

CALIFORNIA COASTAL COMMISSION

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F8a

April 11, 2012

**ADDENDUM****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: SOUTH COAST DISTRICT STAFF****SUBJECT: ADDENDUM FOR ITEM F8A, APPEAL NO. A-5-LGB-12-067, FOR THE COMMISSION MEETING OF APRIL 13, 2012****I. CHANGES TO STAFF REPORT**

Staff recommends the Commission make the following changes to the staff report, designed to clarify issues raised by the applicant's letters of March 14th and April 9th, 2012. Additions are marked in **bold underline text**. Deletions are marked in ~~strike through text~~.

A. Exhibits

Modify the first section of Page 3 of the staff report as follows.

Exhibits

1. Appeal by Commissioners Brian Brennan and Mark Stone
2. Demolition Plans
3. Project Plans
4. **March 14th Letter from Applicant's representatives**
5. **April 9th Letter from Applicant's representatives**
6. **Laguna Beach City Council Resolution No. 88.84**

A. Wave Hazards

1. Modify page 12 of the staff report as follows:

...projects incorporating the construction of shoreline protective devices. Although the applicant interprets shoreline construction narrowly, the term shoreline construction would include construction adjacent to the ocean on beachfront lots.

The Guidelines for Shoreline Protection were incorporated into the City's Certified Land Use Plan by LUP Amendment 1-92. City of Laguna Beach Resolution Number 88.84 (Exhibit 6) adopted the policies regarding shoreline protective

devices as part of the Open Space and Conservation Element portion of the City's certified Land Use Plan.

Section 1.5 of the Open Space and Conservation Element states:

TOPIC 1.5 SEAWALLS AND OTHER SHORE PROTECTION DEVICES

BACKGROUND: In recognition of the complex nature of shoreline protection needs, the Laguna Beach City Council commissioned a special study that examined the characteristics of the local beach sand resource and formulated policies for the evaluation of shoreline protective devices. This study, entitled Guidelines for Shoreline Protection, was adopted by a resolution of the City Council and serves as the technical background and identifies issues for the following policies that specifically address shoreline projects. Any development applications, including grading projects, that are subject to discretionary review shall be reviewed for consistency with these policies. (emphasis added)

The OSCE states that development applications shall be reviewed for consistency with the shoreline protection policies. The City's file does not show evidence that the City has considered impacts to the shoreline environment. Therefore, the project as approved by the City raises an issue as to consistency with policy 1.5Q of the OSCE.

The applicant states that there is no potential risk to public access since no shoreline protective device is proposed, and that the project approved by the City would not result in any added potential for a shoreline protective device when compared to the existing single family residence. Although there is no shoreline protective device at the site currently, there has been no analysis of whether a shoreline protective device will be necessary at the subject site within the lifetime of the structure. Without consideration of whether a shoreline protective device will be required, it cannot be determined whether the proposed development will have negative impacts on use of the narrow sandy beach located seaward of the subject site. **The proposed project would result in the demolition of all interior walls, much of the accessory development on the seaward face of the residence, and would result in significant alterations to the exterior of the structure. The project approved by the City would result in a significant extension of the lifetime of the residence. There is no evidence in the City's file that shows that the City has analyzed whether the current, existing residence, or the development approved by the City would be subject to wave hazards within the lifetime of the structure.** There is minimal available area on the site to allow the construction of a shoreline protective device; thus if a shoreline protective device were required such a **private structure may be proposed** ~~would likely need to be placed~~ on the public beach, resulting in a reduction in the area of beach access for public use and an impact to scenic views along the coast.

2. Insert the attached document, City of Laguna Beach Resolution 88.84, as Exhibit 6 to the staff report.

B. Nonconforming Development

1. Insert the following between the third and fourth paragraphs on page 15 of the staff report as follows.

...Therefore, the project would both: a) remove over 50% of the exterior walls in the nonconforming portion of the residence, and b) result in the removal of substantial amounts of structural support for the existing residence.

The applicant states that the structural integrity of the concrete block structure is maintained by concrete block walls, steel beams, and wood framing, and that the demolition proposed to the exterior walls of the residence would not compromise the integrity of the structure. However, there is not sufficient information present in the City's file to substantiate such a claim. The City's file did not include a specific analysis of the effects of demolition on the structural integrity of the residence, and the submitted plans do not include foundation plans to show that the proposed demolition would not result in elimination of the structural support for the residence.

Therefore, regardless of whether the City used the Certified version of 25.56.009....

2. Modify the second and third paragraphs of page 17 of the staff report as follows.

The project approved by the City would result in the demolition of exterior walls on the seaward face of the residence, and construction of an addition on the ground floor of the residence which would extend the residence further seaward. Areas where walls are being demolished and replaced and the area of new addition to the structure would be located beyond the building stringline, increasing the degree of the existing nonconformity. The City ~~has identified~~ **states** in the staff report for the project ~~its approval~~:

"The existing structure is constructed beyond both the deck and building stringlines. The new second level decks (converted from living) and ground level additions also encroach beyond the applicable stringlines. The Board may approve such encroachments when it is determined that unique conditions relating to landform, orientation, or excessive building setbacks on adjacent property prevent or severely restrict development that otherwise would meet the intent of the zoning code."

Therefore, the City states that the proposed development encroaches beyond the appropriate stringlines. However, the City's **approval** did not require the development to comply with the stringline requirements, even though the LCP states **in section 25.50.004 that** "no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline."

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Section 25.50.004 (B) (4) (b) (ii) states that a modification ~~(i.e. a variance)~~ **to the building stringline** may only be granted when the design review board determines: a) the stringline is significantly more restrictive than the twenty five foot setback, and b) unique conditions relating to landform, lot orientation or excessive building setbacks on an adjacent property prevent or severely restrict residential development that would otherwise be consistent with the zoning code. ~~The City appears to have issued a variance for the approved development.~~ However, the City's file does not include evidence that the City considered all of the necessary requirements in order to recommend approval of a ~~variance~~ **modification to the stringline requirement**. Specifically, neither the City's record received by the Commission, the staff report, the minutes from the hearings, nor the City's resolution show that the City made findings that the stringline is significantly more restrictive than a blufftop setback (which does not exist on the subject site) or how the unique conditions on the site would severely restrict residential development on the site in compliance with the stringline provision. In contrast, given the extent of demolition of the existing residence, it appears that the applicant could have pulled back the structure consistent with building stringline requirements.

Therefore, the City appears to have approved development located beyond the stringline without making findings which are necessary in order to modify the stringline setback requirement. Without evidence that adequate consideration was given to the requirements of a variance for stringline requirements, it cannot be assured that the stringline was appropriately applied to the project approved by the City. Therefore, the project approved by the City raises a substantial issue as to consistency with the building stringline provisions of the City's Certified LCP.

3. Modify the second paragraph of page 18 of the staff report as follows.

The Staff Report written by the City for the January 26, 2012 hearing states: "The new second level decks (converted from living) and ground level additions also encroach beyond the applicable stringlines." The project approved by the City includes the demolition of exterior walls on the second and third stories to create new second and third story decks located beyond the deck stringline, and also includes ground level additions located beyond the deck stringline including: a new spa, landscaping, planter, outdoor bench, and outdoor shower. **The applicant states: "The existing patio's seaward contours are not extended and the other existing rear yard accessories (spa, stairs, landscaping, and shower) will be updated in generally the same locations, resulting in improved views for neighboring properties. There is also no new 'wood deck,'..."** Although the applicant describes the proposed development on the seaward side of the residence as an update, the demolition and site plans show that **existing structures located on the seaward side of the residence would be removed and replaced. Site Plan A-1, number 17 denotes that a "wood deck on grade" is proposed just landward of the existing retaining wall at the seaward property line. The development approved by the City would result in the removal of the old accessory development, and installation of new accessory development located**

beyond the accessory stringline inconsistent with the pattern of accessory development on upcoast properties. This new accessory development....

C. Response to Applicant's Letter

1. Insert the following as Section 3.5 Response to Applicant's Letter, just before Section 4, on page 19 of the staff report.

3.5 Additional Response to Applicant's Letter (Issues not Previously Addressed)

The applicant's representatives state that other projects which were not appealed by the Commission show that the issues of wave hazards, shoreline protective devices, and substantial demolition of structure are new issues that were not previously raised. However, the issues of wave hazards and conformance with current standards are not new; rather, the Commission has considered these matters numerous times in the City of Laguna Beach.

The Applicant's representatives cite 15 projects consisting of remodels which were not appealed by the Commission as evidence that the issues of wave runup and substantial demolition were not previously considered by the Commission. Although sufficient time has not been available to review the complete history of the projects cited by the applicant, it is important to note that the projects listed by the applicants do include projects which are not comparable to the project at 24 Lagunita. The projects cited by the applicant include: the addition of a pool and pool storage structure on the landward portion of the lot with existing residential structures located on the bluff face which were not proposed to be altered(11-30), and site improvements to an existing residence and retaining walls, landscaping, and grading on an existing patio on a small oceanfront lot(CDP 10-54). The projects cited also include the reconstruction of a fire damaged residence which was appealed by the Commission (CDP 10-49, discussed below). Therefore, further study is likely necessary to determine whether Coastal Development Permits cited by the applicant are comparable to the subject project.

The applicant's representatives state that the requirement for a wave uprush study is not supported by precedent since the Commission found that although no wave uprush study was performed, an appeal of a beachfront residence at 18 Lagunita did not raise a substantial issue. The project at 18 Lagunita consisted of construction of a 6,837 square foot single family residence, 653 square foot attached three-car garage and 321 square feet of mechanical/storage area.

When the Commission receives a Notice of Final Action, it looks at the specific circumstances of the case to determine whether an appeal of the project is warranted. In order to ensure that the Commission's time is efficiently spent, in addition to assessing whether the project is consistent with the City's LCP, the

Commission looks at the information which is available, and the coastal resources which will be impacted by the project. Although the project at 18 Lagunita was located on a beachfront lot, the project involved the landward movement of the seaward face of the residence, rather than seaward encroachment. Based on an analysis of the circumstances of the project, the Commission did not file an appeal.

Appeal Number A-5-LGB-11-134 was filed by Northwood Investors, LLC for the project at 18 Lagunita. Grounds raised by the appeal included that the project was inconsistent with Coastal Act Section 30212 because a) the City processed the project as new development; b) that the proposed development would result in significant landform alteration; c) that the proposed development exceeds maximum allowable lot coverage; d) that the proposed development does not comply with hillside development guidelines in the LCP; e) that story poles were not placed on the property; and f) that the Community Development Department did not approve changes to the project.

Pursuant to Section 30625(b)(2) of the Coastal Act, the Commission shall hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. The appellant's grounds raised in appeal No. A-5-LGB-11-134 included the allegations listed in the paragraph above, and not impacts from wave hazards on the site. Thus, the Commission found that the appellant did not allege a substantial issue with respect to the grounds on which the appeal was filed and it did not hear the appeal. Therefore, there is no adverse precedent regarding the requirement for consideration of environmental hazards posed by wave runup for the subject site.

The applicant's representatives state that the Staff Report includes a new test of looking at the extent of structural alterations to determine whether a project should be brought into conformance with current standards. The question of whether a project qualifies as a remodel of an existing structure or as the demolition and reconstruction of a residence has been considered by the Commission multiple times within Areas of Deferred Certification in the City of Laguna Beach. Although the City has approved projects as additions to existing structures, the Commission has found that these projects instead constitute demolition and construction of a new structure due to removal of substantial portions of the structure (for example, see Permit No. 5-10-031 (Paicius), 5-09-208 (De La Pena), 5-11-212(Morgan)). Through consideration of these projects, the Commission has come to look more carefully at how the City has interpreted the requirements of the LCP regarding conformance with current standards.

Contrary to the contentions raised by the applicant, the Commission has appealed decisions of the City based on grounds of wave hazards and demolition of existing structures. Appeal No. A-5-LGB-10-262 was filed by Commissioners Wan and Shallenberger for the construction of a new residence located beyond the oceanfront setback by the Commission. The appellant's contentions included: a)approval of

the project as an addition rather than new development, b) inconsistency of proposed development with oceanfront setback line, and c) lack of analysis of wave hazards and impacts to public access. Although the appeal was withdrawn due to an issue regarding the timeliness of the appeal, Commission staff informed the applicant and the City via letter on December 6, 2010 of the hazards posed by wave uprush and the necessity for wave uprush studies. Appeal number A-5-LGB-10-296 was filed by Commissioners Esther Sanchez and Mary Shallenberger regarding the decision of the City of Laguna Beach to approve the reconstruction of a fire damaged residence with an addition of greater than 10 percent of the existing floor area. Contentions raised in the appeal included, among others: a) no analysis of effects of wave uprush or need for future shoreline protection, b) visual impacts, and c) compatibility of accessory structures with stringlines. Through working together with Commission staff, the applicant performed a study of wave hazards at the site, modified the project to address concerns raised in the appeal, and received City approval for a modified Coastal Development Permit which included conditions designed to ensure that wave hazards would not impact the public beach seaward of the site.

II. EX-PARTE DECLARATIONS

Please find attached Ex-Parte Declarations from Commissioner Mark Stone and Commissioner Jana Zimmer

III. LETTER FROM APPLICANT'S REPRESENTATIVES

Staff recommends that the attached letter from the applicant's representative dated April 9, 2012 be included as Exhibit 5 to the staff report.

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS**

Name or description of project, LCP, etc.: F 8a Appeal No: A-5-LGB-12-67
(Retner, Orange Co.)

Date and time of receipt of communication: 4/2/12 2:30 pm

Location of communication: Board of Supervisor's Office, Santa Cruz, CA


Type of communication: telephone conference

Person(s) initiating communication: Susan McCabe
Rick Zbur
Anne Blemker
Benjamin Hamlin

Person(s) receiving communication: Mark Stone

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

They went over some slides (previously given to staff) that show the site and the existing house alongside what is proposed. They feel that staff is using the wrong interpretation of the LCP by applying a standard that may be in a future certified LCP but is not the standard today. Their calculations show that the development, based on floor area would be below the 50% threshold and so would not require the development to come into conformance with the string line for development on this site. Though the graphic representation of the remodeled house shows some major structural changes, they feel that there is not enough of the house that is actually changing. They said that changing out windows does not constitute structural changes. There was a lot of material in the slides that was not relevant to the discussion of the percentage change in question and we did not discuss that material.

Date: 4/3/12 Signature of Commissioner: 

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred within seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used; such as facsimile,

Del Arroz, John@Coastal

From: Sarb, Sherilyn@Coastal
Sent: Monday, April 09, 2012 4:35 PM
To: Del Arroz, John@Coastal
Subject: FW: ex parte rather F8a

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Rather F8a

Date and time of receipt of communication: 10:00-10:30 April 9, 2012

Location of communication: Santa
Barbara _____

Type of communication (letter, facsimile, etc.):
telecon _____

Person(s) initiating communication: Susan McCabe, Rick Z'bur

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

McCabe and Z'Bur reviewed applicants' briefing materials. This is a full remodel of an existing house. Applicant is caught between City and CCC as to whether remodel should be treated as new development and therefore must be located landward of stringline. The existing home is nonconforming as it is partially seaward of the stringline. Stringline is determined in this area by houses on either side, residence to residence.

Applicant agrees that Section 25.50.004(B) cited in the staff report states the general rule for all additions, structures and improvements, and prohibits them seaward of stringline, but states that is not applicable here because Sections 25.56.008 and 009 provide exceptions which allow nonconformities to remain (and be rebuilt) where the renovated or new areas are less than 50%. Applicant differs with staff on calculation of new square footage because the City has always applied and interpreted this to apply to floor area, and not interior or exterior wall area.

Applicant's position is that staff is attempting to write a new test through an appeal rather than through amendment of the LCP. Applicant states that the City's historic interpretation, lack of prior appeals, as well as the submittal and subsequent withdrawal an LCP amendment which would have tightened up the standard are evidence for the Commission to consider in interpreting the LCP.

Applicant states that there is no requirement in the LCP for a wave run up study as applied to this property, as it is not in a hazard zone.

Applicant urged that the Commission accept the City's interpretation of the LCP and find no substantial issue.

[original forwarded by Jana Zimmer]

Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

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LATHAM & WATKINS LLP

April 9, 2012

VIA EMAIL AND FEDERAL EXPRESS

Chairperson Shallenberger and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

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Agenda Item F8a

Re: Remodel at 24 Lagunita Drive, Laguna Beach; Commission Appeal No. A-5-LGB-12-067

Dear Chairperson Shallenberger and Honorable Commissioners:

We are writing on behalf of our clients, Bruce Ratner and Pamela Lipkin, regarding the proposed remodel of their home at 24 Lagunita Drive in Laguna Beach. On January 26, 2012, the Design Review Board for the City of Laguna Beach approved a CDP for this remodel. Appealed on February 28, 2012, the Commission is scheduled to decide if the remodel raises substantial issues under the City's certified LCP at its April 13, 2012 meeting. We respectfully submit that the appeal does not raise any substantial issues and that it should be rejected.

The appeal is premised on the incorrect assertion that the remodel of a home within its existing footprint is new development and, therefore, that approximately 30% of the home must be demolished to meet current design standards. The appeal relies on a new test that is not in the LCP, a test that focuses on changes to interior walls to determine when a remodel must be treated as new development. The law is clear: "[t]he only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act's access policies." (*Kaczorowski v. Mendocino County Bd. of Supervisors* (2001) 88 Cal.App.4th 564.) This remodel unquestionably conforms with the certified LCP.

The City's certified LCP has clear tests to determine when a remodel must be treated as new development. The tests utilized by Laguna Beach in implementing its certified LCP over many years include reviewing whether the home's floor area increases by more than 50% and whether more than 50% of nonconforming portions of the house are modified. The City has confirmed that this remodel triggers neither of these tests (Tab 1) and the appeal raises no facts that refute the conclusion that the City's application of its LCP was correct. There is no substantial issue because the appeal's standard for when a remodel is new development (i.e., "significant amounts of demolition of interior and exterior walls") is not in the certified LCP.

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Unfortunately, the appeal blurs the line between the rules that apply to remodels under the certified LCP and what Coastal Commission staff wants the City to adopt as its certified LCP in the future. In fact, the City proposed a new standard for when remodels would be reviewed as new development, and the Commission was scheduled to consider it this month. However, the City withdrew the amendment in response to Coastal Commission staff's requests that changes to interior walls trigger review of remodels as new development. We understand the City intends to continue working with Coastal Commission staff to resolve policy issues related to remodels, but the point remains—the standard articulated in the appeal is not in the certified LCP.

The appeal also incorrectly asserts that there are substantial issues under the certified LCP's policies regarding wave run-up studies. First, the City does not require wave run-up studies for remodels unless a new shoreline protection device is proposed. Second, the certified LCP requires wave run-up studies only for new shoreline protection devices and for new development (not remodels) in FEMA-designated high risk flood zones.¹ Because this is not new development, the home is not in a high risk flood zone, and no shoreline protection device is proposed, it is clear that no wave run-up study is required and there are no substantial issues.

This appeal marks an inexplicable departure from years of precedent. A review of all City-issued CDPs for oceanfront remodels since 2006, the year that files are readily available, shows that not one has been appealed by the Coastal Commission and that this is the first appearance of the "significant alterations" test. Attached at Tab 2 are before and after pictures of remodels to nonconforming beachfront homes that were not required to be demolished and were not appealed by the Coastal Commission. Sixteen CDPs for remodels of nonconforming oceanfront homes without wave run-up studies were found. Not one was appealed.

Consistent with this long line of precedent, this remodel raises no substantial issues under the certified LCP, and we respectfully request that the Commission find the same.

The Appeal Raises No Substantial Issues

Rather than focus on the clear tests in the LCP for when a nonconforming structure must be brought into conformance or when a wave run-up study is required, the appeal creates new tests and sets forth novel and never before used interpretations of the certified LCP's policies. Namely, the appeal uses a new test that focuses on modifications of interior walls to conclude that the structure potentially must be treated as new development and that approximately 30% of the existing structure on the seaward side must be demolished. Specifically, the standard used in the appeal is that the remodel involves "significant amounts of demolition of interior and exterior walls" and, therefore, is "new development, and should be brought into consistency with all applicable LCP policies." (Appeal, at 3.) This test is not in the LCP, there is no test in the LCP that focuses on interior walls, and the City's certified LCP cannot be amended through an appeal to impose a new standard that is a clear departure from what the City of Laguna Beach has done in the past. (*Security National Guaranty*, 159 Cal.App.4th 402, 422.)

¹ The appeal also raises concerns that a new shoreline protection device could impact public access. This is a red herring. No shoreline protection device is proposed, so there is no potential for impacts to the public beach.

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The Staff Report outlines three issues: (1) whether the remodel requires demolition of the portion of the home extending beyond the stringline (at 12-19); (2) whether a wave run-up study is required (at 9-12); and (3) whether there is an impact on lateral public access (at 19-20). We respectfully submit that the remodel does not raise a substantial issue as to conformity with the certified LCP's policies for remodels, shoreline protection, or public access.

(1) The Nonconforming Portion Of The House Does Not Need To Be Demolished

The LCP contains two clear tests for when a remodel is treated as new development such that a nonconforming portion of a structure must be brought into conformity, which, here, would mean demolishing the portion of the home, approximately 30%, beyond the building stringline.²

First, under the certified LCP, where the "aggregate floor area [of additions] does not exceed 50 percent of the" structure and the additions comply with the LIP, the nonconformity may remain. (LBZC, § 25.56.008.) Here, there are no additions to the nonconforming portion of the existing structure. The structure's basic shape does not change (see Tab 3) and the home's defining features and footprint are not extended any farther seaward (see Tab 4). The relocation of windows to create covered balconies and interior space within the existing footprint reduce the house's size by approximately 105 square feet. The outermost wall of the structure on every floor will be no closer to the ocean than the building's existing footprint is today. The City found that these changes, including the relocation of the ocean facing windows within the building's existing footprint, were "in conformity with all applicable provisions of the General Plan, including the Certified [LCP]..." (Resolution CDP 12-01, at 1.) The appeal raises no facts suggesting that the City's application of its LCP was wrong.

Second, a nonconforming structure may be required to be brought into conformance where "any part of a nonconforming structure is substantially removed or modified in such a way that it compromises" the building's structural integrity. (LBZC, § 25.56.009.) This standard, adopted in 1994, proved largely ineffective in reducing the number of legally nonconforming structures because it applied to the entire structure and the application of proper engineering ensured that no modification would compromise the building's integrity. As a result, the City has historically interpreted this section as requiring a nonconforming portion of a structure to be removed where 50% of the nonconforming floor area was modified. The City codified this standard in 2003, but it now appears that this change was not incorporated into the certified LCP. In any event, under either the 1994 or the 2003 version of Section 25.56.009, the area beyond the stringline does not need to be demolished because only 24% of the floor area beyond the stringline is modified. Further, the remodel capitalizes on the structure's concrete block, steel beam, wood frame construction, and self-supporting exterior walls to continue to provide the building's primary structural support. The appeal cites no facts to the contrary.³

² The Staff Report states (at 17) that the "City appears to have issued a variance for the approved development." No variance was applied for or required. (See LBZC, § 25.56.008(B)(2).)

³ While the project must be judged under the current certified LCP (LBZC, § 25.07.026), it is also not a "major remodel" under the now withdrawn LCP amendment adopted by the City

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Third, under the Staff Report's novel test – which analyzes changes to exterior walls beyond the building's stringline (at 15) and is not in the certified LCP – the remodel modifies only 39% of the structure's exterior wall area beyond the stringline (not over 50% as assumed in the Staff Report). (Tab 5.) The Staff Report (at 15) uses lineal feet (not wall area) and incorrectly includes the replacement of windows to conclude that more than 50% of the exterior walls would be removed.⁴

The Staff Report (at 18) also has erroneous statements about accessory improvements that are being modified. The existing patio's seaward contours are not extended and the other existing rear yard accessories (spa, stairs, landscaping, and shower) will be updated in generally the same locations, resulting in improved views for neighboring properties. There is also no new "wood deck," and the existing seaward retaining wall does not change. (Tab 4 [site plan].)

(2) A Wave Run-Up Study Is Not Required

The City's certified LCP only requires wave run-up studies where: (1) a shoreline protection device is proposed (see *Guidelines for Shoreline Protection*); or (2) development is in a FEMA-designated high risk flood zone (LBZC, § 25.38, *et seq.*). A shoreline protection device is not proposed and the existing home is not in a high risk flood zone. Therefore, the certified LCP did not require a wave run-up study for the remodel. Notably, a CDP for a new house at 18 Lagunita (only six houses north of 24 Lagunita) was appealed by a private party last year. No wave run-up study was done for this new construction, Coastal Commission staff *recommended finding no substantial issue* (Tab 6, at 1), and the appeal was rejected.

The Staff Report (at 10-12) cites a number of policies that it contends require wave run-up studies for remodels, but none of these policies states that a wave run-up study is required for remodels and the City has never interpreted the cited policies as requiring one. For example, Open Space Policy 1.5Q,⁵ which is under Topic 1.5 "Seawall and Other Shore Protection Devices" and on which the Staff Report heavily relies, applies only to shoreline protection devices and not shoreline construction generally. It makes sense that the City has never interpreted this section as applying generally to development because the cited "Guidelines for

Council in 2011. Under that withdrawn amendment, a remodel would have to resolve any nonconformities where, over a three-year period, 50% of the exterior wall area or structural systems were modified or the square footage was increased by 50% or more. This remodel is not a major remodel under these tests. Less than 50% of the structure's wall area is modified, 27% of the roofing system and structural floor systems are modified, and square footage is reduced.

⁴ These windows are not "walls" under the certified LCP because they are clear. "Walls," on the other hand, are defined as "any structure or device forming a physical barrier which is so constructed that fifty percent or more of the vertical surface is closed and prevents the passage of light, air and vision though the surface in a horizontal plain." (LBZC, § 25.08.048.)

⁵ "Any development application for shoreline construction shall be reviewed with respect to the criteria contained in the Guidelines for Shoreline Protection, including the effects on beach encroachment, wave reflection, reduction in seacliff sand contribution, and effects and aesthetic criteria." (Open Space/Conservation Element, Policy 1.5Q.)

COASTAL COMMISSION

EXHIBIT #

PAGE 9 OF 44

LATHAM & WATKINS LLP

Shoreline Protection" deal exclusively with designing shoreline protection devices and remodels within a structure's existing footprint do not increase the risk that a shoreline protection device may be needed in the future. If the Commission wants wave run-up studies to be required for *all* shoreline development, the LCP must be amended. To be clear, the fact the LCP does not require wave run-up studies for remodels makes sense, especially for remodels like this one where the home's footprint does not change, because a remodeled structure faces the same risk as an existing one.

(3) The Remodel Does Not Impact Lateral Public Access

The remodel does not "result in the further seaward encroachment of the residence" that could "result in potentially significant impacts to the public beach as a result of construction of a shoreline protective device" in the future. (Staff Report, at 19.) No shoreline protection device is proposed and the remodel does nothing to increase the likelihood that one may be required in the future. The appeal's claim that a shoreline protection device may be required at some point in the future is not supported by facts and is directly contrary to a position Commission staff took last year in recommending no substantial issue for new construction at 18 Lagunita, which also had not completed a wave run-up study. (Tab 6.)

* * * *

For the foregoing reasons, we respectfully request that you find that this appeal raises no substantial issues. We look forward to discussing these issues with you further.

Very truly yours,

/s/ Rick Zbur
Rick Zbur
of LATHAM & WATKINS LLP

cc: Ms. Sherilyn Sarb, Deputy Director
Ms. Teresa Henry, District Manager
Mr. John Del Arroz, Coastal Commission Staff
Mr. John Montgomery, City of Laguna Beach
Mr. Morris Skenderian
Mr. Sherman Stacey
Mr. Bruce Ratner

LA12571588

COASTAL COMMISSION

Tab 1

COASTAL COMMISSION

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PAGE 6 OF 44

March 14, 2012

Karl Schwing
California Coastal Commission
200 Occangate, 10th Floor
Long Beach, CA 90802-4302



Re: Commission Appeal No. A-5-LGB-12-067 (Laguna Beach CDP No. 11-34)

Dear Mr. Schwing:

I am writing concerning the appeal of City of Laguna Beach Coastal Development Permit No. 11-34, issued for a remodel at 24 Lagunita Drive on January 26, 2012. The City analyzed the proposed remodel against the certified Local Coastal Program and Coastal Act and found that it fully conforms to the certified Local Coastal Program and the public access and public recreation policies of Chapter 3 of the Coastal Act. We do not believe that the appeal raises any substantial issues warranting the Coastal Commission's review.

Appellants state three reasons for the appeal: (i) alleged failure to analyze the remodel for consistency with current stringline requirements; (ii) alleged failure to analyze the effects of wave uprush; and (iii) alleged failure to analyze the need for future shoreline protection and a future shoreline protective device's impacts on public access. The City respectfully submits that the appeal raises no substantial issues under the certified Local Coastal Program of the City of Laguna Beach or the Coastal Act for the following three reasons.

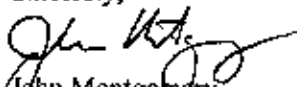
First, under the certified LCP, the portion of the existing house that exceeds the building stringline was not required to be brought into conformance with existing zoning regulations pursuant to Section 25.56.009 of the Laguna Beach Zoning Code. Section 25.56.009 of the Laguna Beach Zoning Code states that a nonconforming portion of an existing structure must be rebuilt in conformance with existing zoning regulations only where "fifty-percent or more of a nonconforming portion of the structure is substantially removed or modified." CDP No. 11-34 does not approve development that would substantially remove or modify fifty-percent or more of the portion of the house that extends beyond the existing building stringline. The City has also reviewed the remodel under its proposed, but not yet certified, definition of "major remodel." (Laguna Beach Ord. No. 1543 [2011].) The remodel is not a "major remodel" under any of these potential future standards.

