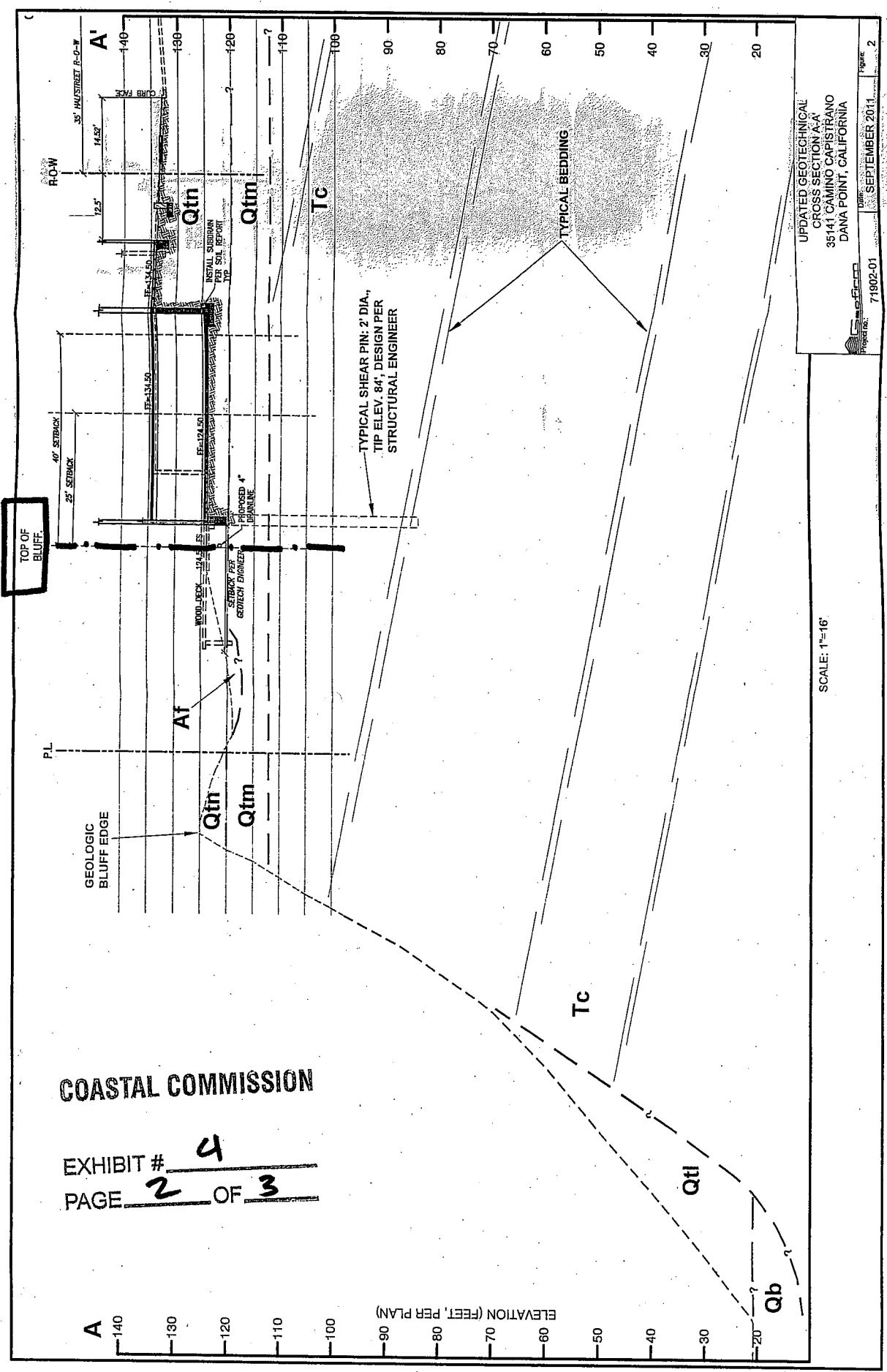
COASTAL COMMISSION

EXHIBIT # 2
PAGE 2 OF 2

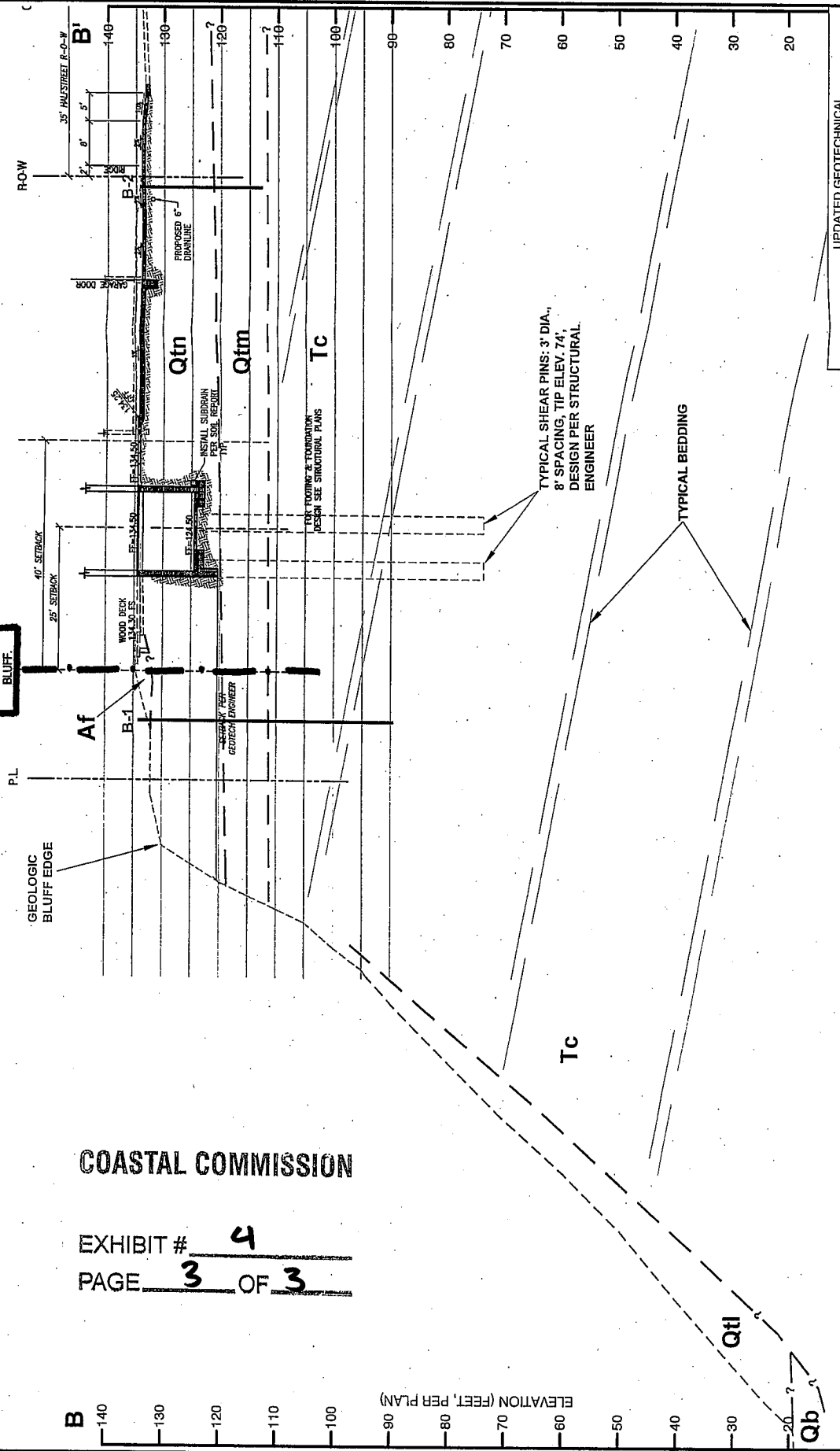


COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 1



TOP OF BLUFF



COASTAL COMMISSION

EXHIBIT # 4
PAGE 3 OF 3

UPDATED GEOTECHNICAL
CROSS SECTION B-B
35141 CAMINO CAPISTRANO
DANA POINT, CALIFORNIA
DATE: 7/19/02-01
SEPTEMBER 2011
Figure 3

SCALE: 1"=16'