Second, the City's certified LCP does not require a wave run-up study or hazards analysis for remodels of existing homes, as proposed here. The LCP policies cited in the appeal do not provide otherwise. Where, as here, a remodel merely continues and does not change an existing use (single-family home), and does not subject the existing structure to any greater risk than it currently faces, a wave run-up study would serve no purpose.

Third, the City's certified LCP does not require an analysis of impacts to public access. Again, the LCP policies that the appeal cites do not require otherwise because no development is proposed that would impact public access.

Please do not hesitate to contact me should you wish to discuss this matter further

Sincerely,

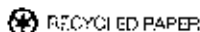

John Montgomery
Director

Community Development

505 FOREST AVE.

LAGUNA BEACH, CA 92651

TEL (949) 497-3311



COASTAL COMMISSION

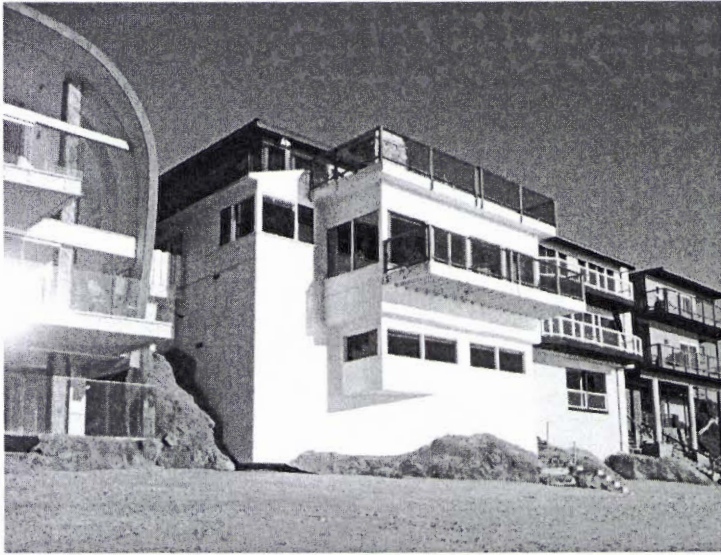
FAX (949) 497-0755
EXHIBIT # 5
PAGE 1 OF 94

Tab 2

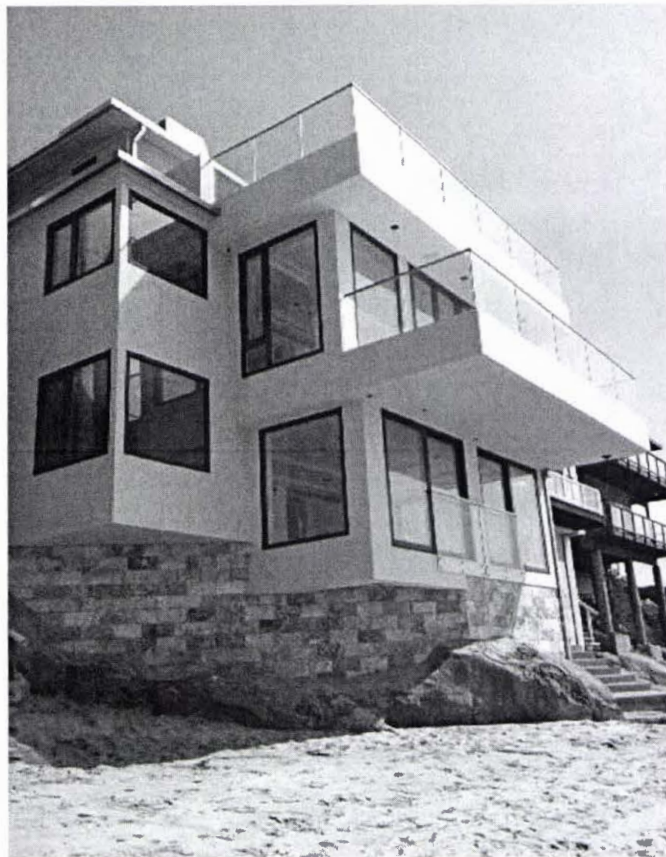
COASTAL COMMISSION

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PAGE 6 OF 44

1275 Ocean Front, Laguna Beach



Before



After

COASTAL COMMISSION

EXHIBIT #

5

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1125 Marine Drive, Laguna Beach



Before



After

ASTAL COMMISSION

EXHIBIT # 5
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1163 Marine Drive, Laguna Beach



Before



During

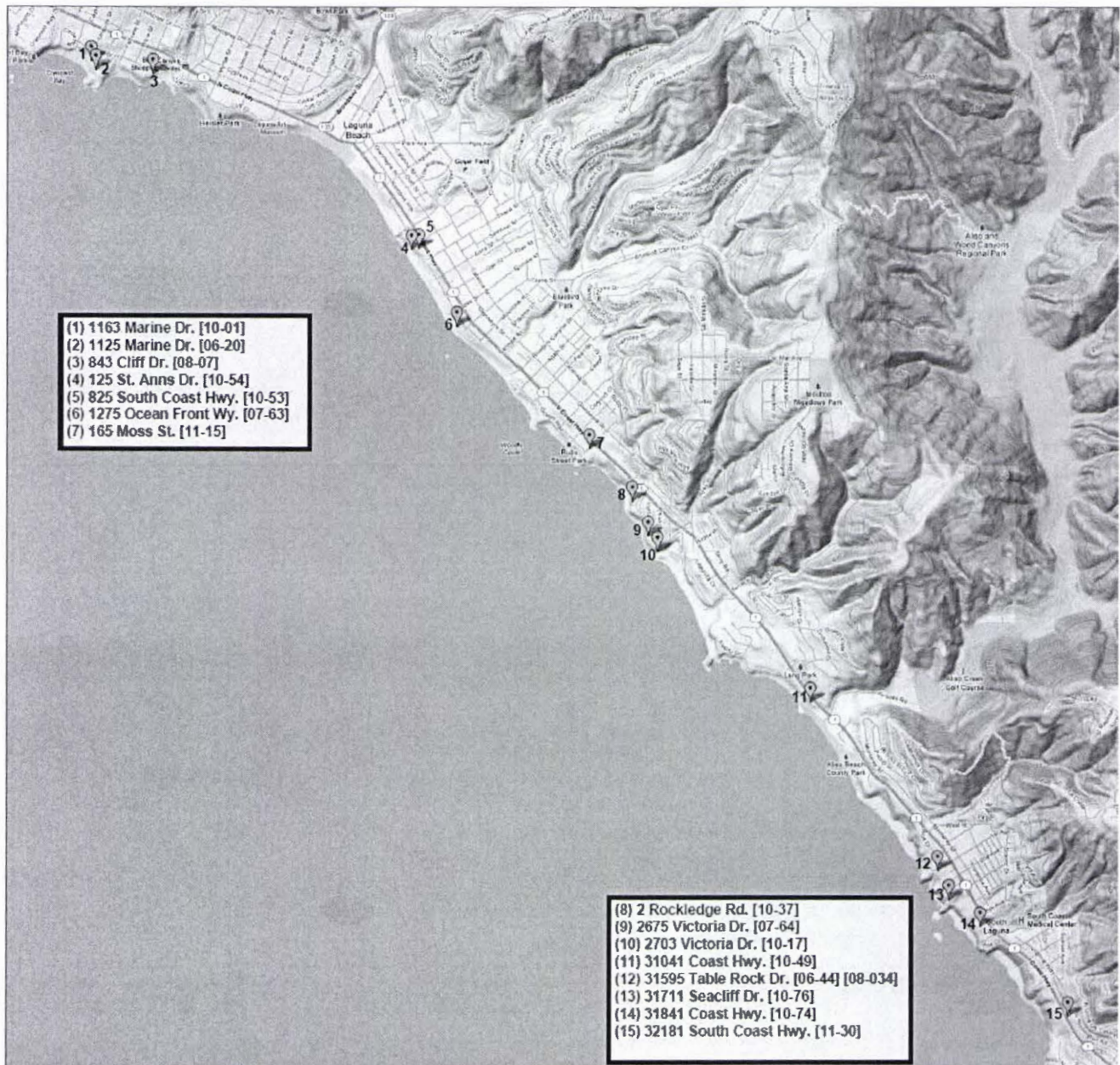


After

COASTAL COMMISSION

EXHIBIT # 5
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An analysis of all CDPs for remodels of beachfront homes issued since 2006 indicates that 16 CDPs were issued for remodels of nonconforming homes. The Commission did not appeal any of these 16 CDPs, nor was a wave run-up study required or performed.



COASTAL COMMISSION

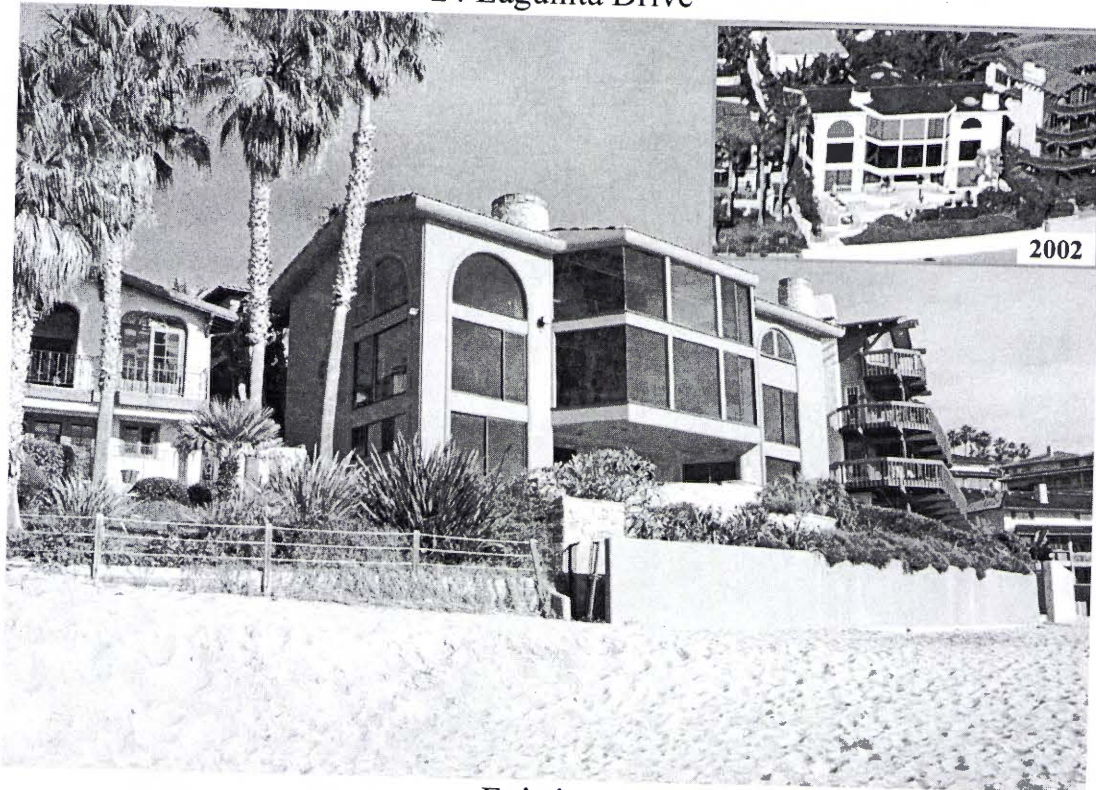
EXHIBIT # 5
 PAGE 12 OF 44

Tab 3

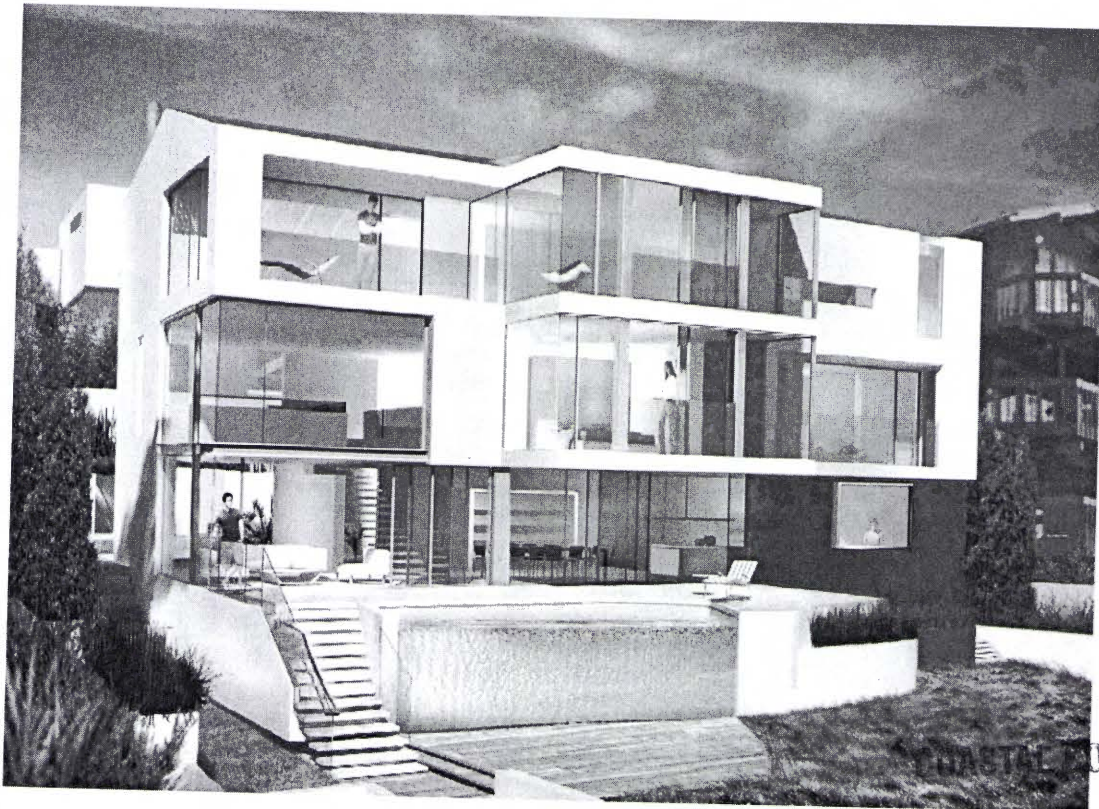
COASTAL COMMISSION

EXHIBIT # 5
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24 Lagunita Drive



Existing



Proposed Remodel

COASTAL COMMISSION

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Tab 4

COASTAL COMMISSION

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COASTAL COMMISSION







EXHIBIT # 5
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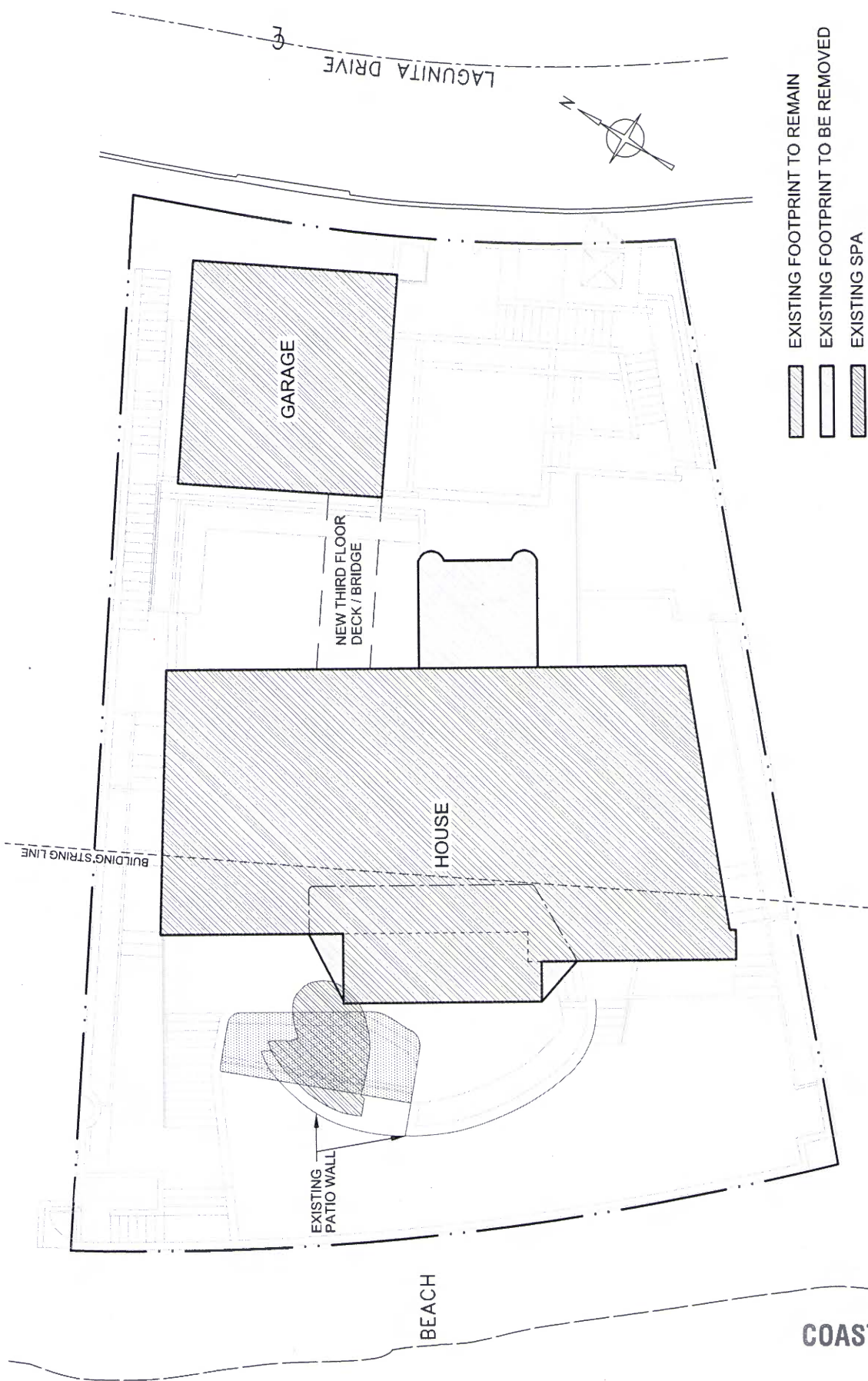
24 LAGUNITA DRIVE SITE PLAN

SCALE: 1/16" = 1'

LEGEND

DATE: 4-6-12

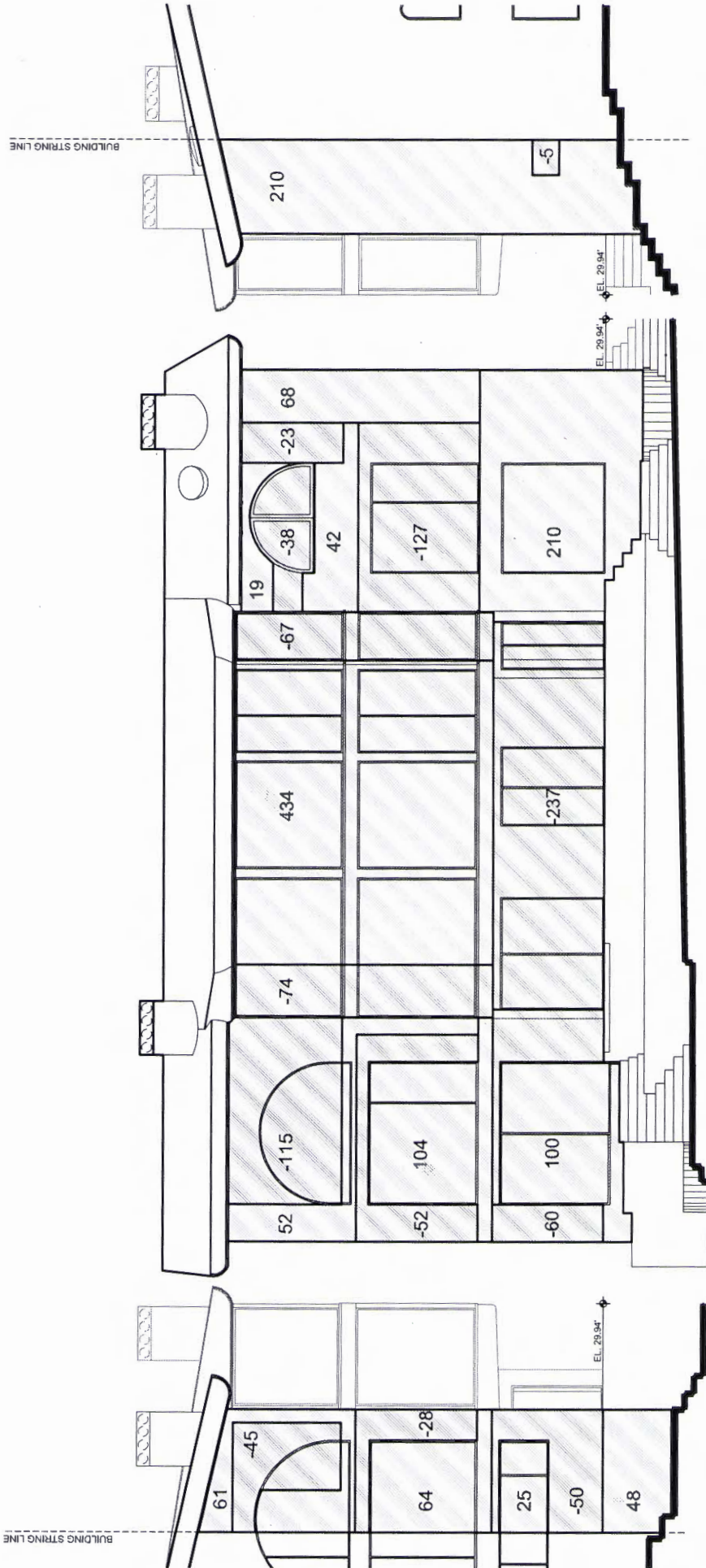
-  EXISTING FOOTPRINT TO REMAIN
-  EXISTING FOOTPRINT TO BE REMOVED
-  EXISTING SPA
-  RECONFIGURED SPA
-  EXISTING GROUND FLOOR WINDOWS
-  RELOCATED GROUND FLOOR WINDOWS WITHIN BUILDING FOOTPRINT



Tab 5

COASTAL COMMISSION

EXHIBIT # 5
PAGE 17 OF 44



SOUTH ELEVATION

WEST ELEVATION

NORTH ELEVATION

	ALL WALLS / GLASS RETAINED = 1437 sq.ft. (61%)
	ALL WALLS / GLASS REMOVED = 921 sq.ft. (39%)
TOTAL ALL AREAS = 2358 sq.ft.	

LEGEND

DATE: 4-5-12

COASTAL COMMISSION
EXHIBIT # 5
PAGE 18 OF 18

LAGUNITA RESIDENCE
24 LAGUNITA DRIVE, LAGUNA BEACH, CA 92651

Tab 6

COASTAL COMMISSION

EXHIBIT # 5
PAGE 14 OF 44

CALIFORNIA COASTAL COMMISSION

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



Th 8a

ADDENDUM

TO: Commissioners and Interested Persons
FROM: South Coast District Staff

Click here to go
to the original staff report.

SUBJECT: Application No. A-5-LGB-11-134 (Mihaylo), Item No. Th8a, Scheduled for hearing on Thursday October 6, 2011, in Huntington Beach.

REVISIONS TO STAFF REPORT

Revise the staff report as follows. Deletions are marked in ~~strike-out text~~. Additions are marked in **bold, underlined text**.

On page 2 of the staff report, modify the last paragraph as follows:

The appellant asserts that because the City processed the proposed project as a new development, as opposed to as an addition to an existing structure, that the development is inconsistent with Coastal Act Section 30212(b)(1-3). The specific inconsistency is not explained by the appellant. Section 30212 subsections (b)(1-3) do not apply to this project because (1) the project is not the replacement of a structure destroyed in a disaster (Section 30212(b)(1)); (2) the demolition of the existing single-family residence and reconstruction of the proposed home will increase the floor area by more than 10 percent as compared to the existing home (Section 30212(b)(2)); and (3) it is a demolition and rebuilt project, thus section 30212(b)(3) does not apply. Therefore, the City was correct by processing this application as a new development since none of the exceptions in section 30212(b) applied to counter such a consideration. Generally, Coastal Act Section 30212 refers to the requirement for public access to be provided in new development. Section 30212, subsection (b)(3) specifically excludes improvements that do not change the intensity of use of the site. The site is presently developed with a single family residence (though, partly demolished). The new development is a new single family residence with the same parking requirements for a single family residential use. No change to the intensity of use of the site ~~has~~ will occur as a result of the proposed new development. The proposed project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed replacement of a single family residence on an existing residential lot will not affect the existing public access conditions. It is the locked gate nature of the community that is the primary impediment to public access. Thus, there is no inconsistency with Section 30212 of the Coastal Act.

On page 3 of the staff report, modify the first paragraph of Section 2, Landform Alteration as follows:

The appellant asserts the proposed project will result in significant landform alteration and grading that will impact the geologic safety of an adjacent residence. The appellant also suggests the home design isn't compatible with those in the area. The appellant doesn't cite inconsistent with any specific LCP policy, however, relevant policies include Land Use Element Policy 12-D, and Open Space Conservation Element Policies 4g, 7a, and 7k. The proposed development is located on an oceanfront lot, on top of a sandy slope which descends to a sandy beach. The grading cited by the appellant is in conjunction with construction of a basement, which are common in newer homes in Laguna Beach. Grading for the basement would occur below the lower floor of the existing

COASTAL COMMISSION

5
44

ADDENDUM
A-5-LGB-11-134 (Mihaylo),
Page 2

residence; however the grading would not result in development located lower on the face of the natural landform. The amount of grading associated with this basement is also typical. The proposed project would result in the landward movement of the seaward face of the residence. Additionally, whereas the existing development has a flat façade, the proposed project includes articulation, which reduces the mass and bulk of the development. Therefore, the development would result in improved visual characteristics at the subject site.

On page 4 of the staff report, modify Section 4, Hillside Development Guidelines as follows:

4. Hillside Development Guidelines

The appellant asserts the proposed development isn't consistent with the City's provisions regarding hillside development. The Design Guidelines for Hillside Development contain criteria used during the Design Review process to alleviate visual impacts associated with new development. The proposed project incorporates articulation and would break up the mass of the development and is therefore consistent with the Guidelines for Hillside Development. ~~The hillside development guidelines are intended to restrict development located on the steep hillsides of Laguna Beach, rather than the subject oceanfront property. Of the Open Space and Conservation Element policies related to hillside development~~ Hillside Guidelines cited by the appellant, the project is consistent with alteration to natural landform policies, as discussed in Topic 2, above, and is consistent with Water Quality requirements as the site includes area drains to collect runoff, a pervious driveway, native landscaping to reduce irrigation requirements, and erosion control measures to prevent sediment from reaching beach sand.

LETTER OF SUPPORT RECEIVED

Attached is a letter received in the South Coast District office on September 29, 2011 from the applicant's authorized agent. The letter states that the applicant agrees with the Staff Recommendation to find no substantial issue.

COASTAL COMMISSION

EXHIBIT # 5
PAGE 21 OF 44

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE
ALICIA B. BARTLEY

LAW OFFICES OF
GAINES & STACEY LLP
1111 BAYSIDE DRIVE, SUITE 280
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)640-8999
FAX
(949)640-8330

September 28, 2011

Th8a

Commissioners
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

RECEIVED
South Coast Region

SEP 29 2011

Re: Appeal No. A-5-LGB-11-134 (Mihaylo)
18 Lagunita Drive, Laguna Beach

CALIFORNIA
COASTAL COMMISSION

Dear Commissioners:

On October 6, 2011, I will appear before you on behalf of Steven Mihaylo, the Applicant in connection with Appeal No. A-5-LGB-11-134. The Staff Recommendation is that the Commission find no substantial issue to the appeal. We agree with that recommendation.

The Applicant proposes to demolish a partially demolished home on the property and construct a new home which is lower, farther from the shoreline, and respects the stringline between the neighboring houses. The appeal is filed by the neighbor to the north, 17 Lagunita Drive, Laguna Beach ("Appellant"). The issues in the appeal are confusing.

First, the neighbor claims that public access should be provided. The Staff agrees that there is no basis under Coastal Act §30212 to require public access. Second, the Appellant complains about landform alteration. But the proposed landform alteration is a basement which the Staff notes is typical for the property in a similar location. The visual result of the new house will move the structure farther from the shoreline, provide articulation to minimize the appearance of mass, and lower the height from the existing structure. There is no evidence that construction will affect the Appellant's home. Third, the Appellant complains about lot coverage. The 55.4% lot coverage is typical for these oceanfront smaller lots. It is no different than numerous other homes that have been approved including the Appellant's home. Fourth, the Appellant complains that the Hillside Development Guidelines in the LCP are not met. The Hillside Development Guidelines were designed for the Laguna Beach hillside areas, not the oceanfront.

There is no merit to the appeal and the Commission should adopt the Staff Recommendation and find no substantial issue.

Sincerely,

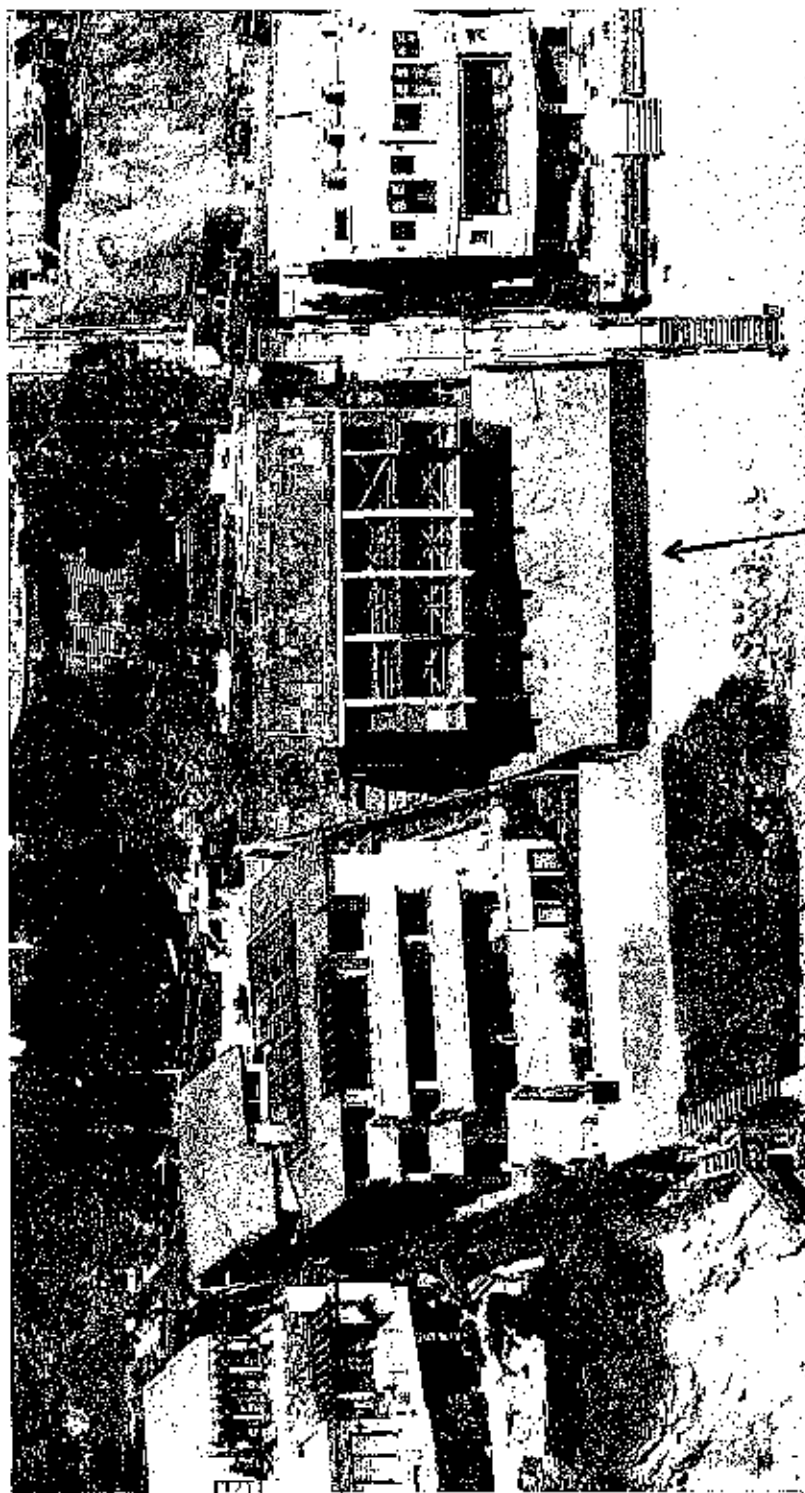
Sherman L. Stacey
SHERMAN L. STACEY

COASTAL COMMISSION

cc: Steven Mihaylo
John Del Arroz, Long Beach CCC Office

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AERIAL

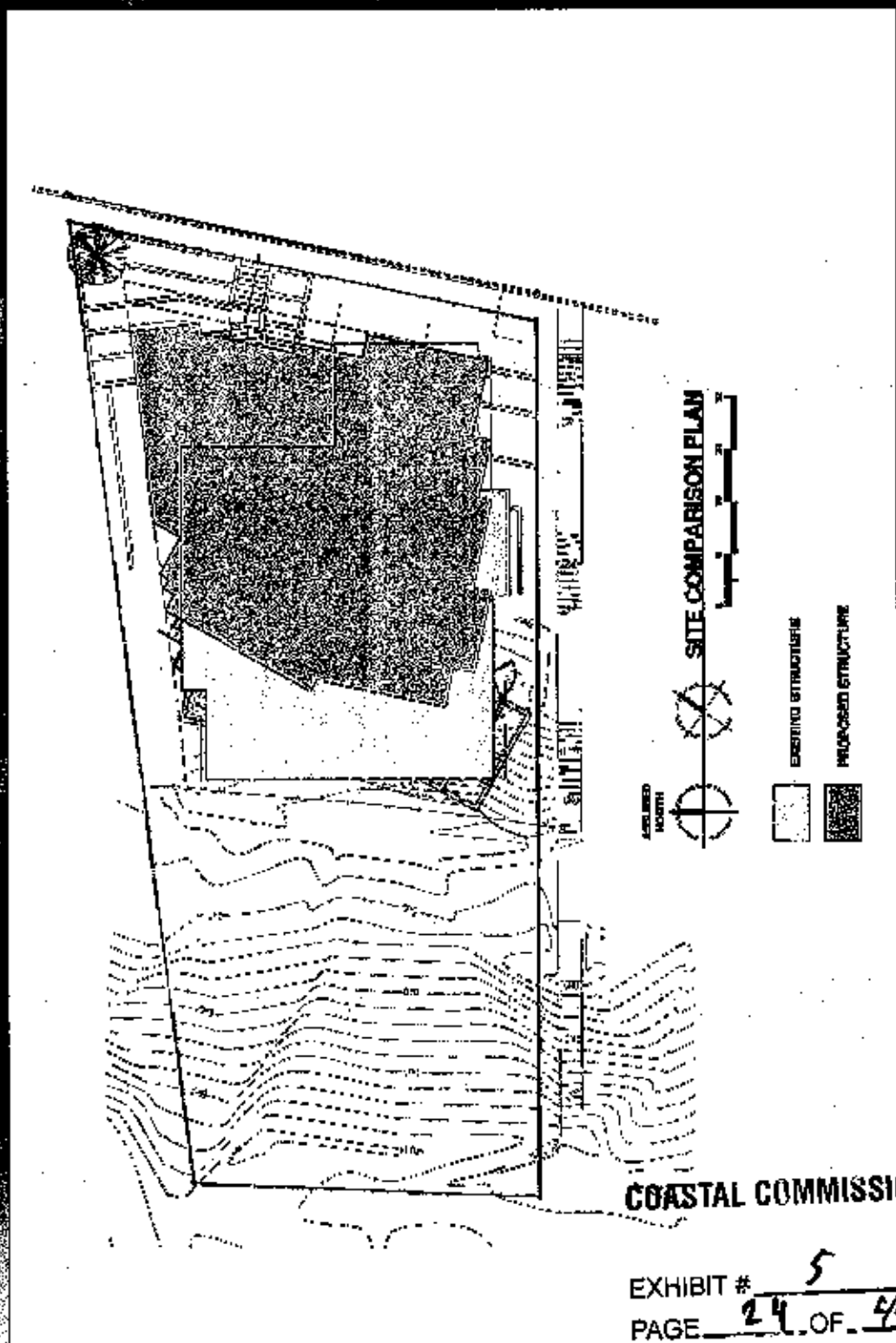


17 Laguna Appellant's House
18 Laguna Appellant's Property

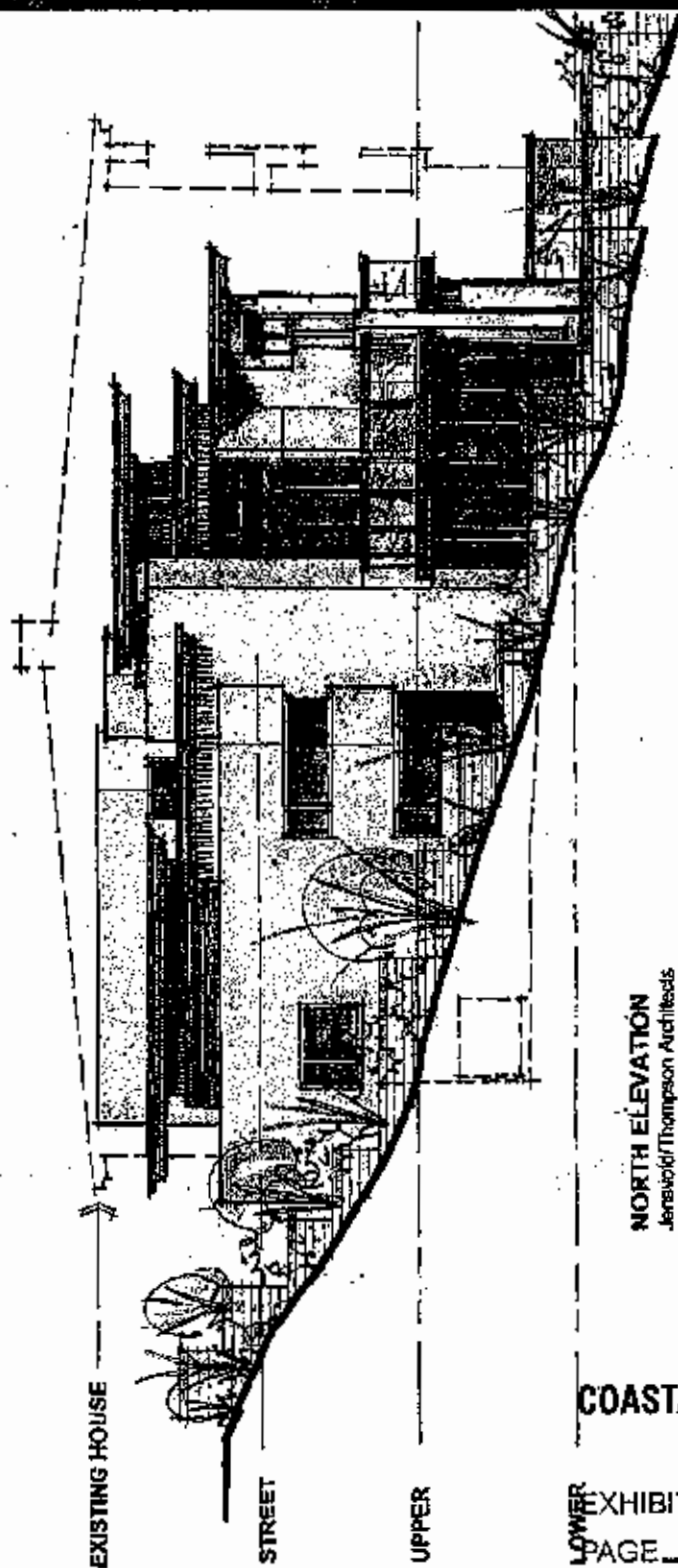
COASTAL COMMISSION

2010 Easement Map Drawn from California Coastal Records Project

SITE COMPARISON



NORTH ELEVATION



NORTH ELEVATION
Jensvold/Thompson Architects

COASTAL COMMISSION

LOWER EXHIBIT # 5
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BASEMENT

CALIFORNIA COASTAL COMMISSION

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

**Item Th8a**

September 15, 2011

TO: Coastal Commissioners

FROM: Sherilyn Sarb, Deputy Director, South Coast Area Office
Karl Schwing, Supervisor, South Coast Area Office
John Del Arroz, Coastal Program Analyst, South Coast Area Office

RE: Appeal A-5-LGB-11-134 (Mihaylo) 18 Lagunita Drive, Laguna Beach,
Orange County. Filed: March 25, 2011. 49th Day: July 13, 2011.

Recommendation: Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which appeal A-5-LGB-11-134 was filed. Staff recommends a YES vote on the following motion and resolution:

Motion and Resolution. *I move that the Commission determine and resolve that: Appeal Number A-5-LGB-11-134 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

Passage of this motion and resolution will result in a finding of no substantial issue and adoption of the following findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Findings: On March 3, 2011, the Laguna Beach City Council denied an appeal of the Design Review Board's decision to approve Coastal Development Permit 10-69 for the construction of a 6,837 square foot single family residence, 653 square foot attached three-car garage and 321 square feet of mechanical/storage area at 18 Lagunita Drive in Laguna Beach (see Exhibit 2). Pursuant to Coastal Act Section 30603, this approval is appealable to the Commission because it is development approved by the City and located between the sea and the first public road paralleling the sea and is within the Coastal Commission appeal jurisdiction, as shown on the Commission adopted Post-LCP Certification and Permit Appeal Jurisdiction map contained in the certified Laguna Beach Local Coastal Program. Exhibit 1 is the appeal to the Commission from Northwood Investors, LLC. The appellants claim that this approval is inconsistent with LCP requirements and the public access policies of Chapter 3 of the Coastal Act for the following reasons:

1. Alleging inconsistency with Section 30212 (b) (1-3) of the Coastal Act, the appellant asserts there is an issue with the fact the City processed the application as new development rather than an addition
2. Proposed development will require significant landform alteration and excessive grading, all of which will jeopardize the safety of the adjacent residence
3. Proposed development exceeds maximum allowed lot coverage
4. Proposed development does not comply with hillside development guidelines
5. Story poles not placed
6. Community Development has not approved most recent changes

COASTAL COMMISSION

EXHIBIT # 5
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The appellant also makes some claims in passing that do not relate to consistency with the certified LCP. Since those claims don't allege a specific inconsistency with the certified LCP or the public access policies of the Coastal Act, they are not valid bases for appeal and are not covered by this staff report. Nevertheless, those claims can be read in the appeal located at Exhibit 1.

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.¹ Commission staff has analyzed the City's Final Local Action Notice for the development (Exhibit 2), the appellant's claims (Exhibit 1), the relevant requirements of the LCP, and the file records submitted by the City. The appeal raises no substantial issue with respect to the LCP as follows.

1. New Development / Public Access

Consistent with Section 13115 of the Commission's regulations, when an appellant appeals a local government's approval of development that is sited between the sea and the first public road paralleling the sea, the appellant may also, in addition to his or her LCP grounds, contend that the approved development raises a significant question with regard to the public access and/or public recreation policies of Chapter 3 of the Coastal Act. In this case, the appellant argues that the approved project violates section 30212 of the Coastal Act, a public access policy found in Chapter 3 of the Coastal Act. Thus, staff addresses this contention in the following analysis.

Coastal Act Section 30212 states:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
- (b) For purposes of this section, "new development" does not include:
 - (1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.
 - (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.
 - (3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

The appellant asserts that because the City processed the proposed project as a new development, as opposed to as an addition to an existing structure, that the development is inconsistent with Coastal Act Section 30212(b)(1-3). The specific inconsistency is not explained by the appellant. Coastal Act Section 30212 refers to the requirement for public access to be provided in new development projects. Section 30212, subsection (b)(3) specifically excludes improvements that do not change the intensity of use of the site. The site is presently developed with a single family residence (though, partly demolished). The new development is a new single family residence with

¹ The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

the same parking requirements for a single family residential use. No change to the intensity of use of the site has occurred. Thus, there is no inconsistency with Section 30212 of the Coastal Act.

2. Landform alteration

The Open Space and Conservation Element of the City's Certified Land Use Plan states:

- 4G Minimize Construction Impacts
Ensure that all development minimizes erosion, sedimentation and other pollutants in runoff from construction-related activities to the maximum extent practicable. Ensure that development minimizes land disturbance activities during construction (e.g., clearing, grading and cut-and-fill), especially in erosive areas (including steep slopes, unstable areas and erosive soils), to minimize the impacts on water quality.
- 7-A *Preserve to the maximum extent feasible the quality of public views from the hillsides and along the city's shoreline.*
- 7K *Preserve as much as possible the natural character of the landscape (including coastal bluffs, hillsides and ridgelines) by requiring proposed development plans to preserve and enhance scenic and conservation values to the maximum extent possible, to minimize impacts on soil mantle, vegetation cover, water resources, physiographic features, erosion problems, and require recontouring and replanting where the natural landscape has been disturbed.*
- 14F *Require grading projects to minimize earth-moving operations and encourage preservation of the natural topographic land features.*

The City's Certified Land Use Element Policy 12-D states:

As part of the Design Review process, maximize the preservation of views of coastal and canyon areas from existing residences, and public view points while respecting rights of property owners proposing new construction.

The appellant asserts the proposed project will result in significant landform alteration and grading that will impact the geologic safety of an adjacent residence. The appellant also suggests the home design isn't compatible with those in the area. The appellant doesn't cite inconsistency with any specific LCP policy, however, relevant policies include Land Use Element Policy 12-D, and Open Space Conservation Element Policies 4g, 7a, and 7k. The proposed development is located on an oceanfront lot, on top of a sandy slope which descends to a sandy beach. The grading cited by the appellant is in conjunction with construction of a basement, which are common in newer homes in Laguna Beach. The amount of grading associated with this basement is also typical. The proposed project would result in the landward movement of the seaward face of the residence. Additionally, whereas the existing development has a flat façade, the proposed project includes articulation, which reduces the mass and bulk of the development. Therefore, the development would result in improved visual characteristics at the subject site.

The geotechnical report for the proposed development states: "proposed new construction at the subject site is considered geotechnically feasible providing recommendations herein are integrated into design..." and, "construction should not affect or be affected by adjacent properties..." Therefore, the proposed project meets the requirement in Implementation Plan section 25.07. **COASTAL COMMISSION** requiring that development not result in undue risks from geological hazards.

3. Maximum Lot Coverage

Section 25.50.020 (B) of the City's Zoning Code/Implementation Plan states that lot coverage on oceanfront residential lots shall not exceed 44%. At 55.4%, the proposed project exceeds that. The appellant asserts the City's approval of that variance is inconsistent with the LCP. In its approval of the proposed lot coverage, the Design Review Board relied on the provisions of Zoning Code/IP Section 25.10.008(E). Under that section, the 44% maximum can be exceeded if necessary to ensure compatibility with neighborhood development patterns, which the Design Review Board found existed in their approval of the project. A review of aerial photography shows similar lot coverages on residences located along Lagunita Drive. Therefore, there is no substantive basis on which to object to the proposed lot coverage in this case.

The proposed project meets stringline requirements, and does not result in further oceanward encroachment, but rather results in the landward movement of the line of development. The bulk, mass, and siting of the project is consistent with development in the surrounding neighborhood, and the project does therefore not raise issues with regard to neighborhood compatibility.

4. Hillside Development Guidelines

The appellant asserts the proposed development isn't consistent with the City's provisions regarding hillside development. The hillside development guidelines are intended to restrict development located on the steep hillsides of Laguna Beach, rather than the subject oceanfront property. Of the Hillside Guidelines cited by the appellant, the project is consistent with alteration to natural landform policies, as discussed in Topic 2, above, and is consistent with Water Quality requirements as the site includes area drains to collect runoff, a pervious driveway, native landscaping to reduce irrigation requirements, and erosion control measures to prevent sediment from reaching beach sand.

5. Community Development has not approved most recent changes

In Resolution CDP 11-007, on March 24, 2011 the Design Review Board approved the Coastal Development Permit for the proposed development. On May 3rd, the City Council denied the appeal of the Coastal Development Permit and upheld the Design Review Board's decision by passing Resolution 11.043, which approved the Coastal Development Permit subject to modifications. Therefore, the approval of the Coastal Development Permit by the City is valid.

For the reasons stated above, the Commission finds that Appeal Number A-5-LGB-11-034 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

List of Exhibits:

1. Appeal from Coastal Permit Decision of Local Government by Northwood Investors LLC
2. City of Laguna Beach Notice of Final Local Action and May 3, 2011 City Council Staff report for the public hearing on the appeal of the Design Review Board's Approval of Coastal Development Permit 10-69
3. March 24, 2011 Design Review Board Staff Report for the public hearing on Coastal Development Permit 10-69
4. Project Location Map
5. Proposed Project Site Plan and Exterior Elevations

COASTAL COMMISSION

EXHIBIT # 5
PAGE 29 OF 44



Rancho Flores Property Management, LLC

RECEIVED
South Coast Region

MAY 25 2011

CALIFORNIA
COASTAL COMMISSION

Letter of Transmittal

To: John Del Arroz

Re: 18 Lagunita, Application No. 5-LGB-11-056

California Coastal Commission	Date	5/25/11
South Coast Area Office	Job #	18 Lagunita Dr., Laguna Beach CA
200 OceanGate, 10 th Floor	Attention:	
Long Beach, CA 90802-4302	CC:	

We are sending you ☒ Attached ☐ Under separate cover via the following items:

Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications

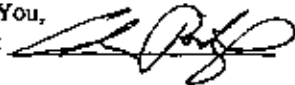
☒ Copy of letter ☐ Change Order ☐

Copies	Date	No.	Description
1	5/25/11		Appeal From Coastal Permit Decision of Local Government. Regarding 18 Lagunita, Laguna Beach, CA

These are transmitted as checked below:

- ☐ For approval ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☒ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment
☐ For bids due: ☐ Prints returned after loan to us

Remarks:

Thank You,
Signed: 

Carlos Bishop
Owner's Representative
RFPM
858.759.4275 ext 109
858.759.3364 Fax

Received By: _____

COASTAL COMMISSION

EXHIBIT # 5
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CALIFORNIA COASTAL COMMISSION

South Coast Region

SOUTH COAST DISTRICT OFFICE

200 OCEANGATE, 10TH FLOOR

LONG BEACH, CA 90802-4418

VOICE (562) 590-5071 FAX (562) 591-5084

MAY 25 2011



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Northwood Investors, LLC (owner of 17 Lagunita, Laguna Beach, CA)

Mailing Address: 2670 Crimson Canyon Drive, Ste. 110

City: Las Vegas, Nevada

Zip Code: 89128

Phone: (702) 384-3192

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Laguna Beach

2. Brief description of development being appealed:

City of Laguna Beach Design review and Coastal Development permit for a 6,184 square-foot single-family residence, 653 square-foot attached three-car garage and 260 square-foot of mechanical/ storage area in the Lagunita Zone. Design review is required for the new structure, excess covered parking excess lot coverage, elevated decks, grading, retaining walls, spa, landscaping and construction in an environmentally sensitive area due to oceanfront.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

18 Lagunita Drive, Laguna Beach, CA 92651. APN #656-171-26.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-5-LGB-11-134

DATE FILED:

5/25/11

DISTRICT:

South Coast

COASTAL COMMISSION

EXHIBIT #

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: May 3, 2011

7. Local government's file number (if any): Resolution No. 11.043

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Stephen Thompson, Architect
2244 Carmel Valley Road
Del Mar, CA 92014

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Carlos Bishop
San Diego Design Services
P.O. Box 9930
Rancho Santa Fe, CA 92067

(2)

(3)

(4)

COASTAL COMMISSION

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PAGE 32 OF 44

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- 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.)
- This 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.

The City of Laguna Beach has approved this application as a new development when there is an existing structure. This is not consistent with Section 30212, (b) (1), (2) & (3) of the Public Resources Code, Division 20, California Coastal Act (2010). In 2003, the owner of this residence went beyond the scope of the a foundation repair permit and substantially demolished the previous existing house. The City then determined that the proposed development should be processed as a new house rather than an addition.

The proposed development will require significant alteration to landform oceanward and dirt export in excess of 575c.y. This will require a 30' + retaining wall, within 11'-6" from the existing street and within 14' of my residence. I am concerned of the adjoining hazardous excavations for the basement, soil stability, drainage and maintaining the structural integrity of my residence. The proposed basement will require 1791 s.f. of grading (the existing structure does not have a basement). This is an undesirable encroachment and is not neighborhood compatible nor consistent with the City Council Resolution 92.014, Land Use and Open Space/Conservation General Plan Elements and Title 22 (Excavation and Grading). This is a lot of grading and export next to a public beach and in an environmentally sensitive area.

The Coastal Land Use Plan (Land Use & Open Space Elements of the General Plan) requires construction and grading to be concentrated on slopes of 30% or less (Policy 14A). It also encourages preservation of the natural topographical land features (Policy 14F) and ensure that development minimizes land disturbance activities to minimize the impacts on water quality (Water Quality Policy 4G). Despite the excessive proposed alteration to landform, the city has approved a Category Exemption 153.03. The lot coverage (BSC) proposed is 55.4% and the maximum allowed is 44%. This is a 6,000 s.f. lot with 77% impervious surfaces. The proposed new development does not adhere to the City Council Resolution 89.104 (Design Guidelines for Hillside Development) and is substantially larger than the adjoining neighbors.

Story poles have not been adequately placed to clearly represent the proposed building envelope as required by the City of Laguna Beach Zoning Submittal Checklist. Story poles have already been removed. Demolition of existing structure is required to clearly view the proposed building outline.

The Lagunita Community Development has not approved the recent plan revisions.

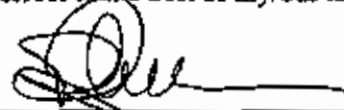
COASTAL COMMISSION

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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: 5/20/11

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: _____

COASTAL COMMISSION

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Please See Up Appeal Permit
RECEIVED
South Coast Region

MAY 11 2011

**NOTICE OF FINAL LOCAL ACTION
FOR COASTAL DEVELOPMENT PERMITS**

Date: May 10, 2011

The following project is located within the City of Laguna Beach Coastal Zone:

Location: 18 Lagunita Drive, Laguna Beach, CA 92651

Coastal Development Project No: 10-69

Project Description: The applicant requests design review and a coastal development permit for a 6,837 square-foot single-family residence, 633 square-foot attached three-car garage and 321 square-foot of mechanical/storage area in the Lagunita Zone. Design review is required for the new structure, excess covered parking, excess lot coverage, elevated decks (184 square-foot), grading, retaining walls, spa, landscaping and construction in an environmentally sensitive area due to oceanfront. This is a re-noticed hearing (due to lack of a quorum on the originally scheduled hearing date).

Applicant: Steven Mihaylo

Mailing Address: POB 19790, Reno, NV 89511

On May 3, 2011 a coastal development permit application for the project was

- ☐ approved
☒ approved with conditions
☐ denied

Local appeal period ended April 7, 2011

This action was taken by: ☒ City Council
☐ Design Review Board
☐ Planning Commission

The action (X) did () did not involve a local appeal; in any case, the local appeal process has been exhausted. Findings supporting the local government action and any conditions imposed are found in the attached resolution.

This project is

- ☐ not appealable to the Coastal Commission
☒ appealable to the Coastal Commission pursuant to Coastal Act Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Applicants will be notified by the Coastal Commission if a valid appeal is filed. Appeals must be in writing to the appropriate Coastal Commission district office and in accordance with the California Code of Regulation Section 13111. The Coastal Commission may be reached by phone at (562) 590-5071 or by writing to 200 Oceangate, 10th Floor, Long Beach, CA 90802-4416

Attn: CDP Resolution No. 11-007

COASTAL COMMISSION

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City of Laguna Beach
AGENDA BILL

No. _____
Meeting Date: 5/03/2011

SUBJECT: APPEAL OF APPROVAL OF DESIGN REVIEW 10-219, COASTAL DEVELOPMENT PERMIT 10-69, AND CATEGORICAL EXEMPTION AT 18 LAGUNITA DRIVE

SUMMARY OF THE MATTER:

The applicant was granted design review approval and a coastal development permit to construct a new 6,122 square-foot single-family residence and attached three-car garage in the Lagunita zone. Design review was required for the new structure, elevated decks, excess covered parking, excess lot coverage, grading, retaining walls, spa, landscaping and construction in an environmentally sensitive area.

Background:

The project site currently contains a dilapidated single-family residence which was substantially demolished a number of years ago. The applicant previously engaged in a protracted review process with the Design Review Board and City Council to reconstruct and enlarge the existing structure, filed litigation regarding the matter, and then ultimately entered into a settlement agreement with the City in order to process revised plans for a new home. (See the attached Settlement Agreement.)

The applicant subsequently submitted revised plans for zoning plan check and design review. The revised design is significantly lower and pulled back from the oceanfront, as compared to the existing structure. The revised design was approved by the Lagunita Community Association prior to scheduling for design review.

Design Review Action:

The Design Review Board considered the project on January 13 and on March 24, 2011. A copy of the staff reports and minutes from those meetings is attached for reference.

(continued)

RECOMMENDATION: It is recommended that the City Council:

Deny the appeal and sustain the Design Review Board's approval of Design Review 10-219, Coastal Development Permit 10-69 and Categorical Exemption at 18 Lagunita Drive.

Appropriations Requested: \$ None

Submitted by: _____

Fund: None

Coordinated with: _____

Attachments: Summary Tables; Appeal; Staff Reports

COASTAL COMMISSION

and DR Minutes of 1/13 and 3/24/11; Letters;

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Agenda Bill & Settlement Agreement; and Radius Map

Approved: _____

At the initial hearing, several neighbors spoke in support of the project. The immediate neighbors to the north, who are appealing the approval, testified with concerns related to the eave overhangs and potential glare. The Board liked the new design, but continued the project with direction to further reduce square footage, grading, and glazing to better comply with the design review criteria. The Board also asked that the applicant employ some technique, such as spray paint, to better represent the proposed building envelope, as the staking was hard to interpret with the existing structure on the project site.

On March 24, 2011, the applicants returned for a second hearing, having made the changes as previously directed. Again, several neighbors testified in support of the project, while the appellants testified with various concerns including the roof overhangs, view impacts, glare, chimney fumes and construction during the summer. The appellants also wanted the existing structure to be demolished so that the project staking would be clearly visible.

The majority of the Board found the project to be approvable, subject to several minor conditions including a requirement that the eave over the family room which posed a concern to the neighbor (appellant) be cut back. The project was approved on a 4-1 vote. The dissenting Board member agreed that the project was an improvement over the existing development, but felt that the project needed to be further reduced in size to be neighborhood compatible and location-sensitive.

Basis for Appeal:

The Board's approval has been appealed by the adjacent northerly neighbors, who testified at both design review hearings. The appeal identifies six grounds, each of which is discussed below:

1. The approved structure is substantially larger than the adjacent structures. The pattern of development is not neighborhood compatible in an environmentally sensitive area.

Staff response: The approved square footage exceeds the square-footage of a number of the existing homes in the immediate vicinity. That being said, the majority of the Board found the proposed building well-designed for the site, and since it is lower than the existing structure and pulled back from the oceanfront, the Board also found the approved project to be a substantial improvement over the existing home in terms of views, articulation, neighborhood compatibility and design integrity.

2. The project staking does not clearly define the building outline, therefore the existing structure should be demolished prior to granting approval of the new residence.

Staff response: Since the proposed structure is substantially 'within' the walls of the existing structure, it is not possible to stake the proposed building in the manner that would normally be done on a vacant site. This posed a frustration for the both the appellants and the Board. It seems likely that the applicant wanted to keep the existing structure through the design review process for comparative purposes, and the Board has historically not required that applicants remove a structure in order to stake a site.

3. The stepped 'fin' mass and 3' roof overhang appear to obstruct beach view from appellants property.

Staff response: The Board reviewed this issue during design review and at that the structure be stepped back, and by imposing a condition that the eave additional building setback line.

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4. The extensive glazing on the northwest building elevation will create glare towards the appellants property.

Staff response: The Board carefully reviewed the quantity and location of proposed glazing, and required modifications and reductions during the design review process.

5. The proposed eaves extend beyond the Additional Building Setback.

Staff response: The Board recognized the appellants concern about the eave projection, and conditioned the project approval upon these eaves being pulled back to the setback line.

6. The approved chimney may direct gas fireplace fumes (carbon monoxide) towards appellants property.

Staff response: Household appliances such as water heaters or gas fireplaces do emit carbon monoxide. In the open air, fireplace fumes dissipate fairly quickly. In this case, the chimney is located at least twelve feet away from the appellants structure, and the top of the chimney is 9'-0" feet above the appellant's deck. Any emitted fumes would continue to rise vertically as they dissipate.

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**CITY OF LAGUNA BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

HEARING DATE: March
January 24, 2011

TO: DESIGN REVIEW BOARD

CASE: Design Review 10-219
Coastal Development Permit 10-69

APPLICANT: Stephen Thompson, Architect

LOCATION: 18 Lagunita Drive
APN # 656-171-26

**ENVIRONMENTAL
STATUS:** Categorically Exempt, Class 1

PREPARED BY: Nancy Csira, Principal Planner
(949) 497-0332

REQUESTED ACTION: The applicant requests design review and a coastal development permit for a 6,122 ~~6,837~~ square-foot single-family residence and a 653 square-foot attached three-car garage and ~~321 square-foot of mechanical area~~ in the Lagunita Zone. Design review is required for the new structure, excess covered parking, excess lot coverage, elevated decks (277 ~~184~~ square-feet), grading, retaining walls, spa, landscaping and construction in an environmentally sensitive area due to oceanfront.

BACKGROUND: The project was presented to the Board on January 13, 2011. The Board had concerns with viewing the project staking due to the existing building still in place. They found it difficult to review neighborhood compatibility and the impacts of the requested excess lot coverage and excess covered parking. They felt the proposed square-footage including the basement was larger than most homes in the immediate neighborhood and the required additional grading which is problematic on this environmentally sensitive oceanfront site. The Board also had concerns with the adherence to the hillside guidelines, the amount of glazing, the amount of impervious surfaces and the amount of exterior lighting. The Board liked the proposed architectural design, colors, materials, the vaulting of mechanical equipment and was pleased that ocean views would be improved.

RESPONSE: The applicant proposes to re-stake the project and paint the proposed roofline on the existing structure to help the Board and neighbors visualize the proposed structure. The basement has been reduced by 715 square-feet, the mechanical area has been reduced to a subterranean low ceiling five foot high vault area and the basement ceiling height has been reduced from nine feet to eight feet, resulting in 605 cubic yards less total grading export. To better adhere to the hillside guidelines the dining room has been pulled back one foot and the master bedroom has been pushed out one foot for an appearance of a two-foot offset. A 93 square-foot elevated deck has been added adjacent to the dining room. To address excessive glazing concerns, the applicant has reduced the glazing 172 square-feet and added some elements to shield neighboring properties and break up the building mass.

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Impervious surfaces have been reduced by 125 square-feet by increasing landscape areas and proposing concrete surfaces at the west terrace with permeable paving. The exterior lighting has been reduced by eliminating 15 soffit lights. The spa has been lowered 18 inches.

STAFF ANALYSIS:

Access: Lagunita is a gated private community improved with curbs and gutters. The parking requirement for the proposed residence greater than 3,600 square-feet is three onsite parking spaces - two covered and one uncovered. The applicant proposes a three-car garage. The Board must make findings that the additional covered parking spaces do not add to the appearance of mass and bulk.

Environmental Context: Although the proposed development expansion occurs primarily within the existing building footprint, substantial excavation is required to build the basement. Alteration to the landform oceanward of the existing retaining wall is proposed to build the two lowest levels. The proposed grading quantities are 775 cubic yards of cut and 200 cubic yards of fill for a total export of 575 cubic yards.

Lighting: Sheet 11 indicates the proposed building and site lighting. Soffit lighting is indicated outside the exercise room where no exterior doors are proposed. The lighting quantities itemized by type of fixture are listed in the chart below:

Level	Soffit	Wall	Foot
Street	3	3	0
Upper	8	1	4
Lower	5	1	12
Basement	0	0	0
Totals	16	5	16

Neighborhood Compatibility: The proposed 6,122 square-foot four level residence is larger than the immediately adjacent structures approved prior to the implementation of the "mansionization" ordinance. Properties at 17 and 19 Lagunita Drive consist of 4,599 square-feet and 4,476 square-feet of living area, respectively. The proposed design, excluding the 1,729 square-foot basement area, yields a visible residence of 4,393 square-feet which appears neighborhood compatible with the directly adjacent properties.

Excess Lot Coverage/Guideline Violations: The allowable lot coverage for this oceanfront lot is 44% of the net lot area or 1,923 square-feet. The net lot area does not include the property ocean ward of the building stringline. The proposed lot coverage is 55.4% or 2,422 square-feet, 499 square-feet more than allowed. Excess site coverage may be allowed by the Design Review Board if it is determined to preserve views, preserve privacy, reduce heights or maintain neighborhood development patterns [LBMC 25.50.020(B)]. The proposed lot coverage appears to be consistent with other oceanfront homes and within the immediate neighborhood development patterns.

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Coastal Development Permit: A Coastal Development Permit is required for all new structures within the coastal zone. Three (3) findings must be made when approving a Coastal Development Permit;

Finding 1: The project is in conformity with all the applicable provisions of the General Plan, including the Certified Local Coastal Program and any applicable specific plans in that the landform alteration and visual impacts have been minimized due to the building height which is within the allowable height limit; the limited amount of grading which serves to terrace the development; and the landscape plan which serves to visually screen the development from views (1I).

Finding 2: Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act in that vertical and lateral access exists to and along this portion of the coast and the proposed development will not create any adverse impacts to this access; therefore, no clear nexus can be demonstrated in this case for a public access dedication (2B).

Finding 3: The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act in that the proposed project is in compliance with the applicable rules and regulations set forth in the Municipal Code and will not cause any significant adverse impacts on the environment (3A).

COMMUNITY INTEREST: There have been no letters or telephone calls received by the City as of the date of this report (2/14/11).

IDENTIFIED ISSUES: Findings for Excess Covered Parking
Findings for Excess lot Coverage
Neighborhood Compatibility - Structure's size

ATTACHMENTS: Minutes of Design Review Board meeting 1/13/11

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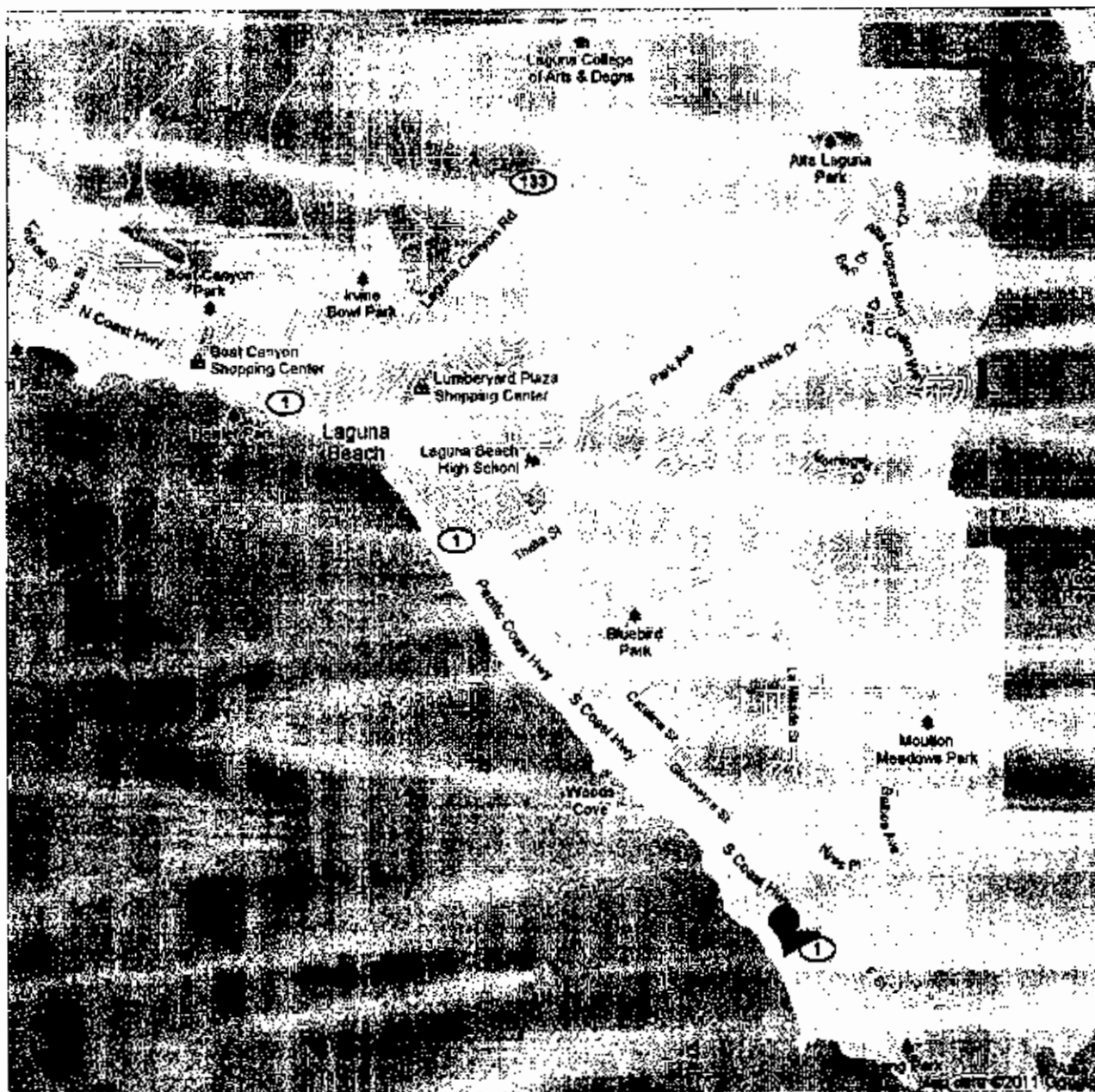
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Google maps

Address 18 Lagunita Dr
Laguna Beach, CA 92651

Get Google Maps on your phone

Text the word "GMAPS" to 466453



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PP-3-2A-11

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PROJECT DATA:

PROJECT NO. _____ DATE _____

CLIENT _____

PROJECT NAME _____

PROJECT LOCATION _____

PROJECT DESCRIPTION _____

PROJECT STATUS _____

PROJECT CONTACT _____

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PROJECT E-MAIL _____

PROJECT WEBSITE _____

PROJECT ADDRESS _____

PROJECT CITY _____

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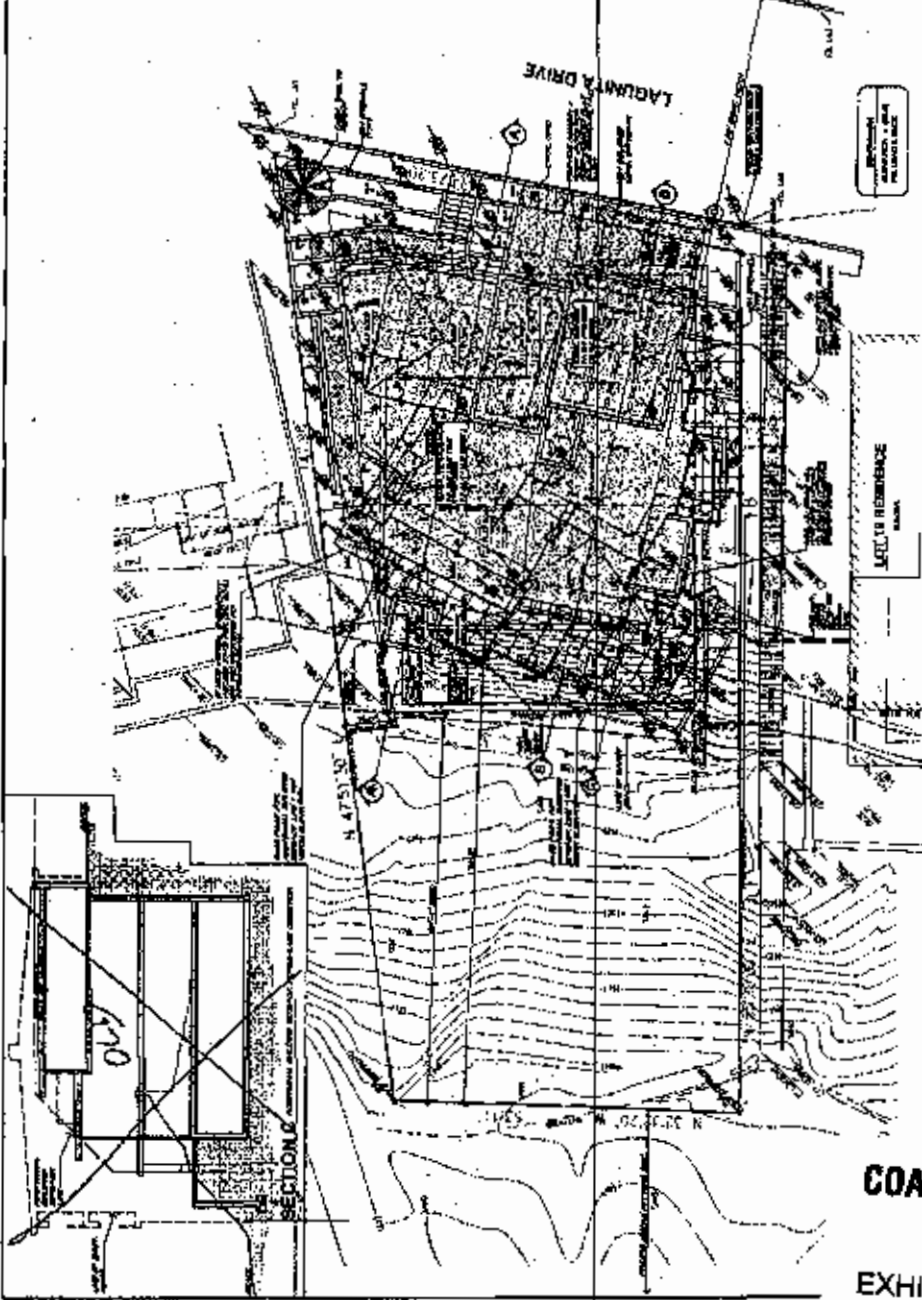
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PROJECT COMMENTS _____

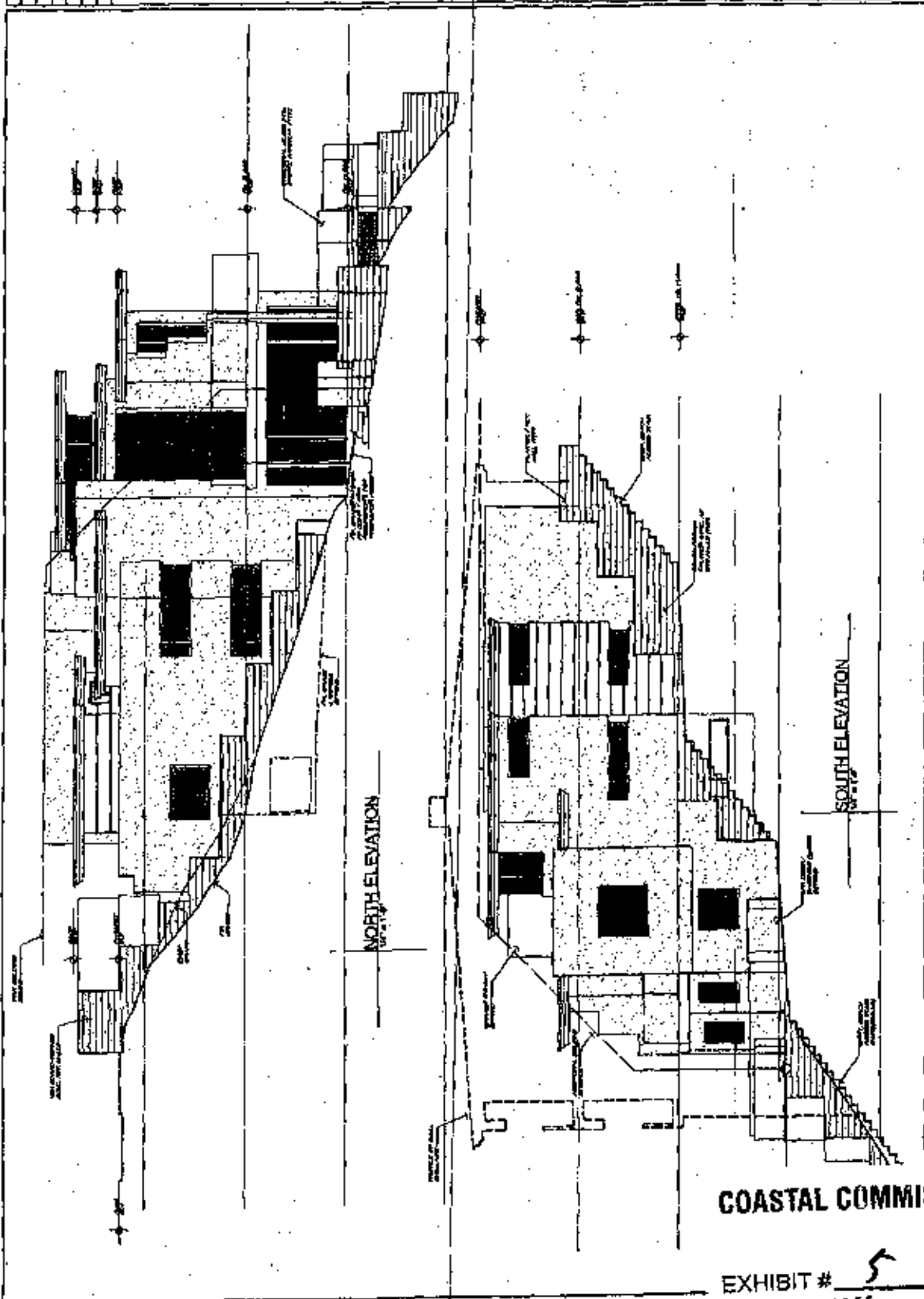
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City of Laguna Beach
Zoning Division

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RESOLUTION NO. 88.84

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LAGUNA BEACH AMENDING THE
OPEN SPACE/CONSERVATION ELEMENT OF
THE GENERAL PLAN BY ADOPTING POLICIES
PERTAINING TO SHORELINE PROTECTION

WHEREAS, an implementation program was reviewed and approved by the City Council in conjunction with the adoption of the Guidelines for Shoreline Protection on June 7, 1988 (Resolution 88.43); and

WHEREAS, The program recommends the adoption of General Plan policies and Zoning amendments as generally discussed in Chapter Six of the Guidelines for the purpose of providing policy direction and regulations for the review of shoreline projects; and

WHEREAS, The Laguna Beach City Planning Commission conducted a duly noticed public hearing on September 28, 1988, in order to review proposed general plan amendments related to shoreline protection issues and policies; and

WHEREAS, After receiving the staff report, conducting said public hearing and inviting public testimony the Planning Commission recommended adoption of the following policies in the form of an amendment to the Open Space/Conservation Element of the General Plan, and

WHEREAS, The City Council of the City of Laguna Beach considered the recommendation of the Planning Commission at a noticed public hearing conducted on November 1, 1988, and, after reviewing the Planning Commission recommendation and

1 accepting public testimony, desires to approve the following
2 amendments to the General Plan.

3 NOW, THEREFORE, BE IT RESOLVED, that the City Council
4 of the City of Laguna Beach does hereby resolve as follows:

5 SECTION 1. Negative Declaration 88-005 has been
6 considered and is hereby approved and adopted.

7 SECTION 2. The following amendment to Chapter 3, Issue
8 Statements and Policies, to the Open Space/Conservation
9 Element of the General Plan is hereby adopted by adding the
10 following new policies to Topic 1, Coastal Land Features:

11 "TOPIC 1.5 SEAWALLS AND OTHER SHORE PROTECTION DEVICES

12 BACKGROUND: The construction of seawalls and other coastal
13 protection devices has caused substantial community interest
14 especially since the severe storms and high tides of 1983.
15 In recognition of the complex nature of shoreline protection
16 needs, the Laguna Beach City Council commissioned a special
17 study that examined the characteristics of the local beach
18 sand resource and formulated policies for the evaluation of
19 shoreline protective devices. This study, entitled
20 Guidelines for Shoreline Protection, was adopted by a reso-
21 lution of the City Council and serves as the technical back-
22 ground and identifies issues for the following policies that
23 specifically address shoreline projects. Any development
24 applications, including grading projects, that are subject to
25 discretionary review shall be reviewed for consistency with
26 these policies.

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POLICIES

1.5-A The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

1.5-B Structural protective solutions should not be approved for ancillary or appurtenant improvements to the main structure, or for unimproved land, unless they are found to be in the public interest.

1.5-C An investigation of reasonable and feasible alternatives that could accomplish the same, or similar, level of protection must be provided with every application for the construction of a shore-protective device. In the required consideration of alternatives, the lead project shall be the one with the least significant impact to the shoreline environment unless a statement of overriding considerations is adopted pursuant to CEQA Guidelines.

1.5-D Enhancement and/or restoration of the natural shoreline setting without the use of structural devices shall be considered as an alternative and implemented whenever feasible.

1.5-E Reconstruction or substantial alterations to existing shore protective devices that have not performed adequately should not be approved unless the causative factors will be corrected in substantial compliance with these guidelines.

1.5-F Lateral public beach access easements shall be offered for dedication consistent with policy 3-G of this element and with prevailing law as a condition of permit approval for shore protection devices.

1.5-G Unless found to be in the interest of public safety and/or welfare and in the interest of protecting existing habitable structures, devices that create a net loss in beach width shall not be approved. A determination as to "net loss" is to be based on the pre-event beach measurement in the case of abrupt erosion or seacliff failure.

1.5-H Construction and grading activities on the beach shall be staged and phased to minimize interference with public use.

1.5-I Beach sand shall not be used as a construction material, nor shall it be re-graded for the purpose of enhancing,

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1 protecting or buttressing individual private properties
2 unless material is imported from a city-approved site.

3 1.5-J Beach area created by avulsion and/or wave induced
4 erosion should not be reclaimed for private use unless the
only feasible alternative for the protection of pre-existing,
habitable structures requires encroachment thereon.

5 1.5-K The visual impact of a protective device should be
6 minimized if the structure is sited next to or at the sea-
7 cliff. As the structure encroaches onto the beach the visual
8 impact will increase accordingly, thereby suggesting non-
technical as well as technical reasons for reducing the
encroachment.

9 1.5-L A protective device will best blend into the seacliff
10 when its surface texture, including shape, size and roughness
11 elements, most nearly duplicate that of the seacliff. A
similar surface roughness will also be in accordance with the
wave reflection criterion discussed in the Guidelines for
Shoreline Protection.

12 1.5-M In order to blend with the natural appearance of the
13 shoreline, seacliff colors should be duplicated in seacliff
14 protective devices as well as in other shoreline structures.
Walkways, stairs and railings are often painted in con-
trasting colors that stand out obtrusively from a distance,
whereas a similar color would render them almost invisible
from a distance of several hundred feet.

15 In most places the surface of a protective device will be
16 impacted by waves only infrequently. Consideration should be
17 given to covering devices with a non-structural, sacrificial
18 surface that will have to be replaced whenever damaged by
waves or vandals. The surface cover could consist of
imported earth, sand or a cover of vegetation.

19 1.5-N Any proposed protection scheme must be accompanied by
20 an assessment as to whether it can serve its intended purpose
21 without detriment to adjoining properties or the sandy
beach.

22 1.5-O Any coastal engineering report prepared pursuant to
23 the Guidelines shall include a recommendation as to the
design event (i.e., 25-year, 50-year or 100-year) being con-
sidered for a specific protective device and the property
24 owner shall record a deed restriction estimating its useful
and anticipated service life, as well as any maintenance
25 requirements identified in policy 1.5-Q below.

26 1.5-P The owner, successors and assigns of shore protective
27 devices shall adequately maintain such device and assure its
structural integrity, maintain its approved appearance, and

28 COASTAL COMMISSION

EXHIBIT # 6

PAGE 4 OF 6

1 shall absolve the City of any liability arising out of its
2 location, placement and construction.

3 1.5-Q Any development application for shoreline construction
4 shall be reviewed with respect to the criteria contained in
5 the Guidelines for Shoreline Protection, including the
6 effects of beach encroachment, wave reflection, reduction in
7 seacliff sand contribution, and effects and aesthetic
8 criteria.

9 1.5-R Due to the oftentimes unexpected and sudden onslaught
10 of damaging waves, whether associated with a regional storm
11 system or not, observance of the above policies may be tempo-
12 rarily suspended under an emergency declaration by the proper
13 local authorities. The design principles, however, shall be
14 observed to the maximum extent feasible in order to preclude
15 the need for costly alterations or removal of structures once
16 an emergency has abated. Any structure placed under emergen-
17 cy conditions shall be classified as temporary and the proj-
18 ect sponsor shall be responsible for its removal if a regular
19 permit, processed in accordance with applicable regulations,
20 is not obtained.

21 1.5-S In order to validate and update the data contained in
22 the Guidelines for Shoreline Protection, the City should
23 maintain a beach profile and seacliff retreat monitoring
24 program, investigate funding methods for beachfill projects
25 and identify a candidate site for a test beachfill project.
26 An on-going monitoring program is essential for the develop-
27 ment of a comprehensive technical data base for future ac-
28 tions that may be needed to protect beach width and quality
29 and to test the accuracy of assumptions and predictions
30 contained in the Guidelines.

31 1.5-T Since the long-term stability of shoreline properties
32 can be influenced to a great extent by the occurrence of
33 groundwater, whether from natural sources or induced by
34 irrigation, development applications for shore protective
35 devices should be accompanied by landscape plans that empha-
36 size the use of natural and drought-tolerant vegetation. The
37 use of irrigation systems shall be limited to low-flow tech-
38 niques specifically designed to minimize and limit the
39 application of water and meet irrigation needs only as
40 necessary to establish and maintain such vegetation. Shore
41 protective devices shall include drainage and de-watering
42 systems as necessary to maintain slope stability and to
43 prevent soil erosion."

COASTAL COMMISSION

EXHIBIT #

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PAGE 5 OF 6

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ADOPTED this 1st day of November, 1988.

ATTEST:

Edm Kenney
Mayor

Verna L. Rollinger
City Clerk

I, VERNA L. ROLLINGER, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing resolution was duly adopted at a Regular Meeting of the City Council of said City held on November 1, 1988, by the following vote:

AYES: COUNCILMEMBER(S) Fitzpatrick, Collison,
Lenney, Gentry, Kenney

NOES: COUNCILMEMBER(S)

ABSENT: COUNCILMEMBER(S)

Verna L. Rollinger
City Clerk of the City of
Laguna Beach, California

COASTAL COMMISSION

CALIFORNIA COASTAL COMMISSION

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

F8a

Filed: February 28, 2012
49th Day: April 17, 2012
Staff: John Del Arroz-LB
Staff Report: March 30, 2012
Hearing Date: April 11-13, 2012
Commission Action:

**STAFF REPORT: APPEAL**
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Laguna Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-LGB-12-067

APPLICANT: Bruce C. Ratner

PROJECT LOCATION: 24 Lagunita Drive, Laguna Beach, Orange County

PROJECT DESCRIPTION: Substantial demolition, modifications and upper level addition to existing 6,135 sq. ft. residence and pool/spa on 8410 sq. ft. oceanfront lot

APPELLANTS: Commissioners Brian Brennan and Mark 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 the appeal raises a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed. The appeal raises a substantial issue regarding whether the City-approved development conforms with the City of Laguna Beach certified Local Coastal Program (LCP) or the public access policies of Chapter 3 of the Coastal Act because the City's approval of the proposed project does not conform to requirements to assess and avoid shoreline hazards, to conform to stringline, and protection of public access.

The subject development is located on an oceanfront site adjacent to a public beach between the nearest public road and the sea, an area where development approved by the City of Laguna Beach pursuant to its certified Local Coastal Program (LCP) is appealable to the Coastal Commission. The subject site has a land use designation of Single Family Dwelling.

The appellants contend that the project approved by the City is inconsistent with the City's certified Local Coastal Program(LCP) and the public access policies of Chapter 3 of the Coastal Act for the following reasons: a) Proposed reconstruction, and addition to, living space that is non-conforming as to stringline requirements, and inadequate analysis of whether accessory structures are consistent with stringline requirements; b) No analysis of the effects of wave uprush, sea level rise, and the potential need for future shoreline protection, despite the requirements for said analysis in the City's LCP; c) No analysis of whether the home has been sited to avoid the need for future shoreline protection which may have negative impacts on use of the narrow sandy beach. Thus, the appeal raises a substantial issue regarding the conformity of the locally approved development with the LCP and the Public Access Policies of Chapter 3 policies of the Coastal Act. Therefore, staff is recommending that the Commission find that a substantial issue exists with respect to the grounds upon which the appeal was filed.

If the Commission adopts the staff recommendation, a de novo hearing will be scheduled at a future Commission meeting. **The motion to carry out the staff recommendation is on Page 6 of this report.**

SUBSTANTIVE FILE DOCUMENTS:

City of Laguna Beach Certified Local Coastal Program
Appeal by Commissioners Brian Brennan and Mark Stone
City Permit Record for local Coastal Development Permit 11-34
Local Coastal Development Permit 11-34
Project Plans by Kanner Architects dated 12/15/2011

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Exhibits

1. Appeal by Commissioners Brian Brennan and Mark Stone
2. Demolition Plans
3. Project Plans
4. Letter from Applicant's representatives

I. APPELLANT'S CONTENTIONS

A. Summary of Appeal Contentions Raised by Commissioners Brennan and Stone

1. Substantial Demolition and Reconstruction

The proposed project is described in the City notice as an addition to an existing single family residence. However, the proposed development includes significant amounts of demolition of interior and exterior walls, and also includes the demolition and replacement of retaining walls which support the residence. Therefore, the project may be considered as new development, and should be brought into consistency with all applicable LCP policies.

2. Stringline

The City's Implementation Plan states in section 25.50.004 (B) (4) that: "no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply."

The plans received by the Commission show that portions of the existing residence extend beyond the building stringline, and portions of the accessory structures associated with the single family residence extend beyond the deck stringline. As discussed above, the proposed development consists of significant alterations to the existing single family residence and the proposed project should be considered as new development. Therefore, the proposed project should be consistent with all applicable LCP policies.

However, the development proposed by the City would not be consistent with the stringline policies of the LCP; rather, the proposed development would perpetuate and exacerbate the nonconforming stringline on the site. The proposed development includes the demolition of the majority of the seaward side of the ground floor of the residence. However, instead of pulling back the seaward face of the residence to be consistent with the building stringline, the proposed development includes reconstruction of the nonconforming area and an addition to the existing residence which extends a nonconforming portion of the residence 5 feet further seaward. The City's approval would therefore result in the perpetuation of the non-conforming stringline at the site, and

result in the potential for further seaward encroachment by neighboring properties. Therefore, the project raises an issue as to consistency with the stringline setback policies of the City's certified LCP.

3. Future Shoreline Protection

No analysis of the effects of wave uprush or sea level rise has occurred, no assessment has been made of the potential need for future shoreline protection for the proposed development, nor did the City impose any conditions which would prohibit future shoreline protective devices to protect the proposed development. Without adequate consideration of environmental hazards, it cannot be determined whether the project will result in development which places the health and safety of the public at risk, or whether the development will result in potentially significant impacts to public access, scenic views, and alteration of natural landforms as a result of the construction of a shoreline protection device. As a result, the project raises an issue as to consistency with the hazard prevention policies of the City's certified LCP.

4. Public Access

The City's approval did not include an analysis of whether a shoreline protective device will be required within the lifetime of the structure, and whether such a shoreline protective device may have negative impacts on use of the narrow sandy beach located seaward of the subject site. There is minimal available area on the site to allow the construction of a shoreline protective device; thus if a shoreline protective device were required such a structure would likely need to be placed on the public beach, resulting in a reduction in the area of beach available for public use and an impact to scenic views along the coast. Therefore, based on the information available at this time, the project as approved raises an issue as to consistency with the Public Access policies of Chapter 3 of the Coastal Act and the public access policies of the City's certified LCP. Therefore, the City's approval must be appealed.

II. LOCAL GOVERNMENT ACTION

Local Coastal Development Permit 11-34 was approved by the City of Laguna Beach on January 26, 2012. Based on the date of receipt of the Notice of Final Action, the ten (10) working day appeal period for local Coastal Development Permit 11-34 began on February 13, 2012 and ran through February 28, 2012. An appeal of local Coastal Development Permit 11-34 was received from Commissioners Brian Brennan and Mark Stone on February 28, 2012 (see Exhibit 1), 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 between the sea and the first public road paralleling the sea and is within 300 feet of the inland extent of the beach.

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 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 Commission finds this appeal raises 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 for this appeal will occur at a subsequent meeting date. What is before the Commission, at this time, is the question of whether or not this appeal raises a substantial issue with respect to the grounds for the appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-5-LGB-12-067 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-LGB-12-067 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 an 8,410 square foot oceanfront lot located at 24 Lagunita Drive, between the sea and the first public road, and has a designated land use of Single Family Dwelling. The site is in the Lagunita neighborhood, a private locked-gate community located westerly of South Coast Highway and generally between Blue Lagoon Village to the south and Dumond Drive to the north. However, public access to the sandy beach seaward of the community is available via Dumond Drive north of the site, as well as by a public access stairway located at Victoria Drive located to the north of the site, just north of Dumond Drive. Because public access is available to the beach seaward of the Lagunita Community, Lagunita was not included as one of the areas of deferred certification at the time the City's Local Coastal Program was certified.

The site is currently developed with a 6,135 sq. ft. single family residence and a detached two car garage which the City's website states was built in 1969. The existing structure is located beyond the building stringline, which is taken from the furthest corners of the adjacent residences. Also currently existing on the site are landscaping, patio, spa, fire pit, and two low retaining walls which are located seaward of the residence and seaward of the deck stringline. Also seaward of the residence is a 7'4" high retaining wall located adjacent to the seaward property line, which was constructed at some point between 1972 and 1979, and later expanded in 1982 pursuant to CDP No. 5-82-834. The site is adjacent to a scenic, but fairly narrow (less than 100 feet deep) public beach.

The development approved by the City would result in a new, 5,448 sq. ft. single family residence with 338 sq. ft. of deck space and a detached garage. The development includes 1) an addition of 161 sq. ft. addition to the ground floor which would expand the ground floor of the residence seaward, 2) a new spa, wood deck, and retaining walls located seaward of the residence, beyond the deck stringline 3) new retaining walls and alteration to existing grade on the landward side of the residence, 4) transformation of 219 sq. ft. of habitable space to deck.

The project would involve demolition of interior and exterior walls. The applicant's architect calculated how much of the residence was being demolished by looking at the square footage of each wall and measuring the areas of wall that are being retained or demolished. According to the applicant's architect, the project would result in the demolition of 46.9% of all exterior walls. The demolition plans prepared by the architect show that the project proposes the demolition of the majority of the seaward face of the residence. Commission Staff has determined that the project would result in demolition of most of the seaward face of the ground floor and just over half of the seaward face of the second and third floors. The demolition plans show that the project includes the demolition of all existing interior walls of the residence (Exhibit 2, pages 1-3, demolished walls denoted by dashed lines). The project also includes the removal of the roof eaves and some interior portions of the roof, which the applicant's architect calculates to result in 15.9% roof demolition (Exhibit 2, page 4).

The project also includes the demolition of retaining walls and construction of new walls which support the grade upon which the house relies. The retaining walls are proposed at the seaward side of the residence and at the landward side of the residence, between the residence and the detached garage. Although the plans received by staff did not include structural/foundation plans, the submitted site and floor plans and grading cross sections seem to indicate that the project may include work to the existing foundation of the residence. However structural plans would need to be reviewed to determine the extent of such work.

B. 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 at times, on a case-by-case basis, used the following factors in determining the substantial issue question

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, within 60 days after the decision or action has become final.

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 or with the public access policies of the Coastal Act. 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 considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP and the public access policies of Chapter 3 of the Coastal Act raise substantial 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 public access policies of Chapter 3 of the Coastal Act, and/or the certified LCP regarding new development, stringline requirements, construction of shoreline protective devices, and protection of public access.

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 public access Policies of the Coastal Act for the reasons set forth below.

C. **Substantial Issue Analysis**

1. **Wave Runup**

The Open Space and Conservation Element of the City's certified LCP states:

Policy 1.5A:

The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

Policy 1.5 Q:

Any development application for shoreline construction shall be reviewed with respect to the criteria contained in the Guidelines for Shoreline Protection, including the effects of beach encroachment, wave reflection, reduction in seacliff sand contribution, end effects and aesthetic criteria.

Policy 7A:

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

Policy 3-A of the Land Use Element states:

Ensure adequate consideration of environmental hazards in the development review process.

The Guidelines for Shoreline Protection included in the City's certified LCP states:

Shoreline development which would place structures in danger of wave attack or degrade natural means of shoreline protection should be prevented

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation

Coastal Act Section 30213 states (in relevant part):

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

a. Appellants and Applicants Contentions

The appellants contend that the City's approval does not adequately consider hazards associated with wave uprush and sea level rise, and without such consideration it cannot be determined whether the project will result in impacts to public health and safety or impacts to the public beach. The applicant's letter to staff (Exhibit 4) states: a) there is no change in the use on the site and no review of hazards posed by wave uprush is necessary; and b) the policies cited in the appeal either do not apply to remodels of existing structures or do not apply to projects other than the construction of shoreline protective devices.

b. Analysis

The project approved by the City is located on a beachfront lot and thus qualifies as an application for shoreline construction which requires a determination of its consistency with Policy 1.5Q of the City's certified LCP and other relevant LCP policies. The

construction of shoreline protective devices results in significant impacts to coastal resources. These include adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. In recognition of these impacts, the City's certified LCP includes policies to ensure that construction along the shoreline will not be placed in hazardous locations and require the construction of shoreline protective devices within the lifetime of the development.

Policy 3-A of the Land Use Element portion of the LUP requires "adequate consideration of environmental hazards in the development review process." This policy does not limit the consideration of environmental hazards to only certain types of projects, such as construction of new structures. Rather, the policy states that adequate consideration of hazards be given during the review of proposed development. Therefore, regardless of the type of development reviewed by the City, the City must adequately consider environmental hazards during its review, including consideration of wave hazards.

The City states (Exhibit 4, page 17) that consideration of wave hazards is not necessary for remodels of existing structures, where the development does not change the existing use and where the development does not increase the risk of wave hazards to the existing structure. This is not consistent with the requirements of the City's certified LCP which states that any application for development adequately consider the hazards of development.

The proposed project would extend the footprint of the ground floor on the seaward side beyond the stringline, and it would result in development including demolition and replacement of much of the existing residence. The proposed addition to the ground floor may alter the structure's susceptibility to wave uprush. The addition and the extensive demolition will result in a significant extension of the lifetime of the existing structure, extending the amount of time that the existing structure is located in a potentially hazardous location. Furthermore, significant changes have been made in the scientific understanding of sea level rise and wave uprush since the construction of the original structure in 1969. In order for adequate consideration of environmental hazards, the City should consider those changes in cases where significant changes to the original development is proposed in order to assess whether the development will result in hazards for future occupants.

Without adequate environmental review of the project, including the hazards posed by wave uprush, it cannot be determined whether the project is located in a location where it will be subject to wave hazards. The City's file does not include any evidence that the City considered whether the project would result in development placed in danger of wave attack or whether the approved development would necessitate a shoreline protective device within its lifetime.

Policy 1.5Q of the Open Space Conservation Element requires the review of impacts to the shoreline environment for projects incorporating shoreline construction. The applicant states in his letter that the LUP policies regarding wave hazards only apply for

projects incorporating the construction of shoreline protective devices. Although the applicant interprets shoreline construction narrowly, the term shoreline construction would include construction adjacent to the ocean on beachfront lots. The City's file does not show evidence that the City has considered impacts to the shoreline environment. Therefore, the project as approved by the City raises an issue as to consistency with policy 1.5Q of the OSCE.

Without consideration of whether a shoreline protective device will be required, it cannot be determined whether the proposed development will have negative impacts on use of the narrow sandy beach located seaward of the subject site. There is minimal available area on the site to allow the construction of a shoreline protective device; thus if a shoreline protective device were required such a structure would likely need to be placed on the public beach, resulting in a reduction in the area of beach access for public use and an impact to scenic views along the coast.

Without adequate consideration of environmental hazards, it cannot be determined whether the project will result in development which places the health and safety of the public at risk, or whether the development will result in potentially significant impacts to public access, scenic views, and alteration of natural landforms as a result of the construction of a shoreline protective device. Thus, the proposed project raises a substantial issue as to consistency with the certified Implementation Plan section 25.50.004, the shoreline protection policies of the LCP, and Coastal Act Sections 30211 and 30213.

2. Substantial Alterations

Section 25.50.004 of the City's Implementation Plan regards setbacks and states (in relevant part, emphasis added):

In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:

4) In addition to (1), (2) and (3) above, no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare....

(b) The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways and other types of similar features shall not be used to define the building stringline criteria.

(ii) Only in such cases where the design review board determines that the stringline is significantly more restrictive than the twenty-five foot

setback may the board modify the required building setback, provided it determines that unique conditions relating to landform, lot orientation or excessive building setbacks on an adjacent property prevent or severely restrict residential development that otherwise meets the intent of the zoning code.

Implementation Plan Section 25.56.002 states:

A nonconforming building, structure or improvement is one which lawfully existed on any lot or premises at the time the first zoning or districting regulation became effective with which such building, structure or improvement, or portion thereof, did not conform in every respect.

Any such nonconforming building, structure or improvement may be continued and maintained, except as otherwise provided in this chapter, but may not be moved in whole or in part unless and except every portion thereof is made to conform to the provisions of this title.

Implementation Plan Section 25.56.008 states: S

(A) No building, structure or improvement which is nonconforming shall be added to or enlarged in any manner unless such building, structure or improvement, is made to conform in every respect with the provisions herein set forth for the applicable zoning district.

(B) Exceptions

(1) Existing legal nonconforming structure located in the R1, R2 or VC zone may be added to or expanded without bringing the existing nonconformities into compliance with the provision of the applicable zoning district if the proposed structure's addition or modification meets all of the following criteria:

(a) The proposed addition meets all applicable zoning regulations; and

(b) The total floor area per residential structure (with addition) does not exceed fifteen hundred square feet

(2) If a building is nonconforming only because of noncompliance with the required yard regulations and access requirements, then additions and enlargements may be made without the need for a variance provided:

(a) The additions and enlargements comply in every respect with the provisions of this title; and

(b) The total aggregate floor area included in all such separate additions and enlargements does not exceed fifty percent of the floor area contained in such building, structure or improvement prior to the making of any such additions or enlargements.

The uncertified Section 25.56.009 of the City's zoning code, appears to have been modified in the City's version of its code without approval of an Implementation Plan amendment by the Commission. See discussion below. The section states:

If fifty percent or more of a nonconforming portion of the structure is substantially removed or modified, that portion must be rebuilt in conformance with zoning regulations. Structures listed on the historic register shall be allowed to maintain existing setbacks, in accordance with the provisions of Chapter 25.45.(Ord 1434 S 12, 2003: Ord. 1282 S 1(part), 1994)

The certified version of the City's Implementation Plan Section 25.56.009 states:

If any part of a nonconforming portion of the structure is substantially removed or modified in such a way that it compromises the structural integrity of the building, that portion must be rebuilt in conformance with zoning regulations, (Ord. 1282 S 1 (part), 1994)

a. Appellants and Applicants Contentions

The appellants contend that the project constitutes new development and should be brought into conformance with the applicable policies of the LCP because substantial portions of the existing residence are being demolished. The applicant's letter to staff (Exhibit 4) states that the project constitutes a cosmetic upgrade of the home with "nominal removal and replacement of the home's structural elements," and that the project does not qualify as development that would be required to comply with current LCP requirements.¹

b. Nonconforming Development

The appeal contends that substantial alterations are occurring to the existing structure, thus the City must require the proposed development conform with current policies. Implementation Plan Section 25.56.009 requires that where alterations are occurring to a nonconforming portion of a structure, if such alterations would compromise the structural integrity of the building, that portion must be rebuilt in conformance with zoning regulations.

Any project which involves a nonconforming structure is required to be in compliance with the policies regarding nonconforming structures in the LCP. Implementation Plan Section 25.50.004 requires that buildings extend no further than the building stringline or a 25 foot setback from the oceanfront bluff, whichever is most restrictive, and requires

¹ The applicant also cites two LCP provisions (LBCZ, §§ 25.10.008(O) and 25.53.002) which are only pertinent when interpreting the open space or access requirements of the IP. In this case, the appeal is not raising issues related to the provision of landscaped open space on the property or the provision of new access to the site. Even if the appeal raised these issues, which it doesn't, the calculus would remain the same for assessing the extent of substantial alteration of a proposed project, and the associated application of section 25.56.009 of the City's certified LCP, to determine if an applicant must bring nonconformities into conformity with zoning regulations for a proposed project. Thus, these provisions, LBCZ, §§ 25.10.008(O) and 25.53.002, do not affect the Commission's determination of whether or not the proposed project constitutes a substantial alteration. Therefore, the applicant's reliance on these two LCP provisions are not applicable to whether the grounds of the appeal raise substantial issues with respect to the LCP.

that decks conform to the deck stringline. The City has not determined that a bluff exists at the subject property; therefore the stringline requirement is the appropriate setback at the subject site. Implementation Plan Section 25.56.002 defines a nonconforming structure as a structure that was lawfully built prior to the effective date of an ordinance. The City's GIS website identifies the site as built in 1969, prior to the effective date of the stringline requirement. The City has identified in its approval that the "existing structure is constructed beyond both the deck and building stringlines." Therefore, the existing structure is a nonconforming structure.

It appears that there is a discrepancy between Section 25.56.009 in the certified copy of the City's Implementation Plan and Section 25.56.009 listed on the City's current version of its Zoning Code. The City's version of 25.56.009 states that projects modifying 50 percent or more of a nonconforming portion of a structure must rebuild those sections in conformance with zoning regulations, whereas the Certified version of Section 25.56.009 states that projects substantially removing or modifying a nonconforming part of a structure in a way that compromises the structure integrity of the building must rebuild those nonconforming portions in conformance with zoning regulations. The discrepancy between the two versions of the code seems to have resulted from a modification to the City's zoning code which was approved by the City Council but which was not submitted to the Commission for review of an Amendment to the City's Implementation Plan, and was therefore not approved by the Commission. Therefore, based on the information which has been reviewed to date by staff, Section 25.56.009 labeled as the Certified version appears to be the correct basis for the review of the project approved by the City.

The portion of the project which would qualify as the nonconforming portion of the structure for purposes of IP Section 25.56.009 would be the portion of the existing structure located beyond the building stringline. From the location of the stringline (Exhibit 3, page 1), and the demolition plans (Exhibit 2, pages 1-3) Commission Staff has calculated that the project approved by the City would result in the demolition of the following percentages of the nonconforming portion of the residence: 82% of exterior walls on the ground floor of the residence, 61% of exterior walls on the second floor, and 58% exterior walls on the third floor. Therefore, the project would both: a) remove over 50% of the exterior walls in the nonconforming portion of the residence, and b) result in the removal of substantial amounts of structural support for the existing residence.

Therefore, regardless of whether the City used the Certified version of 25.56.009 found in the City's certified Implementation Plan, or whether the City used the uncertified version of 25.56.009 found in the latest copy of the City's zoning code, the nonconforming portion of the structure should be required to be brought into consistency with current policies because the proposed project results in removal of substantial amounts of structural support for the existing residence. Therefore, the proposed project raises a substantial issue as to consistency with Section 25.56.009 regarding significant alterations to nonconforming structures.

3. Line of Development

Implementation Plan Section 25.08.034 states (in relevant part):

“Structure” means anything constructed, built, any edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some defined manner, which requires location on the ground or is attached to something having a location on the ground, except outdoor areas such as patios, paved areas, walks, tennis courts, and other similar recreation areas.

Implementation Plan Section 25.50.004 states (in relevant part):

In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:

4) In addition to (1), (2) and (3) above, no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare....

(b) The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways and other types of similar features shall not be used to define the building stringline criteria.

(ii) Only in such cases where the design review board determines that the stringline is significantly more restrictive than the twenty-five foot setback may the board modify the required building setback, provided it determines that unique conditions relating to landform, lot orientation or excessive building setbacks on an adjacent property prevent or severely restrict residential development that otherwise meets the intent of the zoning code.

c) A deck stringline may be used to establish a setback for decks. The deck stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the decks on main buildings on adjacent lots.

(d) Building Projection Setback.

(i) Balconies, patios, or decks in excess of thirty inches above the finished grade, including patio deck covers, and other similar architectural features may project a maximum of five feet beyond the applicable building setback or to the applicable deck stringline, whichever is least restrictive. In no case shall such projections be closer than ten feet to the top of an oceanfront bluff

(ii) Decks, patios and other similar improvements that are thirty inches or less above finished grade shall not encroach closer than ten feet to the top of an oceanfront bluff.

Coastal Act Section 30213 states (in relevant part):

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

a. Building Stringline

Implementation Plan Section 25.50.004 requires buildings, structures, and improvements to comply with the appropriate setback line. Therefore, regardless of whether the City considered the approved development to be a new structure or an improvement to the existing structure, the setback policies found in IP Section 25.50.004 apply. IP Section 25.50.004 states that in addition to other setbacks, oceanfront properties shall be subject to a setback of either 25 feet from the top of an oceanfront bluff or a stringline. In this case, the City has not identified a bluff on the subject site, so the applicable setback is a stringline.

The project approved by the City would result in the demolition of exterior walls on the seaward face of the residence, and construction of an addition on the ground floor of the residence which would extend the residence further seaward. Areas where walls are being demolished and replaced and the area of new addition to the structure would be located beyond the building stringline, increasing the degree of the existing nonconformity. The City has identified in its approval that the “existing structure is constructed beyond both the deck and building stringlines.” However, the City did not require the development to comply with the stringline requirements, even though the LCP states “no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline.”

Section 25.50.004 (B) (4) (b) (ii) states that a modification (i.e. a variance) may only be granted when the design review board determines: a) the stringline is significantly more restrictive than the twenty five foot setback, and b) unique conditions relating to landform, lot orientation or excessive building setbacks on an adjacent property prevent or severely restrict residential development that would otherwise be consistent with the zoning code. The City appears to have issued a variance for the approved development. However, the City’s file does not include evidence that the City considered all of the necessary requirements in order to recommend approval of a variance. Specifically, neither the City’s record received by the Commission, the staff report, the minutes from the hearings, nor the City’s resolution show that the City made findings that the stringline is significantly more restrictive than a blufftop setback (which does not exist on the subject site) or how the unique conditions on the site would severely restrict residential development on the site in compliance with the stringline provision. In contrast, given the extent of demolition of the existing residence, it appears that the applicant could have pulled back the structure consistent with building stringline requirements. Without evidence that adequate consideration was given to the requirements of a variance for stringline requirements, it cannot be assured that the stringline was appropriately applied to the project approved by the City. Therefore, the project approved by the City raises a

substantial issue as to consistency with the building stringline provisions of the City's Certified LCP.

b. Deck Stringline

The Staff Report written by the City for the January 26, 2012 hearing states: "The new second level decks (converted from living) and ground level additions also encroach beyond the applicable stringlines." The project approved by the City includes the demolition of exterior walls on the second and third stories to create new second and third story decks located beyond the deck stringline, and also includes ground level additions located beyond the deck stringline including: a new spa, landscaping, planter, outdoor bench, and outdoor shower. This new accessory development, located seaward of the residence, would also occupy the same area that may be necessary to construct a shoreline protective device on the site, if one is found to be needed within the lifetime of the structure, resulting in the potential need for shoreline protection which occupies the public beach. As described above, the available evidence does not show that the City has adequately considered whether strict application of the stringline requirement with regard to the addition of decks and other significant structures would prevent or severely restrict development. Therefore, the proposed project raises a substantial issue as to consistency with Implementation Plan Section 25.50.004.

c. Nonconforming Development

As described above, the project approved by the City constitutes a nonconforming structure. Implementation Plan Section 25.56.008 prohibits additions or enlargements to existing nonconforming structures unless specific criteria are met, including that the addition conforms in all respects to the applicable zoning code requirements. The project approved by the City would result in the addition of living space to the ground floor of the residence on the nonconforming seaward side of the residence, resulting in an addition to an existing nonconforming structure. As discussed above, the project approved by the City, which would result in further seaward development on the ground floor of the residence, raises an issue as to consistency with the stringline setback. The exceptions allowed by IP Section 25.56.008 may not apply, as the proposed addition may not meet the provisions of the Implementation Plan, and therefore the project approved by the City may be inconsistent with the section's prohibition on additions to existing nonconforming structures. Therefore, the proposed project raises an issue as to consistency with Implementation Plan Section 25.56.008.

Coastal Act Section 30213 requires protection of visitor serving and recreational facilities, such as the beach seaward of the residence. The proposed development would result in major modifications to the existing structure and the perpetuation of the nonconforming structure on the site. Adjacent development will rely on the location of development on this site for purposes of compatibility with stringline. The proposed development will result in further seaward encroachment as the adjacent residences are redeveloped over the lifetime of the structure. Therefore, the City's approval raises a substantial issue as to consistency with Coastal Act Section 30213 due to potential

impacts to public views to and along the coast due to further seaward encroachment of the line of development in the area.

4. 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 City did not consider the wave hazards on the site so that it could condition the proposed development in a manner that it would not require the future construction shoreline protection device. If a shoreline protective device is built on this site in the future, it would likely be placed on and/or result in impacts to a public beach and would contribute to scouring of the sandy beach from wave activity, resulting in loss of public sandy beach. As such, the coastal resource that would be affected by the City-approved project is the public beach located seaward of the site. The public beach is a valuable resource to residents from the area and to visitors from around the state. Impacts to the public beach in this location would result in impacts to the ability of the public to access and enjoy the beach and state owned tidelands. Thus, the resource affected area is indeed significant and the adverse impacts created by the proposed development upon the significant resources are considerable. Therefore, the appeal raises a substantial issue with regard to the significance of the coastal resources and the public access to and along the coast which are affected by the City decision to approve the local CDP.

In the segment of shoreline in which the subject site lies, there appears to be only one development which has a shoreline protective device. That development is the Blue Lagoon residential community, which is located much further seaward than the adjacent residences and is protected by a rock revetment and seawall. Adequate consideration of setbacks and wave hazards is important to ensuring that this segment of shoreline continues to be unimpacted by shoreline protective devices in the future. Without such consideration, it cannot be assured that the public beach will not be subject to the negative effects of shoreline protective devices.

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 regional and statewide significance. As noted, the proposed development would result in the further seaward encroachment of the residence and may result in potentially significant impacts to the public beach as a result of construction of a shoreline protective device within the lifetime of the structure. Protection of public access and recreational opportunities from the impacts of adjacent development is important to ensure the continued ability of visitors from around the state to access coastal waters. Without adequate consideration of the issues which arise from development of adjacent privately owned lots, significant impacts can occur to adjacent public uses. Ensuring that the LCP's policies regarding siting, hazards, and impacts to public access are being appropriately interpreted is vital to ensuring that impacts to public beaches and the waters of the State do not occur. Allowing development to occur without adequately ensuring that such development

would not impact the adjacent public beach would also set a precedent for allowing similar types of development statewide, thus resulting in impacts to lower cost visitor-serving facilities statewide. Thus, the appeal raises substantial issues of regional and statewide significance.

5. Conclusion

For the reasons described above, the appeal raises a substantial issue regarding whether the development approved by the City is consistent with the City's certified LCP and the Public Access policies of the Chapter 3 policies of the Coastal Act. Further, the inconsistencies raise issues with regard to significant coastal resources and adverse precedent for future interpretation of the City's LCP. 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.

CALIFORNIA COASTAL COMMISSION

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



RECEIVED
South Coast Region

FEB 28 2012

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

CALIFORNIA
COASTAL COMMISSION

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

Coastal Commissioners: Brian Brennan and Mark Stone
200 Oceangate, Suite 1000
Long Beach, CA 90802 (562) 590-5071

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Laguna Beach
2. Brief description of development being appealed: The applicant requests design review and a coastal development permit for additions (no net increase) to a single-family dwelling in the Lagunita Zone. Design review is required for upper level additions, elevated decks (net increase of seven square feet), oceanfront stringline violation, pool/spa, grading, retaining walls, air-conditioning units, landscaping and construction in an environmentally sensitive area due to oceanfront and water quality.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 24 Lagunita Drive, APN# 656-171-33
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: XX
 - c. Denial: _____

NOTE: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-5-LGB-12-067

Appeal Form
COASTAL COMMISSION

DATE FILED:

February 28, 2012

DISTRICT:

South CoastEXHIBIT # 1

PAGE

1 OF 8

5. Decision being appealed was made by (check one):
- a. Planning Director/Zoning Administrator: _____
 - b. City Council/Board of Supervisors: _____
 - c. Planning Commission: _____
 - d. Other: _____ Design Review Board
6. Date of local government's decision: January 26, 2012
7. Local government's file number: CDP 11-34

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:
Bruce and Pam Ratner
1 Metrotech Center
Brooklyn, New York, 11021
2. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.
- a. Morris Skenderian Architects
2094 South Coast Highway #3
Laguna Beach, CA 92651
 - b. Warren Tapp
25 Lagunita, Laguna Beach, CA 92651
 - c. Patrick Lehman
21 Lagunita, Laguna Beach, CA 92651

COASTAL COMMISSION

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SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please 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.)

Appeal of the Local Government decision is based on: a) Proposed reconstruction, and addition to, living space that is non-conforming as to stringline requirements, and inadequate analysis of whether accessory structures are consistent with stringline requirements; b) No analysis of the effects of wave uprush, sea level rise, and the potential need for future shoreline protection, despite the requirements for said analysis in the City's LCP; c) No analysis of whether the home has been sited to avoid the need for future shoreline protection.

The subject site is an 8,410 square foot oceanfront lot, located adjacent to an approximately 150 foot wide sandy public beach. The site is currently developed with a 6,315 sq. ft., three story single family residence, 173 sq. ft. of deck, and a detached garage. The applicant is proposing to demolish 48% of exterior walls, the majority of interior walls, and install new foundations consisting of retaining walls. The development approved by the City would result in a new, 5,448 sq. ft. single family residence with 338 sq. ft. of deck space and a detached garage.

Substantial Demolition and Reconstruction

The proposed project is described in the City notice as an addition to an existing single family residence. However, the proposed development includes significant amounts of demolition of interior and exterior walls, and also includes the demolition and replacement of retaining walls which support the residence. Therefore, the project may be considered as new development, and should be brought into consistency with all applicable LCP policies.

Line of Development

Implementation Plan Section 25.50.004 states (in relevant part):

In addition, no building, structure or improvement shall be erected or constructed after the effective date of the ordinance codified in this section on the oceanward side of the following building setback lines:

4) In addition to (1), (2) and (3) above, no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply. Greater setback may be required by the city engineer or building official in order to protect the public health, safety or welfare....

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(b) *The building stringline averages the setback of oceanfront buildings on both adjacent sides of coastal lots and is defined as follows: The stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the nearest adjacent walls of the main buildings on adjacent lots. Posts or columns that extend to grade from upper story decks, balconies, stairways and other types of similar features shall not be used to define the building stringline criteria.*

(ii) *Only in such cases where the design review board determines that the stringline is significantly more restrictive than the twenty-five foot setback may the board modify the required building setback, provided it determines that unique conditions relating to landform, lot orientation or excessive building setbacks on an adjacent property prevent or severely restrict residential development that otherwise meets the intent of the zoning code.*

c) *A deck stringline may be used to establish a setback for decks. The deck stringline setback shall be depicted as a line across a parcel that connects the oceanward ends of the decks on main buildings on adjacent lots.*

The City's Implementation Plan states in section 25.50.004 (B) (4) that: "no new building, additions to existing buildings, or structures or improvements shall encroach beyond the applicable building stringline or shall be closer than twenty-five feet to the top of an oceanfront bluff; the more restrictive shall apply."

The plans received by the Commission show that portions of the existing residence extend beyond the building stringline, and portions of the accessory structures associated with the single family residence extend beyond the deck stringline. As discussed above, the proposed development consists of significant alterations to the existing single family residence and the proposed project should be considered as new development. Therefore, the proposed project should be consistent with all applicable LCP policies.

However, the development proposed by the City would not be consistent with the stringline policies of the LCP; rather, the proposed development would perpetuate and exacerbate the nonconforming stringline on the site. The proposed development includes the demolition of the majority of the seaward side of the ground floor of the residence. However, instead of pulling back the seaward face of the residence to be consistent with the building stringline, the proposed development includes reconstruction of the nonconforming area and an addition to the existing residence which extends a nonconforming portion of the residence 5 feet further seaward. The City's approval would therefore result in the perpetuation of the non-conforming stringline at the site, and result in the potential for further seaward encroachment by neighboring properties. Therefore, the project raises an issue as to consistency with the stringline setback policies of the City's certified LCP.

Hazards

The Open Space and Conservation Element of the City's certified LCP states:

Policy 1.5A:

The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or

COASTAL COMMISSION

collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

Policy 1.5 Q:

Any development application for shoreline construction shall be reviewed with respect to the criteria contained in the Guidelines for Shoreline Protection, including the effects of beach encroachment, wave reflection, reduction in seacliff sand contribution, end effects and aesthetic criteria.

Policy 3-A of the Land Use Element states:

Ensure adequate consideration of environmental hazards in the development review process.

The Guidelines for Shoreline Protection included in the City's certified LCP states:

Shoreline development which would place structures in danger of wave attack or degrade natural means of shoreline protection should be prevented

No analysis of the effects of wave uprush or sea level rise has occurred, no assessment has been made of the potential need for future shoreline protection for the proposed development, nor did the City impose any conditions which would prohibit future shoreline protective devices to protect the proposed development. Without adequate consideration of environmental hazards, it cannot be determined whether the project will result in development which places the health and safety of the public at risk, or whether the development will result in potentially significant impacts to public access, scenic views, and alteration of natural landforms as a result of the construction of a shoreline protection device. As a result, the project raises an issue as to consistency with the hazard prevention policies of the City's certified LCP.

Public Access

The certified Open Space and Conservation Element (OSCE) of the City's certified LCP states:

Policy 7A:

Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline.

Policy 1.5A:

The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. "Imminent Danger" is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger.

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Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation

The City's approval did not include an analysis of whether a shoreline protective device will be required within the lifetime of the structure, and whether such a shoreline protective device may have negative impacts on use of the narrow sandy beach located seaward of the subject site. There is minimal available area on the site to allow the construction of a shoreline protective device; thus if a shoreline protective device were required such a structure would likely need to be placed on the public beach, resulting in a reduction in the area of beach available for public use and an impact to scenic views along the coast. Therefore, based on the information available at this time, the project as approved raises an issue as to consistency with the Public Access policies of Chapter 3 of the Coastal Act and the public access policies of the City's certified LCP. Therefore, the City's approval must be appealed.

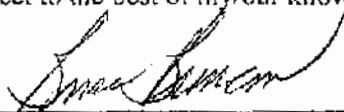
Coastal Act Section 30603 states that the standard of review for an appeal of a development between the first public road and the sea is the City's certified LCP and the Public Access Policies of Chapter 3 of the Coastal Act. Based on available information, the project raises an issue as to consistency with these standards of review. Therefore, the project must be appealed.

COASTAL COMMISSION

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: 2/27/12

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: _____

COASTAL COMMISSION

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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.)

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: Mohamed S. [Signature]
Appellant or Agent

Dated: 2/28/2012

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

Signed: _____

Dated: _____

COASTAL COMMISSION

EXHIBIT # 1
PAGE 8 OF 8

1556 10 TH STREET
SANTA MONICA, CALIFORNIA 90401
TEL: 310.451.5400
FAX: 310.451.5440
email: kanner@kannerarch.com

LEGEND

DEMOLITION PLAN - LEGEND

- WALL TO REMAIN
- WALL TO BE REMOVED

REVISION NO.	DATE
03/17/2011	03/17/2011
04/07/2011	04/07/2011
05/10/2011	05/10/2011
08/17/2011	08/17/2011
08/16/2011	08/16/2011
12/15/2011	12/15/2011

JOB TITLE
LAGUNITA RESIDENCE

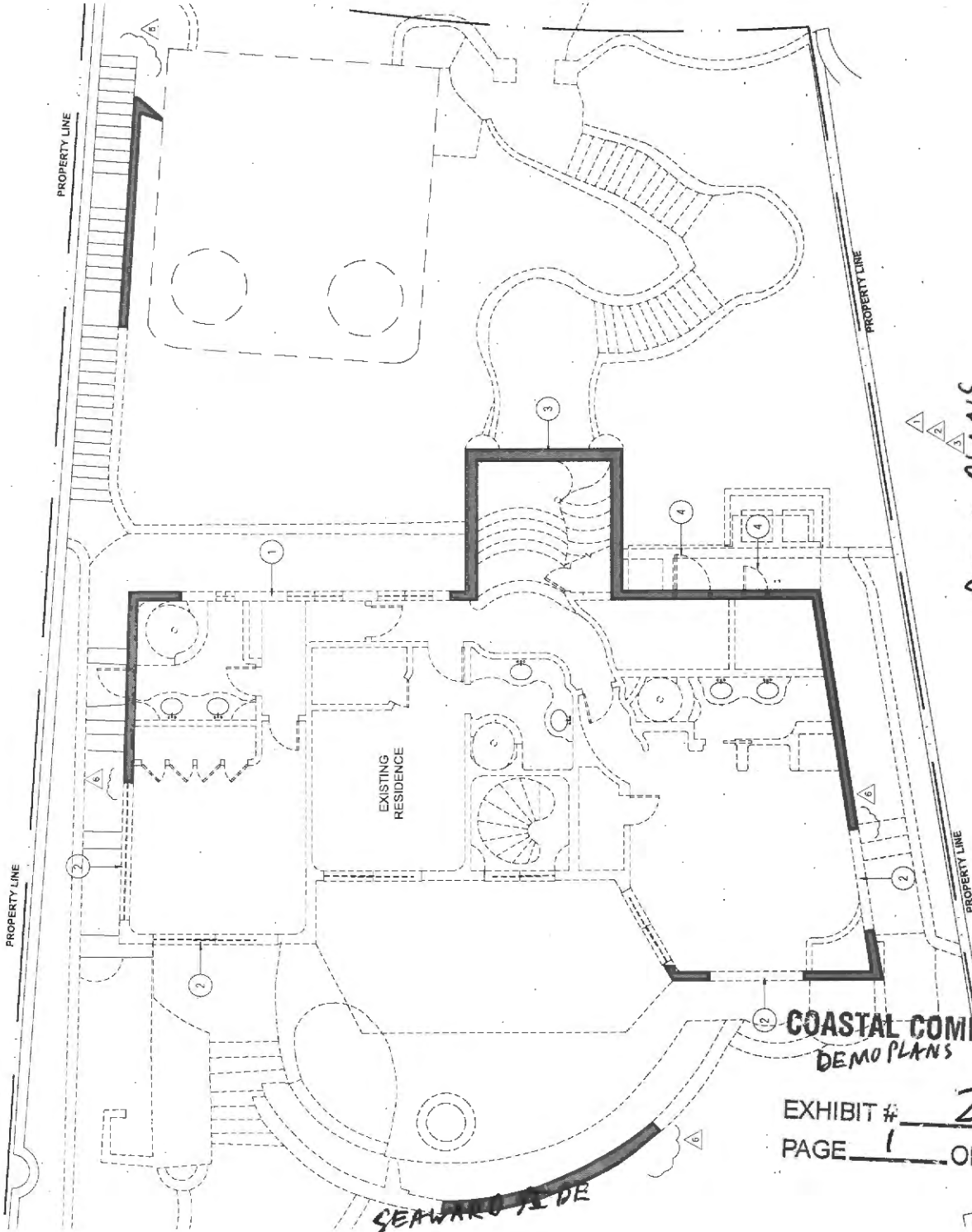
JOB ADDRESS
24 LAGUNITA DRIVE
LAGUNA BEACH, CALIFORNIA 92651

SHEET TITLE
GROUND FLOOR
DEMOLITION PLAN
ISSUED FOR
ZONING SUBMITTAL

JOB NO.
03061
DATE
11/18/2010
SCALE
1/4" = 1'-0"
SHEET NO.
D-1

DEMOLITION PLAN - KEY NOTES

- 1. EX. WALL TO BE MODIFIED ON THE BUILD
- 2. EX. WINDOW TO BE MODIFIED
- 3. EX. WINDOW TO BE REMOVED
- 4. EX. DOOR TO BE REMOVED
- 5. EX. DOOR TO BE REMOVED
- 6. EX. FLOOR TO BE REMOVED



DEMO PLANS
GROUND FLOOR

COASTAL COMMISSION
DEMO PLANS

EXHIBIT # 2
PAGE 1 OF 4

SEAWARD SIDE

DEMOLITION- GENERAL NOTES

KAMNER ARCHITECT'S

1505 16 114 STREET
LAGUNA BEACH, CALIFORNIA 92651
TEL: 310.451.5400
FAX: 310.451.5440
email: kamner@kamnerarch.com

LEGEND

DEMOLITION PLAN- LEGEND

WALL TO REMAIN
 WALL TO BE REMOVED

DEMOLITION PLAN- KEY NOTES

1. (1) WALL TO BE MODIFIED OR REMOVED
2. (2) WINDOW TO BE MODIFIED
3. (3) WINDOW TO BE REMOVED
4. (4) DOOR TO BE REMOVED
5. (5) DECK TO BE REMOVED
6. (6) FLOOR TO BE REMOVED

REVISION NO.	DATE
1	02/17/2011
2	04/07/2011
3	06/09/2011
4	06/17/2011
5	08/16/2011
6	12/15/2011

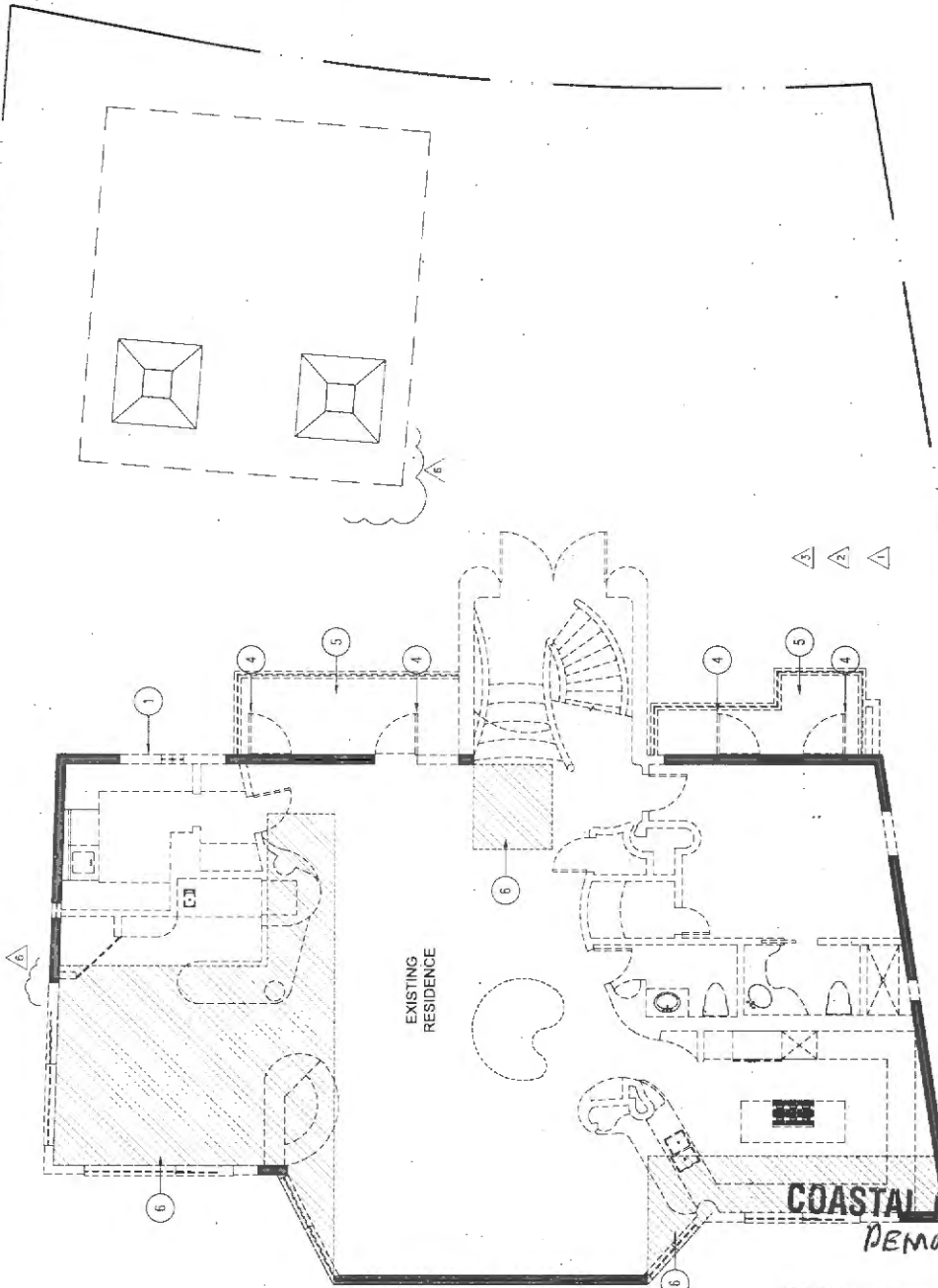
JOB TITLE
LAGUNITA RESIDENCE

JOB ADDRESS
24 LAGUNITA DRIVE
LAGUNA BEACH, CALIFORNIA 92651

SHEET TITLE
SECOND FLOOR
DEMOLITION PLAN
ISSUED FOR
ZONING SUBMITTAL

JOB NO.
00081
DATE
11/18/2010
SCALE
1/4" = 1'-0"

SHEET NO. D-2



SEAWARD SIDE

COASTAL COMMISSION
DEMO PLANS

EXHIBIT # 2
PAGE 2 OF 4

DEMOLITION PLANS
SECOND FLOOR

1 SECOND FLOOR DEMOLITION PLAN
1/4" = 1'-0"

1555 10th STREET
 SAN DIEGO, CALIFORNIA 92101
 TEL: 310.431.5400
 FAX: 310.431.5440
 email: kammer@kammerarch.com

REVISION NO.	DATE
1	02/17/2011
2	04/07/2011
3	05/10/2011
4	06/17/2011
5	08/16/2011
6	12/19/2011

JOB TITLE
 LAGUNITA RESIDENCE

JOB ADDRESS
 24 LAGUNITA DRIVE
 LAGUNITA BEACH, CALIFORNIA 92051

SHEET TITLE
 THIRD FLOOR
 DEMOLITION PLAN
 PREPARED FOR
 ZONING SUBMITTAL

JOB NO.
 00921

DATE
 11/18/2010

SCALE
 1/4" = 1'-0"

SHEET NO.
 D-3

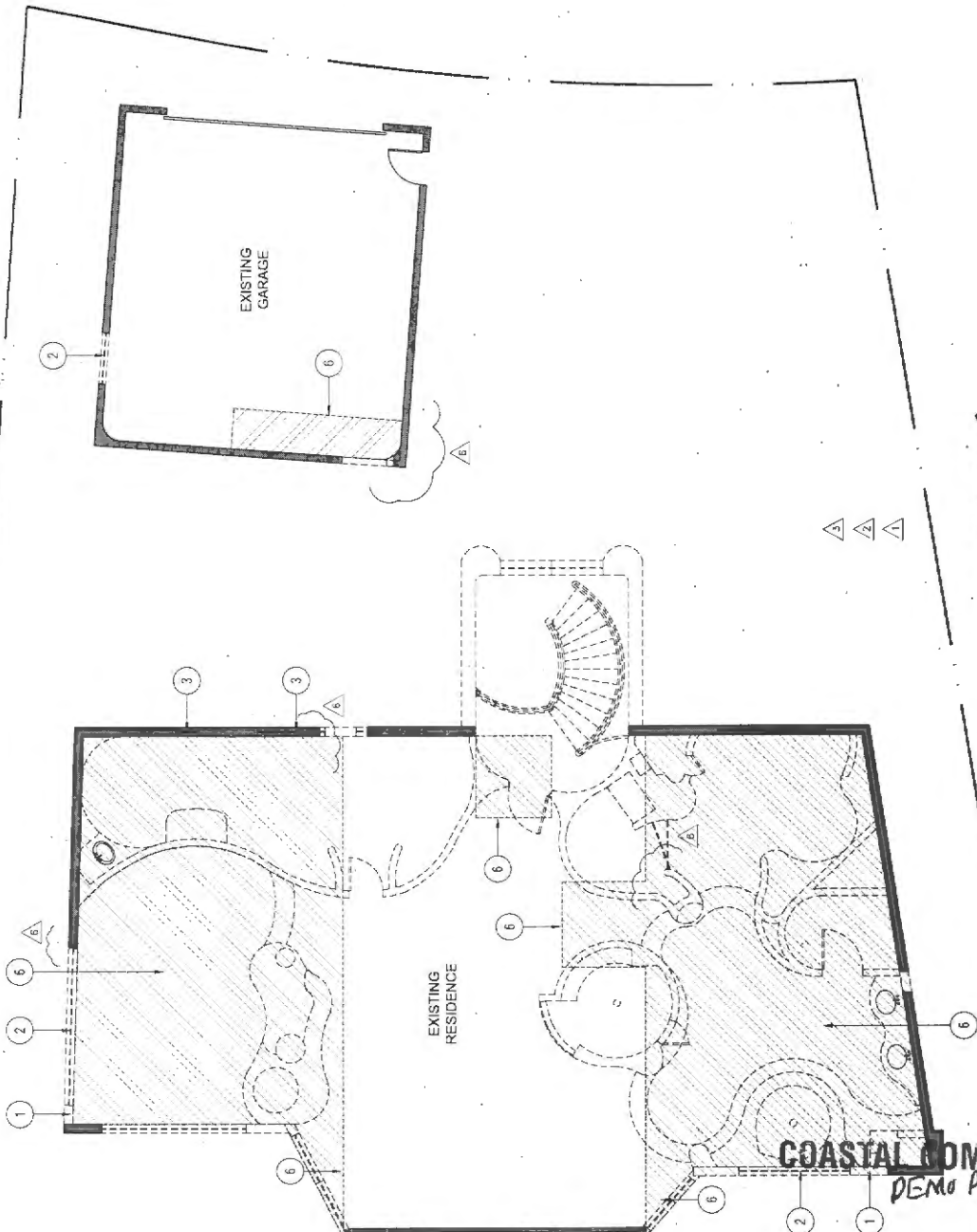
LEGEND

DEMOLITION PLAN - LEGEND

WALL REMAIN
WALL REMOVED

DEMOLITION PLAN - KEY NOTES

- (1) WALL TO BE MODIFIED OR REMOVED
- (2) WINDOW TO BE REMOVED
- (3) DOOR TO BE REMOVED
- (4) FLOOR TO BE REMOVED
- (5) CEILING TO BE REMOVED
- (6) FLOOR TO BE REMOVED



THIRD FLOOR
 DEMOLITION

COASTAL COMMISSION

DEMO PLANS

EXHIBIT # 2
 PAGE 3 OF 4

SEAWARD
 SIDE

1556 10 TH STREET
LAGUNA BEACH, CALIFORNIA 92651
TEL: 310.451.5400
FAX: 310.451.5440
email: kanner@kannerarch.com

LEGEND

DEMOLITION PLAN - LEGEND

 AREA REMOVED

REVISION NO.	DATE
1	02/17/2011
2	04/07/2011
3	06/10/2011
4	06/17/2011
5	06/16/2011
6	12/15/2011

JOB TITLE
LAGUNITA RESIDENCE

JOB ADDRESS
24 LAGUNITA DRIVE
LAGUNA BEACH, CALIFORNIA 92651

SHEET TITLE
ROOF
DEMOLITION PLAN
ISSUED FOR
ZONING SUBMITTAL

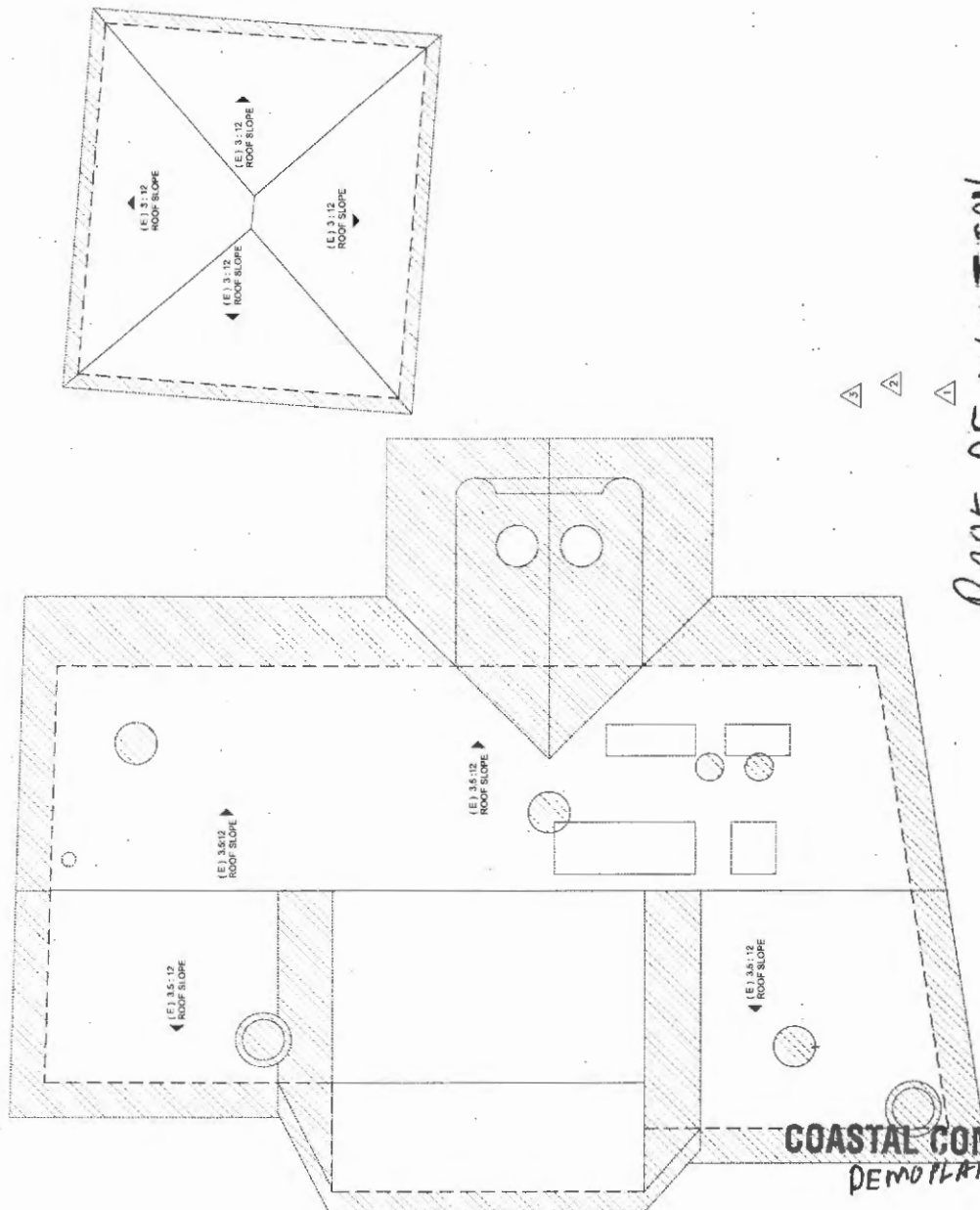
JOB NO.
00001

DATE
11/16/2010

SCALE
1/4" = 1'-0"

SHEET NO.
D-4

DEMOLITION PLAN - KEY NOTES



ROOF DEMOLITION

COASTAL COMMISSION
DEMOLITION PLANS

EXHIBIT # 2
PAGE 4 OF 4

1 ROOF DEMOLITION PLAN

1/4" = 1'-0"

1558 10 TH STREET
SANTA MONICA, CALIFORNIA 90401
TEL: 310.451.5400
FAX: 310.451.5640
email: kannerv@kannervarch.com

REVISION NO.		DATE
1	Zoning Submittal Revision	02/17/2011
2	Zoning Submittal Revision	04/07/2011
3	Zoning Submittal Revision	05/10/2011
4	Zoning Submittal Revision	06/17/2011
5	HDA Submittal Revision	09/16/2011
6	Design Review	12/15/2011

JOB TITLE
LAGUNITA RESIDENCE

JOB ADDRESS
14 LAGUNITA DRIVE
LAGUNA BEACH, CALIFORNIA 92651

ISSUED FOR
SUBMITTAL

JOB NO.
 00921

DATE
 11/18/2010

SCALE
 REFER TO DRAWING

SHEET NO.
 A-1





A-1

SITEPLAN- GENERAL NOTES

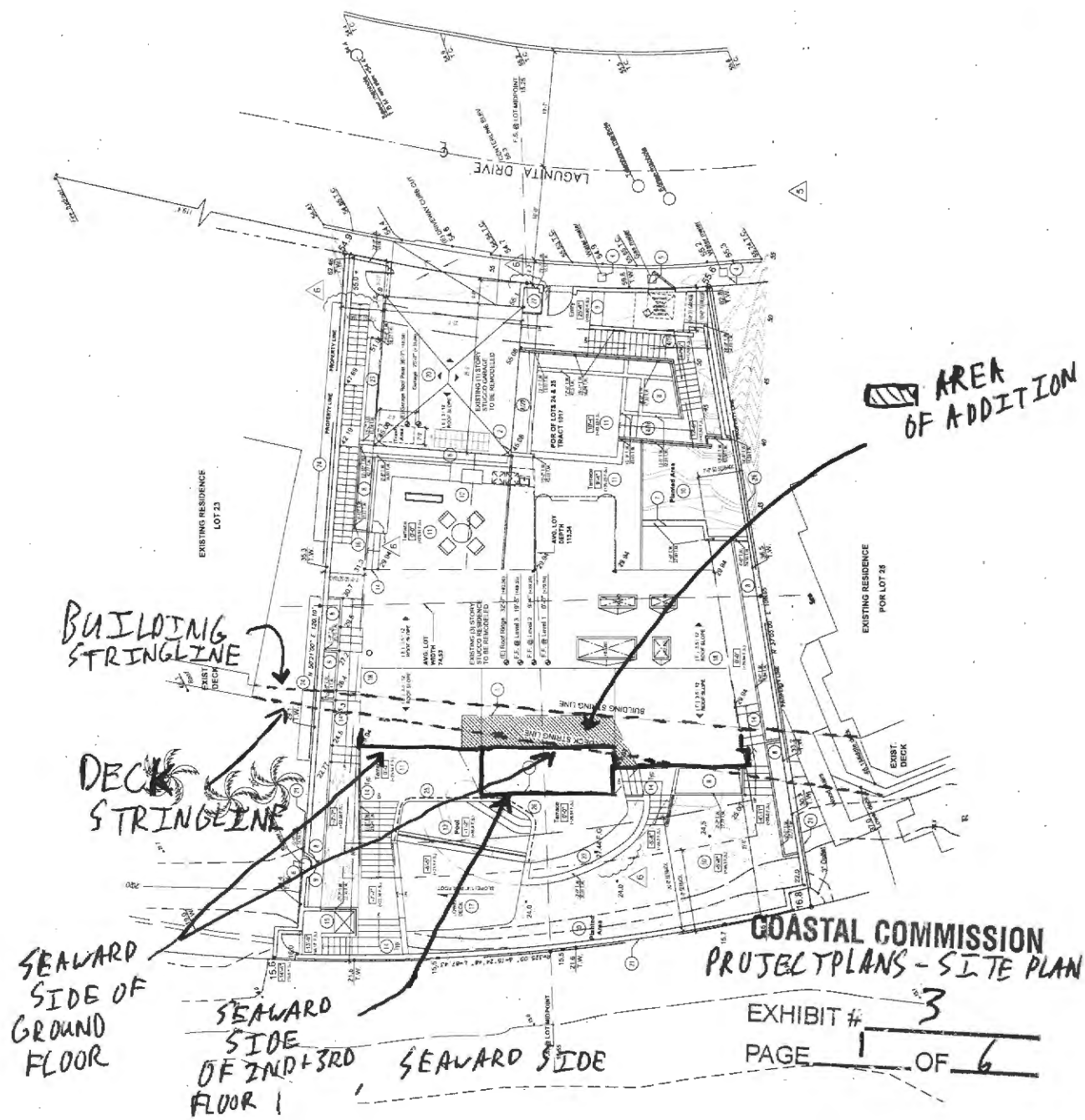
SITEPLAN- KEY NOTES

1. FOOTPRINT OF EXISTING BUILDING
2. FOOTPRINT OF EXISTING GARAGE
3. EXISTING WALL BUILDING ABOVE
4. EXISTING WALL BUILDING BELOW
5. EXISTING WALLS W/ UP TO REMAIN
6. EXISTING WALLS W/ UP TO REMAIN
7. EXISTING GARAGE WALLS
8. EXISTING GARAGE WALLS
9. EXISTING SIGN AREA (C.A. REFLECTOR EXIST UNIT)
10. PROPOSED PLANTERS AT WINDUZZ (EXIST. UNIT)
11. PROPOSED OUTDOOR BENCH
12. PROPOSED IN PLANT AREA
13. PROPOSED EXISTING AREA WITH EXTERIOR WHITE TERRAZZO
14. PROPOSED OUTDOOR BENCH AREA WITH BUILT IN APPLANCE
15. PROPOSED POOL
16. PROPOSED TERRAZZO STAIRS (TYP) FINISH ON BRIDGE
17. PROPOSED TERRAZZO STAIRS (TYP) INTO GROUND SYSTEM
18. PROPOSED 2" MINIMUM STEEL, HANG GLASS RAILING
19. PROPOSED 2" MINIMUM STEEL, HANG GLASS RAILING
20. PROPOSED 1" WOOD DECK ON GRADE
21. EXISTING GABLE ROOF
22. PROPOSED BRIDGE WALKWAY
23. NEW POOL PLANT
24. EXISTING WALL TO REMAIN
25. PLANTER WALL, SLOPE, WARDEN IS HEIGHT.
26. EXISTING PLANTER
27. EXISTING PLANT
28. EXISTING PLANT
29. FENCEABLE SIGN AND ALUMINUM POLE SEGMENT POOL
30. FENCEABLE SIGN AND ALUMINUM POLE SEGMENT POOL
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99. FENCEABLE SIGN AND ALUMINUM POLE SEGMENT POOL
100. FENCEABLE SIGN AND ALUMINUM POLE SEGMENT POOL

SITE PLAN - LEGEND

- | | |
|---|-------------------|
|  | AREA OF REDUCTION |
|  | AREA OF ADDITION |
|  | 20' SETBACK LINE |
|  | 14' SETBACK LINE |

SITE PLAN

 $1/9'' = 1'.0''$ 

FLOORPLAN- GENERAL NOTES

1. PLEASE REFER TO DRAWING FOR FLOOR FINISHES.

FLOORPLAN- PROJECT DATA

PROVIDED	EXISTING	PROPOSED	UNIT
Multi Residential	1800 sq ft	1800 sq ft	1800 sq ft
Ground Floor	1800 sq ft	1800 sq ft	1800 sq ft
2nd Floor	1800 sq ft	1800 sq ft	1800 sq ft
3rd Floor	1800 sq ft	1800 sq ft	1800 sq ft
4th Floor	1800 sq ft	1800 sq ft	1800 sq ft
5th Floor	1800 sq ft	1800 sq ft	1800 sq ft
6th Floor	1800 sq ft	1800 sq ft	1800 sq ft
7th Floor	1800 sq ft	1800 sq ft	1800 sq ft
8th Floor	1800 sq ft	1800 sq ft	1800 sq ft
9th Floor	1800 sq ft	1800 sq ft	1800 sq ft
10th Floor	1800 sq ft	1800 sq ft	1800 sq ft
11th Floor	1800 sq ft	1800 sq ft	1800 sq ft
12th Floor	1800 sq ft	1800 sq ft	1800 sq ft
13th Floor	1800 sq ft	1800 sq ft	1800 sq ft
14th Floor	1800 sq ft	1800 sq ft	1800 sq ft
15th Floor	1800 sq ft	1800 sq ft	1800 sq ft
16th Floor	1800 sq ft	1800 sq ft	1800 sq ft
17th Floor	1800 sq ft	1800 sq ft	1800 sq ft
18th Floor	1800 sq ft	1800 sq ft	1800 sq ft
19th Floor	1800 sq ft	1800 sq ft	1800 sq ft
20th Floor	1800 sq ft	1800 sq ft	1800 sq ft

* All quantities in () are previous submittals

FLOORPLAN- LEGEND

- AREA OF REDUCTION
- AREA OF ADDITION
- NEW WALLS
- EXISTING WALL TO BE REMOVED
- EXISTING WALL TO REMAIN
- INTERIOR CHANGES THAT HAVE NO ZONING IMPACT

FLOORPLAN- KEY NOTES

REVISION NO.	DATE
1	02/11/2011
2	03/07/2011
3	03/16/2011
4	03/16/2011
5	03/16/2011
6	03/16/2011
7	03/16/2011
8	03/16/2011
9	03/16/2011
10	03/16/2011

JOB TITLE
LAGUNA BEACH RESIDENCE

JOB ADDRESS
2000 LAGUNA BEACH
LAGUNA BEACH, CALIFORNIA 92651

SHEET TITLE
GROUND FLOOR PLAN

ISSUED FOR
ZONING SUBMITTAL

JOB NO.
00221

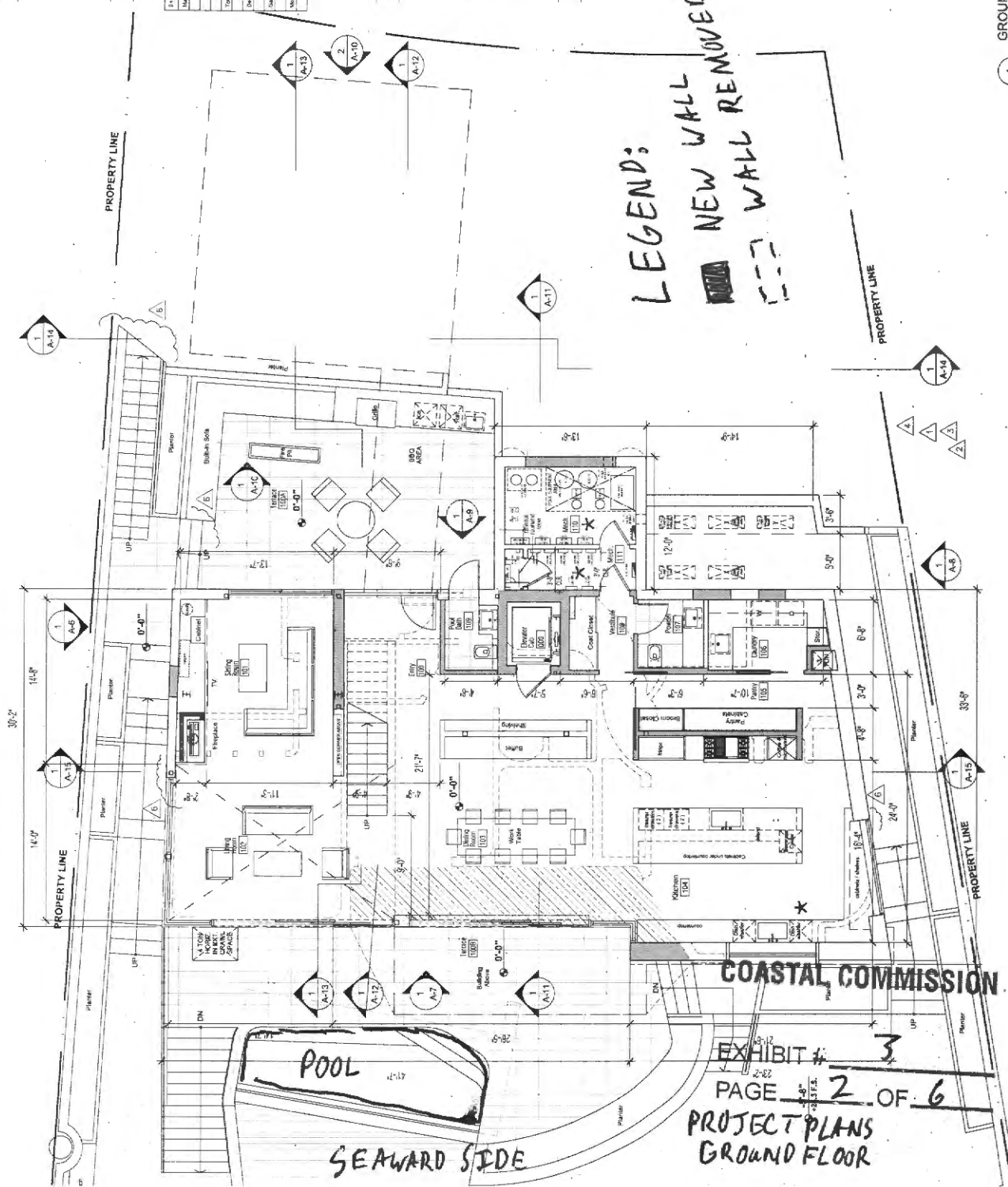
DATE
11/19/2010

SCALE
1/4" = 1'-0"

SHEET NO.
A-2

GROUND FLOOR PLAN

1/4" = 1'-0"



FLOORPLAN - GENERAL NOTES

1. PLEASE REFER TO DRAWING FOR FLOOR ELEVATIONS.

FLOORPLAN - PROJECT DATA

Description	Existing	Proposed	Total
Main Residence	1000 sq. ft.	1000 sq. ft.	1000 sq. ft.
Garage	200 sq. ft.	200 sq. ft.	200 sq. ft.
Pool	200 sq. ft.	200 sq. ft.	200 sq. ft.
Deck	200 sq. ft.	200 sq. ft.	200 sq. ft.
Staircase	200 sq. ft.	200 sq. ft.	200 sq. ft.
Other	200 sq. ft.	200 sq. ft.	200 sq. ft.
Total	1000 sq. ft.	1000 sq. ft.	1000 sq. ft.

* All quantities in () show previous identical.

LEGEND

FLOORPLAN - LEGEND

AREA OF IMPACT

AREA OF ADDITION

NEW WALLS

WALLS TO BE REMOVED

EXISTING WALL TO REMAIN

INTERIOR CHANGES THAT HAVE NO ZONING IMPACT

FLOORPLAN - KEY NOTES

Water Features: Please See Specification Sheet Below.

Volume: 231: 180 gallons of water.

Depth of the standing water: 12"

Height of the proposed structure: Subject to 2'-2"

Height of the proposed structure: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

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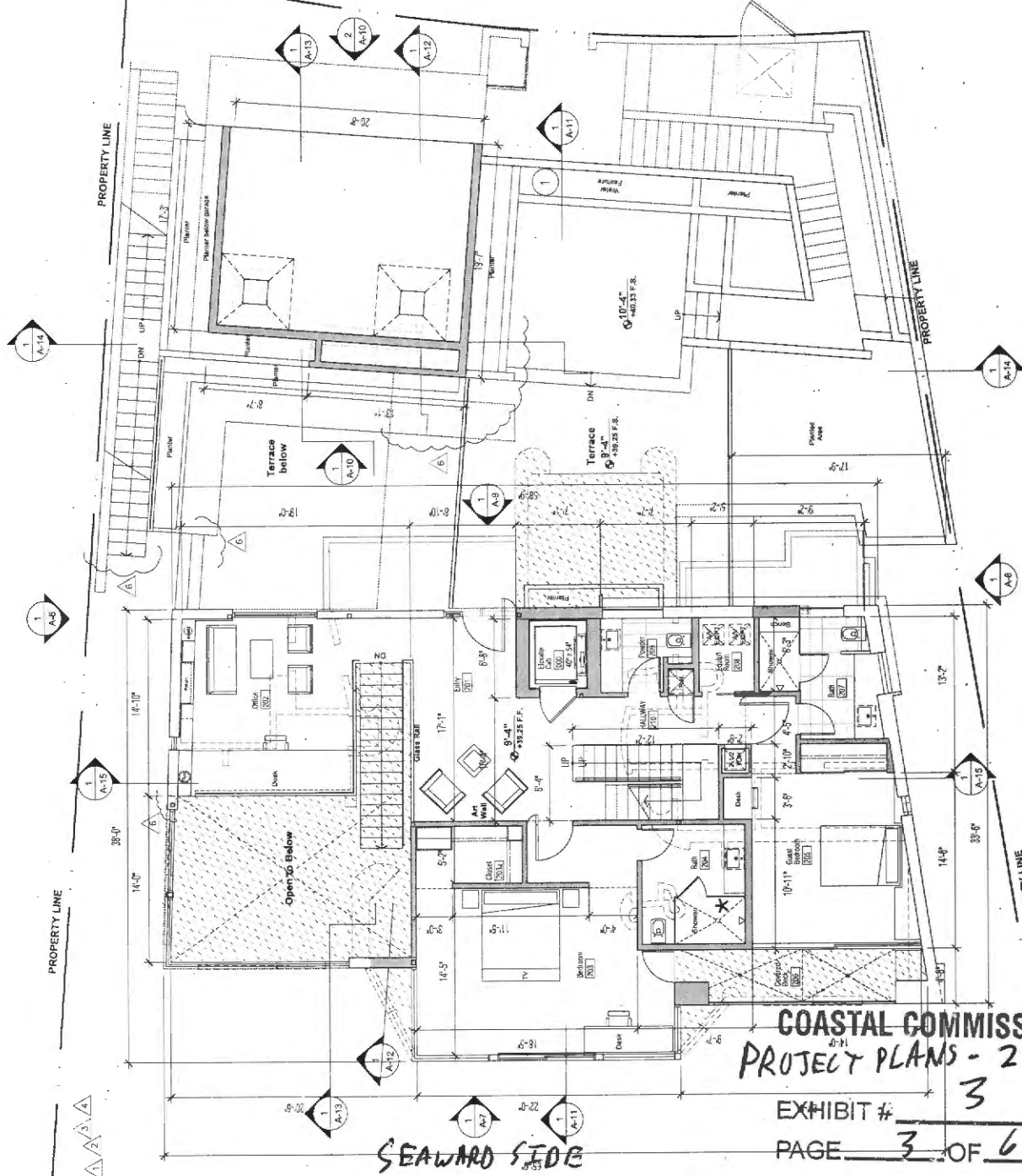
Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"

Utilities: Subject to 2'-2"



SECOND FLOOR PLAN

1/4" = 1'-0"

1/4" = 1'-0"

1/4" = 1'-0"

1/4" = 1'-0"

1/4" = 1'-0"

1/4" = 1'-0"

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1/4" = 1'-0"

1/4" = 1'-0"

COASTAL COMMISSION
PROJECT PLANS - 2ND FLOOR

EXHIBIT # 3
PAGE 3 OF 6

SEAWARD SIDE

A-3

ELEVATION - GENERAL NOTES

1. FLOOR - FRONT YARD SETBACK
2. SYMB - SIDE YARD SETBACK
3. SYMB - FRONT YARD SETBACK
4. SYMB - SIDE YARD SETBACK
5. 30' MOORE CORSET LEVEL @ ELEV 28.0'
6. 12' MOORE CORSET PT OF CURB @ ELEV 35.7'
7. 12' MOORE CORSET PT OF CURB @ ELEV 35.7'
8. RE: STUDIOS EASTING WALL

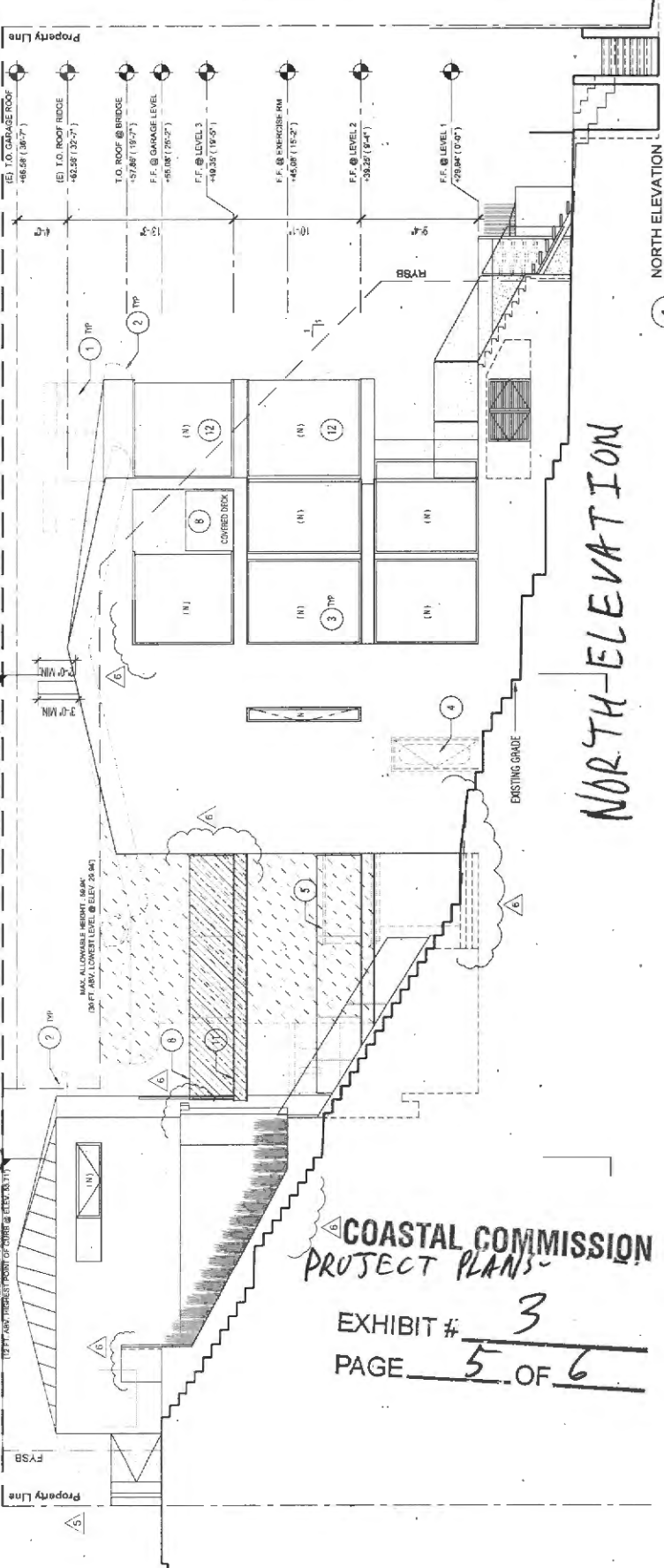
ELEVATION - LEGEND

- AREA OF REDUCTION
- AREA OF ADDITION
- GROUND
- EXISTING ELEMENTS TO BE DEMOLISHED
- LINE OF PROPOSED CHANG
- LINE OF EXISTING GRADE
- PROPOSED CHANG

ELEVATION - KEY NOTES

1. REMOVE EXISTING CHIMNEY
2. REMOVE EXISTING ROOF OVERHANG
3. NEW WINDOW EXISTING WINDOW
4. REMOVE EXISTING DOOR
5. REMOVE EXISTING BALCONY
6. REMOVE EXISTING ENTRY FACADE
7. NEW DOOR
8. GLASS RAILING
9. EXISTING STRUCTURE/REPLACE W/ GLASS W/ WINDOW ONLY
10. NEW POOL & TERRACE
11. NEW BRIDGE
12. NEW WALLS & WINDOW
13. 30' MOORE CORSET LEVEL @ ELEV 28.0'
14. 12' MOORE CORSET PT OF CURB @ ELEV 35.7'
15. 12' MOORE CORSET PT OF CURB @ ELEV 35.7'

HEIGHT LIMIT - 67.7'



1 NORTH ELEVATION 1/4" = 1'-0"

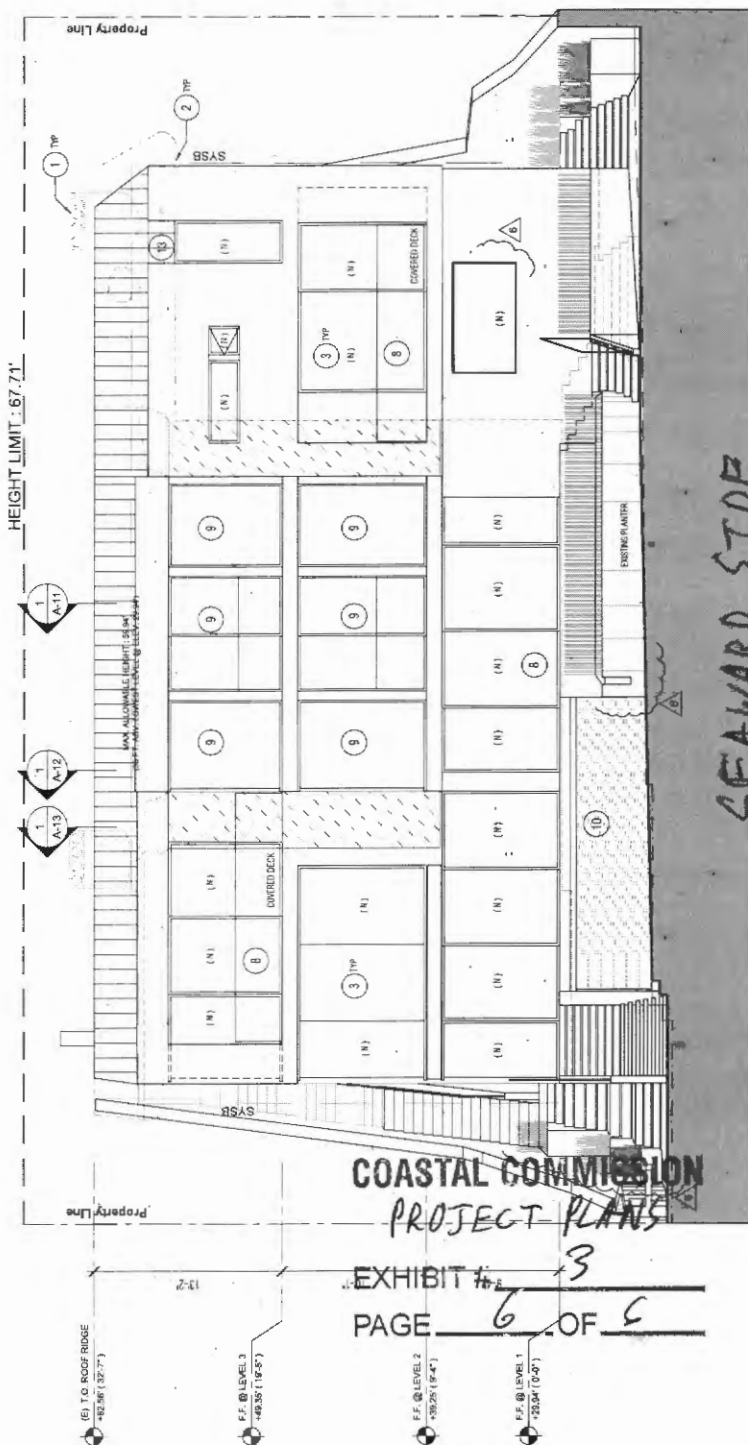
COASTAL COMMISSION
PROJECT PLANS
EXHIBIT # 3
PAGE 5 OF 6

REVISION NO.	DATE
1	02/17/2011
2	04/07/2011
3	05/10/2011
4	06/17/2011
5	08/16/2011
6	12/15/2011

JOB TITLE
LAGUNITA RESIDENCE
JOB ADDRESS
24 LAGUNITA DRIVE
LAGUNA BEACH, CALIFORNIA 92651

SHEET TITLE
NORTH
ELEVATION
DESIGNED FOR
ZONING SUBMITTAL

JOB NO.
0001
DATE
11/18/2010
SCALE
1/4" = 1'-0"
SHEET NO.
A-6



SEAWARD SIDE
ELEVATIONS

COASTAL COMMISSION PROJECT PLANS

EXHIBIT # 3
PAGE 6 OF 6

WEST ELEVATION

 $1/4'' = 1'-0''$

Rick Zbur
Direct Dial: (213) 891-8722
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www.lw.com

LATHAM & WATKINS LLP

March 14, 2012

VIA EMAIL AND FEDERAL EXPRESS

Mr. Karl Schwing, Supervisor
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

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London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

Re: Commission Appeal No. A-5-LGB-12-067 (24 Lagunita Drive, Laguna Beach)

Dear Mr. Schwing:

We are writing on behalf of our clients, Bruce Ratner and Pamela Lipkin, regarding the proposed remodel of their existing single-family home at 24 Lagunita Drive in Laguna Beach. On January 26, 2012, the Design Review Board for the City of Laguna Beach approved a CDP for this remodel. The CDP was appealed to the Commission on February 28, 2012. The Commission is scheduled to make a determination on whether the appeal presents substantial issues at its April 2012 meeting. We respectfully submit that the CDP does not raise any substantial issue as to conformity with the City's certified LCP and appellants have not presented any facts that indicate otherwise. Therefore, the appeal is improper because it is not based on the certified LCP.

The appeal is premised on the inaccurate assertion that the remodel constitutes "substantial alterations" and, therefore, must be reviewed as new development that must meet current design standards.¹ The appeal ignores the very specific standards set forth in the certified

¹ Under the existing certified LCP, the term "major remodel" is not defined, but the LCP incorporates the concept of "major remodel" by requiring that a remodel meet a number of "fifty percent tests" before it must be brought into conformance with current design requirements (such as current setback and stringline requirements) in the certified LCP. (Laguna Beach Zoning Code [LBZC], § 25.56.009.) The City has approved an LCP amendment to add a definition of "major remodel" to its LCP, but because the Coastal Commission has not certified the amendment, it is not a part of the LCP and is not the standard against which the remodel can or should be measured. The appeal, however, blurs the line between the rules that apply to development today and what may be adopted at some point in the future – citing removal of interior walls as a relevant factor to be considered, for example. Under either test – the certified LCP or the City-adopted but not certified definition of "major remodel" – the remodel conforms to the LCP in all respects.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 17
*Letter from applicants
representative*

LATHAM & WATKINS^{LLP}

LCP. The appeal simply asserts that "substantial alterations" raise substantial issues necessitating the appeal. The term "substantial alterations" does not appear in the certified LCP.

The proposed remodel leaves the vast majority of the existing home's structural elements in place and intact and generally does not change the house's existing footprint. Attached at Exhibit 1 are pictures of the existing house and a rendering of the remodeled home as seen from the beach, which shows that the structure's basic shape does not change. A simple before and after comparison of the home's defining features and footprint attached as Exhibit 2 shows that there will not be significant amounts of demolition of exterior walls or change in the structure's footprint. The proposed remodel is essentially a modernization of the external cosmetic appearance of an existing home, and an interior remodel. Because the proposed remodel does not constitute a "major remodel" under the certified LCP, applying policies and standards applicable only to "major remodels" is improper. The appeal raises no facts that in any way refute or call into question the City's determination that the CDP constitutes less than a "major remodel." Because the project is not a "major remodel," the certified LCP requires neither a hazards analysis nor an analysis of impacts to public access. Contrary to the appeal, the remodel is fully consistent with the certified LCP. The appeal cites not a single fact indicating otherwise.

The Remodel Is Not A "Substantial Demolition And Reconstruction"

The appealed CDP approves certain renovations to an existing, three-story single-family home. The renovation would leave the existing structure largely intact, principally modernizing the home's exterior cosmetic appearance within the home's existing footprint, and upgrading the exterior façade without significant changes to the structural elements. Unlike other projects in which substantial portions or structural elements of a building are demolished and rebuilt, here, the structure is being cosmetically upgraded within its existing footprint with nominal removal and replacement of the home's structural elements.

The property is an 8,410 square foot oceanfront lot. The existing 6,315 square foot single-family residence would be reduced in size by approximately 800 square feet to 5,448 square feet, a reduction of approximately 14 percent of the existing square footage.² Contrary to incorrect assertions in the appeal, exterior decking will total only 338 square feet, a net increase of 165 square feet. The 338 square feet includes a walkway on the street side of the property and two interior spaces on the seaward side of the existing home that will be converted to open exterior space when windows are relocated within the building's structural footprint. The existing and proposed deck at the street-side of the house will not be visible from the street or the beach.

The home will retain its basic footprint and only see very minor changes, which are shaded blue in the site plan attached at Exhibit 2. On the ocean side, the house will not extend any farther towards the ocean than the existing seaward-most exterior walls. On the second and

² This reduction in square footage is the result of eliminating the street side entrance between the garage and the residence, and pulling in a portion of the seaside façade five feet on the second and third stories to create covered outdoor space. Each of these changes will be accomplished without significantly altering the house's structural elements.

COASTAL COMMISSION

LATHAM & WATKINS LLP

third floors, existing seaward facing windows will be relocated to convert existing interior space to covered exterior space within the building's existing structural footprint.

Also contrary to the assertions in the appeal, there are no accessory structures that extend beyond the rear yard stringline. The existing patio and spa are not structures under the certified LCP because they are not more than 30 inches above finished grade. As such, the patio and spa legally extend into the required rear yard and will be reconfigured in essentially the same location. Further, there is no increased need for shoreline protective devices as a result of this cosmetic upgrade to the home. The original structure and the renovated home retain the same basic footprint and, therefore, will face the same risks.

There Are No Substantial Issues Raised by the Appeal

The remodel is consistent with the LCP and the Coastal Act. The project does not raise any issue, let alone a substantial issue, as to conformity with the certified LCP's design guidelines or shoreline protection policies, or Coastal Act and LCP public access policies.

The Project Is Consistent with the Certified LCP's Setback and Public Access Requirements. As noted in footnote 1, the existing LCP does not include a definition of "major remodel," but it does incorporate the concept of "major remodel" by including a 50 percent test. The City's LCP makes clear that a nonconforming portion of a structure must be brought into conformance only where fifty percent or more of the nonconforming portion of the structure is substantially removed or modified. (LBZC, § 25.56.009.) In addition, the certified LCP requires that a renovated house be brought into compliance with open space requirements where a remodel equals or exceeds fifty percent of the original gross floor area of the structure. (LBZC, § 25.10.008(O).) Lastly, the certified LCP requires that public access be enhanced where "additions or alterations exceed fifty percent of the existing population...density or intensity of use." (LBZC, § 25.53.002.)

Despite these clear tests in the certified LCP, the appeal proffers a non-existent and amorphous "significant alterations" test to argue that the project "should be consistent with all applicable LCP policies." (Appeal, at p. 4.) The appeal wholly ignores Zoning Code Sections 25.10.008(O) and 25.56.009, and instead appears to focus on factors that are not part of the certified LCP to argue that the structure must meet current design standards. The "significant alterations" test used in the appeal is not the standard set forth in the certified LCP. As discussed more specifically below, because the remodel does not substantially remove or modify 50 percent of the existing nonconforming portion of the structure, does not increase the original gross floor area by 50 percent, and does not increase the density of development, the appeal raises no substantial issues under the certified LCP.

- The Seaside Facing Portion of the Structure Is Not Modified by Fifty Percent. Under the existing certified LCP, a nonconforming structure may be required to be rebuilt in conformance with the certified LCP's development standards only where "fifty percent or more of a nonconforming portion of the structure is substantially removed or modified." (LBZC, § 25.56.009.) The existing seaward facing portion of the house, which currently extends beyond the stringline, is not

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being modified in any significant respect. The remodel only modifies a small portion of the nonconforming floor area of the house – 24 percent – which is much less than the 50 percent necessary to require conformance with the certified LCP's setback requirements. The City of Laguna Beach has reviewed the Ratner/Lipkin application and has found that it does not trigger the fifty percent test. (See attached letter from John Montgomery, Director of Community Development at Exhibit 3.) Again, the appeal raises no facts supporting its conclusion that the remodel is inconsistent with the LCP. Therefore, there is no substantial issue on appeal.

- The Remodel Is Not a "Major Remodel" Under the Certified LCP's Landscaping Open Space Requirements.³ The certified LCP defines "major remodel" as "a structural renovation and/or addition, which equals or exceeds fifty percent of the original gross floor area of the structure on the lot" in establishing a lot's landscaped open space requirements. (LBZC, § 25.10.008(O).) Under this definition of "major remodel," which only applies to landscaped open space requirements, the remodel is also not a "major remodel." First, the remodel will reduce the size of the existing house by 800 square feet, 14 percent, so it is not adding to the original gross floor area. Second, the remodel is not affecting more than fifty percent of the house's structural members. (See Exhibit 3.)
- The House Will Be Smaller; Evaluation Under the City's Access Policies Was Not Required. The remodel does not raise any issues under the public access policies of the City's certified LCP. The certified LCP makes clear that its access and improvement requirements apply only "if additions or alterations exceed fifty percent of the existing population...density or intensity of use." (LBZC, § 25.53.002.) The project is not subdividing the property so the population density will not increase. In fact, the remodel will reduce the existing home's size by

³ Moreover, while the project must be judged under the current certified LCP (LBZC, § 25.07.026 ["The city council may amend all or part of the local coastal program, but the amendment will not take effect until it has been certified by the coastal commission"], it is also not a "major remodel" under the definition the City Council adopted on December 7, 2011. Under that definition, *which is not yet part of the certified LCP*, a remodel becomes a "major remodel" and must comply with the City's current development standards, where any of the following occur over a three year period: (1) "Demolition, removal and/or reconstruction of fifty percent or more of the total existing above grade exterior wall area;" (2) "Demolition, removal and/or reconstruction of fifty percent or more of the combined total area(s) of the existing roof framing system and structural floor systems, not including eaves or decks;" or (3) "One or more additions to an existing building or structure within any consecutive three-year period that increases the square footage of the existing building or structure by fifty percent or more." The proposed remodel is also not a major remodel under these more stringent standards that are not yet part of the certified LCP. Less than 50 percent of the above grade wall area is being affected, only about 27 percent of the existing roofing system and structural floor systems are being affected, and the size of the home is being reduced, not expanded.

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approximately 800 square feet due to the elimination of a street side entrance between the garage and the house and the conversion of interior space to covered balconies. Further, since the footprint and height of the structure do not change in any substantial way, there is no development proposed that will reduce the "quality of public views" (Open Space and Conservation Element, Policy 7A), alter a portion of the shoreline environment that is "in a natural state" (*id.*, at 1.5A), or "interfere with the public's right of access to the sea" (Pub. Resources Code, § 30211), there is no significant question raised concerning the remodel's consistency with the public access policies of the certified LCP or the Coastal Act. (See Exhibit 3.) The appeal presents no facts suggesting otherwise.

The Certified LCP Does Not Require the City to Analyze Wave Uprush or the Potential Need for Future Shoreline Protective Devices. The appeal also incorrectly asserts that the CDP raises substantial issues because a wave uprush study was not done and public access impacts from potential future shoreline protective devices were not reviewed. Specifically, the appeal states, "[n]o analysis of the effects of wave uprush...has occurred, no assessment has been made of the potential need for future shoreline protection for the proposed development." The appeal then states that, "it cannot be determined whether the project will result in development which places the health and safety of the public at risk, or whether the development will result in potentially significant impacts to public access...as a result of the construction of a shoreline protection device." (Appeal, at p. 5.)

There is nothing in the LCP that would require a wave uprush study or a review of whether future shoreline protective devices are required for a remodel that is not a "major remodel." As discussed above, the existing certified LCP embraces a framework in which new developments and remodels that are considered "major," are required to conform to current existing zoning and design standards. Modifications and remodels of a home that are less than a "major remodel" are entitled to remain in place without being required to meet current design guidelines set forth in the LCP that may apply to new development. Because the City does not have the authority to require a house to conform to current development standards where only a "minor" remodel is proposed, studies that relate to how a "major remodel" should be redesigned are not necessary or required by the City. (See Exhibit 3.) For example, what would be the purpose of a wave uprush study when the LCP allows the house to remain in its existing footprint? What would be the purpose of a review of future shoreline protective devices when remodeling a home does not increase future risks?

The appeal cites a number of policies in the City's Open Space and Conservation Element, Land Use Element, and the City's Guidelines for Shoreline Protection as a basis for claiming that an analysis of the need for a shoreline protective device should have been completed. Not one of the cited sections is applicable to this remodel. (See Attachment A [listing policies cited in the appeal and explaining why they are inapplicable to the proposed remodel].) None of the cited policies requires either a wave uprush study or an analysis of a shoreline protective device when a "minor" remodel is contemplated. In fact, the few policies that deal with shoreline protection relate to applications where shoreline protective devices themselves are applied for. (See, e.g., Guidelines for Shoreline Protection, at pp. 48-60 [setting forth initial objectives of screening seawall applications, providing a framework for processing

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seawall applications, and providing policy guidance for consultants and other interested parties considering seawall applications].) Since the remodel does not propose any new shoreline protective devices, the policies cited do not raise a substantial issue under the Coastal Act.

In addition, although not a part of the existing LCP, Action 7.3.9 of the LCP's Land Use Element acted on by the Coastal Commission in December 2011, clearly demonstrates the distinction embodied in the LCP differentiating new development and "major remodels" from minor modifications of a property. This distinction makes clear that only "major remodels" and new development are subject to updated design standards.

Action 7.3.9: Ensure that new development, major remodels and additions to existing structures on oceanfront and oceanfront bluff sites do not rely on existing or future bluff/shoreline protection devices to establish geologic stability or protection from coastal hazards. A condition of the permit for all such new development on bluff property shall expressly require waiver of any such rights to a new bluff/shoreline protection device in the future and recording of said waiver on the title of the property as a deed restriction.

* * * *

For the foregoing reasons, we respectfully request that Commission staff recommend no substantial issue in this appeal. As discussed above, the basis of the appeal appears to assert incorrectly that the renovation constitutes a "major remodel." The appeal ignores the specific and clear standards set forth in the existing LCP that make clear that the Ratner/Lipkin remodel is not a "major remodel" and, therefore, not required to bring the existing non-conforming elements of the house into conformance with current design guidelines. The appeal incorrectly asserts that additional studies were necessary for the proposed renovation. The appeal appears to be based on policy proposals that are not yet part of the existing LCP. Because the appeal raises no facts supporting a claim that the work approved under the CDP constitutes a "major remodel" under the existing LCP, there are no substantial issues under the Coastal Act to be reviewed.

We look forward to discussing these issues with you further.

Very truly yours,

Rick Zbur

Rick Zbur
of LATHAM & WATKINS LLP

Copy recipients listed on following page.

COASTAL COMMISSION

LATHAM & WATKINS LLP

cc: Ms. Sherilyn Sarb, Deputy Director
Ms. Teresa Henry, District Manager
Mr. John Montgomery, City of Laguna Beach
Mr. Morris Skenderian
Mr. Sherman Stacey
Mr. Bruce Ratner

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ATTACHMENT A

The Policies Cited in the Appeal Raise No Substantial Issue

Below are the policies cited in the appeal together with an explanation of why the proposed remodel of an existing home raises no substantial issue under the City's Local Coastal Program or the Coastal Act.

- 1) The Open Space and Conservation Element Policy 1.5A: "The shoreline environment should remain in a natural state unless existing, substantial improvements are in imminent danger from erosion, flooding or collapse. 'Imminent Danger' is defined as a short-range threat from the immediate to a maximum range of three (3) to five (5) years. A threat presented in the context of geologic time shall not constitute imminent danger."

Response: This policy guides when seawalls and other shoreline protective devices may be permitted. Because the remodel does not propose any such protective device, this LCP policy is inapplicable. The existing house's basic footprint does not change. There is no increased risk to the structure as a result of the proposed remodel. Accordingly, no substantial issue under this LCP policy is raised.

- 2) The Open Space and Conservation Element Policy 7A: "Preserve to the maximum extent feasible the quality of public views from the hillsides and along the City's shoreline."

Response: The remodel will have no impacts on public views. The height of the existing home will not change and the footprint will only modestly change in a way that affects no public views. Because this project does not constitute a major remodel under Section 25.10.008(O) of the Zoning Code, which is a part of the current LCP, the development is not required to comply with as yet uncertified new design regulations that may require enhancement of views. There are no substantial issues raised under this LCP policy.

- 3) The Open Space and Conservation Element Policy 1.5Q: "Any development application for shoreline construction shall be reviewed with respect to the criteria contained in the Guidelines for Shoreline Protection, including the effects of beach encroachment, wave reflection, reduction in seacliff sand contribution, and effects and aesthetic criteria."

Response: Under this policy, new shoreline protective devices must be reviewed for consistency with the City's Guidelines for Shoreline Protection. Because no shoreline protective devices are proposed as part of the remodel, this policy is entirely inapplicable and there are no substantial issues raised under this LCP policy or the Coastal Act.

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- 4) Land Use Element Policy 3-A: "Ensure adequate consideration of environmental hazards in the development review process."

Response: The proposed remodel does not meet the fifty percent test established in Section 25.10.008(O) of the Zoning Code, and is therefore not a "major remodel" that is treated as new development under the LCP. Furthermore, as the house's height and footprint do not change in any substantial way, the house after renovation does not face increased hazards as compared to before renovation. The LCP is clear that new design review standards only apply if the remodel is a "major remodel," which this is not. The renovated house will face no greater risks than the existing house, no substantial issue is raised under this LCP policy or the Coastal Act.

- 5) The Guidelines for Shoreline Protection, Page 19: "Shoreline development which would place structures in danger of wave attack or degrade natural means of shoreline protection should be prevented."

Response: The Guidelines for Shoreline Protection sets forth when shoreline protection devices may be permitted and how applications for the same should be reviewed. The remodel does not propose a new shoreline protection device. The remodel is of an existing home, does not increase density on the project site, does not extend any further seaward than the existing development, and maintains the same general footprint of the existing structure, and does not "place structures in danger of wave attack." There are no substantial issues raised under the Guidelines for Shoreline Protection.

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EXHIBIT 1

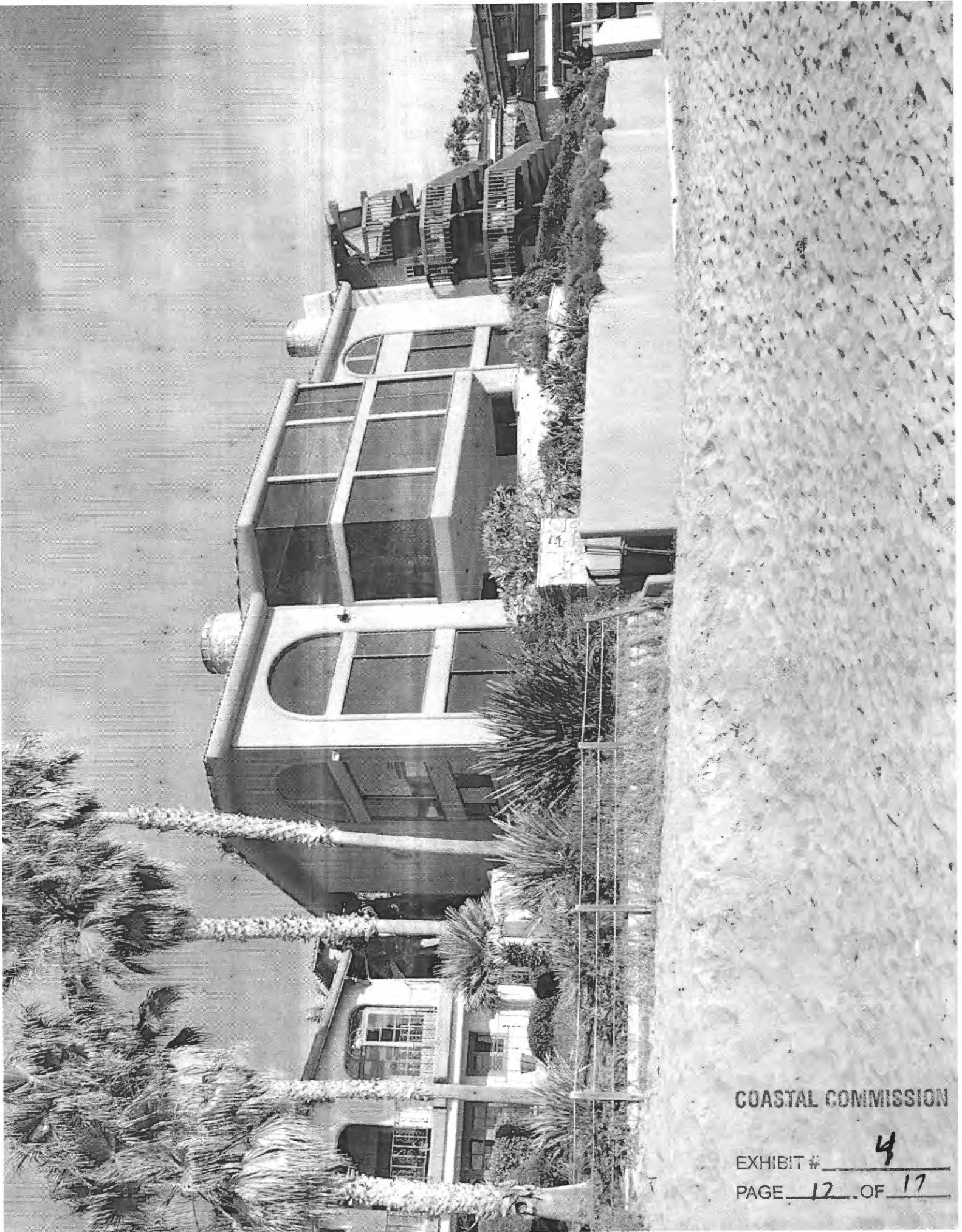
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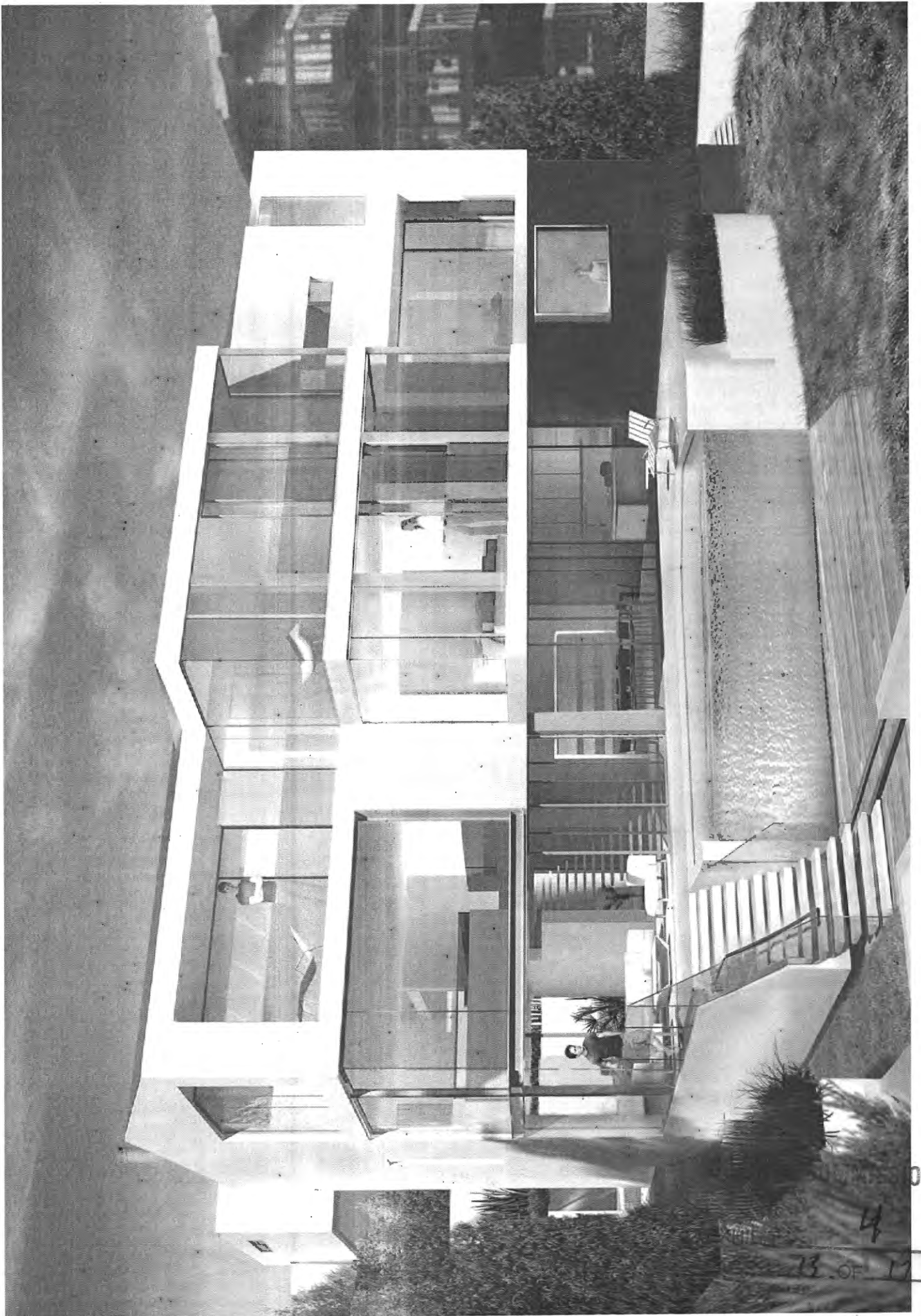


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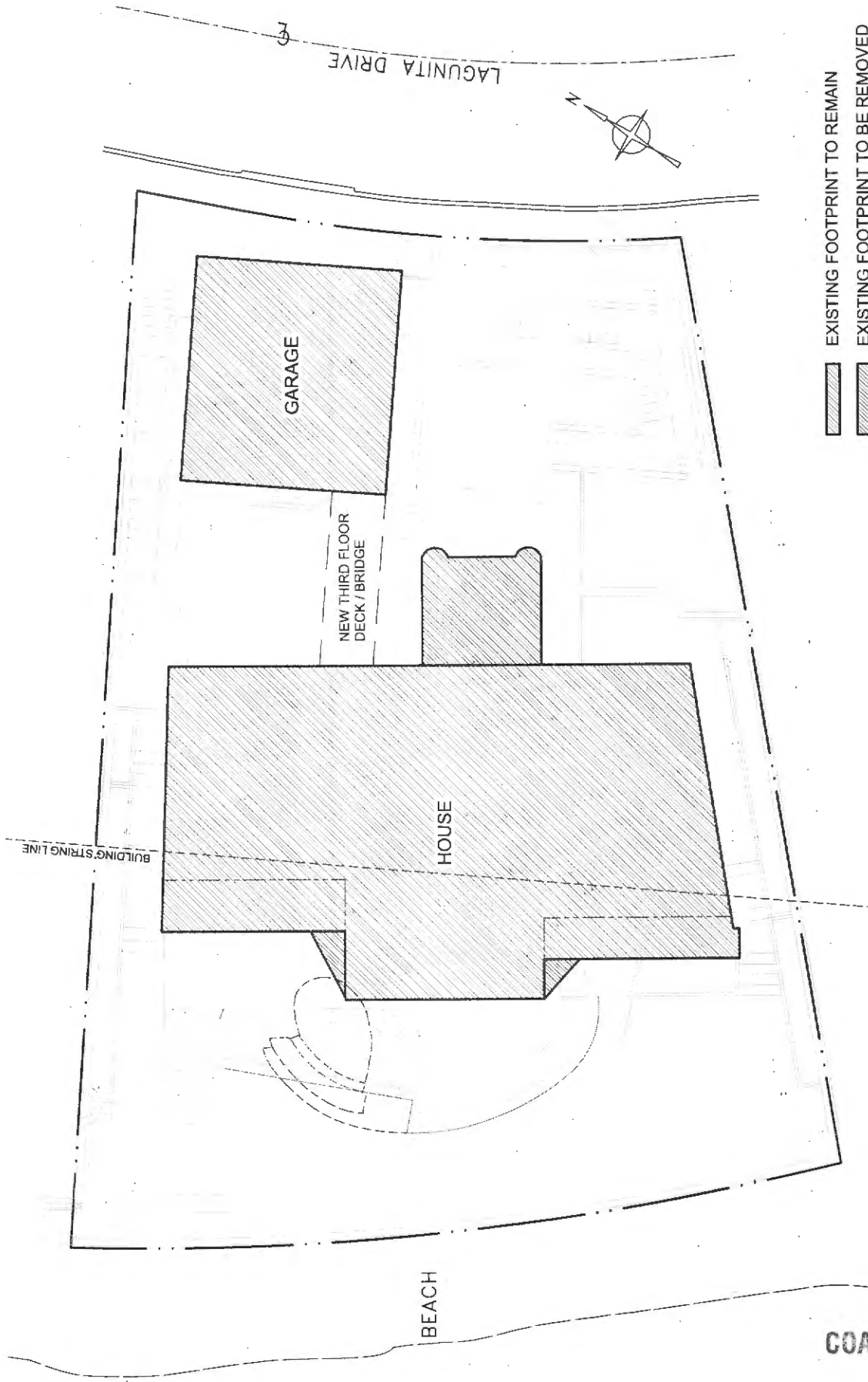
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EXHIBIT 2

EXHIBIT 2

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-  EXISTING FOOTPRINT TO REMAIN
-  EXISTING FOOTPRINT TO BE REMOVED
-  RECONFIGURED SPA
-  EXISTING TERRACE & SPA
-  RELOCATED WINDOWS CREATING COVERED EXTERIOR SPACE

LEGEND

DATE: 3-14-12

24 LAGUNITA DRIVE SITE PLAN

SCALE: 1/16" = 1'

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EXHIBIT 3

EXHIBIT 3

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March 14, 2012

Karl Schwing
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4302



Re: Commission Appeal No. A-5-LGB-12-067 (Laguna Beach CDP No. 11-34)

Dear Mr. Schwing:

I am writing concerning the appeal of City of Laguna Beach Coastal Development Permit No. 11-34, issued for a remodel at 24 Lagunita Drive on January 26, 2012. The City analyzed the proposed remodel against the certified Local Coastal Program and Coastal Act and found that it fully conforms to the certified Local Coastal Program and the public access and public recreation policies of Chapter 3 of the Coastal Act. We do not believe that the appeal raises any substantial issues warranting the Coastal Commission's review.

Appellants state three reasons for the appeal: (i) alleged failure to analyze the remodel for consistency with current stringline requirements; (ii) alleged failure to analyze the effects of wave uprush; and (iii) alleged failure to analyze the need for future shoreline protection and a future shoreline protective device's impacts on public access. The City respectfully submits that the appeal raises no substantial issues under the certified Local Coastal Program of the City of Laguna Beach or the Coastal Act for the following three reasons.

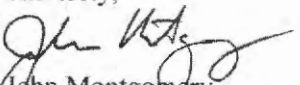
First, under the certified LCP, the portion of the existing house that exceeds the building stringline was not required to be brought into conformance with existing zoning regulations pursuant to Section 25.56.009 of the Laguna Beach Zoning Code. Section 25.56.009 of the Laguna Beach Zoning Code states that a nonconforming portion of an existing structure must be rebuilt in conformance with existing zoning regulations only where "fifty-percent or more of a nonconforming portion of the structure is substantially removed or modified." CDP No. 11-34 does not approve development that would substantially remove or modify fifty-percent or more of the portion of the house that extends beyond the existing building stringline. The City has also reviewed the remodel under its proposed, but not yet certified, definition of "major remodel." (Laguna Beach Ord. No. 1543 [2011].) The remodel is not a "major remodel" under any of these potential future standards.

Second, the City's certified LCP does not require a wave run-up study or hazards analysis for remodels of existing homes, as proposed here. The LCP policies cited in the appeal do not provide otherwise. Where, as here, a remodel merely continues and does not change an existing use (single-family home), and does not subject the existing structure to any greater risk than it currently faces, a wave run-up study would serve no purpose.

Third, the City's certified LCP does not require an analysis of impacts to public access. Again, the LCP policies that the appeal cites do not require otherwise because no development is proposed that would impact public access.

Please do not hesitate to contact me should you wish to discuss this matter further.

Sincerely,


John Montgomery
Director

Community Development

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