

**CALIFORNIA COASTAL COMMISSION**

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Staff: Liliana Roman-LB  
Staff Report: March 29, 2012  
Hearing Date: April 11-13, 2012  
Commission Action:

**Item F9a****STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-09-105

**APPLICANT:** Donald Norberg

**AGENTS:** Sherman Stacey  
Felix Lim

**PROJECT LOCATION:** 86 South La Senda, City of Laguna Beach (Three Arch Bay)  
(Orange County)

**DESCRIPTION:** Remodel and addition to an existing 1,958 sq.ft., single-story, single-family residence consisting of 307 cu. yds. cut/fill grading to construct a semi-subterranean, 860 sq. ft. new lower level within the footprint of the existing residence to include 2 bedrooms, 2 baths, family room plus a 326 sq. ft. utility/storage room; addition of a lower level paved patio with outdoor spa and shower, outdoor half spiral stair to access new lower level; repairs to existing 355 sq. ft. wood balcony deck; and interior remodel of existing portion of residence on a bluff top lot.

Lot Area	11,620 square feet
Building Coverage	1,996 square feet
Pavement Coverage	1,863 square feet
Landscape Coverage	1,498 square feet
Unimproved Area	6,263 square feet
Parking Spaces	2
Zoning	Three Arch Bay
Planning Designation	Low Density Residential
Ht above final grade	21.6 feet

## **STAFF NOTE**

The Commission previously approved this application on January 14, 2010 subject to eight special conditions. The permit applicant filed a petition for writ of administrative mandate challenging several of the permit conditions. The Orange County Superior Court denied the petition in part and granted it in part, Exhibit 4 is the Court Statement of Decision. The Court held that Special Condition No. 2, which required the applicant to waive rights to future shoreline protective devices to protect the proposed new development, was invalid because it was not limited to shoreline protective devices that “substantially alter natural landforms along bluffs and cliffs.” The Court further ruled that Special Condition No. 4A was invalid because there was not substantial evidence in the record to establish that the bluff edge on the site is located at the 103’ contour line. The Court also ruled that Special Condition No. 7 (deed restriction requirement) and No. 8 (irrigation plan) were invalid because they implemented requirements of Special Conditions 2 and 4A. The Court’s writ of mandate directs the Commission to rescind its January 14, 2010 decision to conditionally approve the application, including setting aside Special Condition Nos. 2, 4A, 7, and 8, and to take further action on the application consistent with the Court’s Statement of Decision.

After the Commission sets aside its original action on this application, Staff recommends that the Commission re-approve the application subject to the recommended revised special conditions. In conformity with the Court’s decision, Staff recommends that the Commission adopt a revised Special Condition No. 2 that requires the applicant to waive any rights to construct shoreline protective devices that would substantially alter natural landforms along bluffs and cliffs. The Staff recommendation now incorporates a memorandum by Commission Staff Geologist Mark Johnsson evaluating the location of the bluff edge on this site. In light of this new substantial evidence, Staff recommends that the Commission adopt Special Condition 4A establishing the bluff edge at the 103’ contour line. These actions would address the Court’s substantive concerns regarding the Commission’s original action. Accordingly, Staff also recommends that the Commission adopt Special Conditions No. 7 (irrigation plans) and No. 8 (deed restriction) to implement these requirements.

## **SUMMARY OF STAFF RECOMMENDATION:**

Commission staff is recommending **APPROVAL** of the proposed project with **Eight (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future blufftop or shoreline protective devices that substantially alter natural landforms; **3)** future development; **4)** submittal of revised final plans; **5)** conformance with geotechnical recommendations; **6)** construction of best management practices; **7)** no irrigation permitted seaward of the bluff edge; and **8)** a deed restriction against the property; referencing all of the Special Conditions contained in this staff report.

The applicant is proposing a remodel and addition to an existing single level single-family residence by constructing a new semi-subterranean level. The proposed development is located on a bluff top site, the toe of which is subject to wave erosion. The geotechnical report deems the site grossly stable under current and proposed conditions. The primary issue with the proposed development is conformance with bluff top setbacks. The existing residence conforms to a

structural stringline setback but does not meet the minimum 25-foot blufftop setback and existing secondary structures are also non-conforming with a 0-foot blufftop setback based on the Commission's bluff edge definition. Although no landscaping or drainage improvements are proposed as part of the remodel, the Commission received correspondence from a neighbor and downcoast property owner that raised concerns regarding the saturated soils and drainage at the subject site. A letter from a geotechnical firm (Geofirm) was also provided recommending the applicant consult with a landscape architect to plan and manage site irrigation on the bluff portion of the subject lot. Therefore, the Commission includes a permit condition that requires the applicant to submit, prior to issuance of the permit, a report from a soils engineer or geologist with recommendations as to irrigation limits and to any needed changes to existing irrigation at the site. The applicant is to submit and implement a plan incorporating the recommendations; however, the Commission's permit condition does not permit any watering of the bluff seaward of the bluff edge which is defined as the 103 ft. contour.

The proposed development includes minimal demolition of exterior walls/windows as part of the first level remodel, a new 860 sq. ft. lower level/semi-subterranean liveable space addition and 326 sq. ft. utility/storage area to the existing structure on the western (bluff side) portion of the lot and hardscape improvements. The proposed new expansion area constitutes new development for the purposes of Sections 30235 and 30253. Because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device that would substantially alter natural landforms along bluffs and cliffs is not expected to be needed in the future.

The proposed development appears to be safe from erosion on the basis of available information provided by the applicant and is therefore consistent with Coastal Act section 30253(a). Nonetheless, the addition would increase the existing residence's exposure to threats from erosion by increasing the amount of development close to the blufftop edge. The record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices. The Commission typically applies a "No Future Blufftop/Shoreline Protective Device" Special Condition to both bluff top residential remodel projects and residential demo/rebuild projects in Three Arch Bay in the City of Laguna Beach.

**LOCAL APPROVALS RECEIVED:** City of Laguna Beach Approval in Concept, dated 6/03/09.

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## I. STAFF RECOMMENDATION

**MOTION:**                    *I move that the Commission approve Coastal Development Permit No. 5-09-105 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

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

### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. SPECIAL CONDITIONS

### 1. **Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides, waves, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards;

and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. **No Future Bluff top or Shoreline Protective Devices That Would Substantially Alter Natural Landforms Along Bluffs and Cliffs**

- A. By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) that would substantially alter natural landforms along bluffs and cliffs shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-09-105 including, but not limited to, the residence, foundations, patios, balconies and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. By acceptance of this Permit, the applicant/landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this Permit, the applicant/landowner further agrees, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this Permit, including the residence, foundations, patios, balconies and any other future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within five (5) feet of the principal residence but no government agency has ordered that the structures are not to be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicants, that addresses whether any portions of the residence are threatened by bluff and slope instability, erosion, landslides or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without the use of bluff or shoreline protective device(s) that substantially alter the natural landform along bluffs and cliffs including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a

coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

3. **Future Development**

This permit is only for the development described in coastal development permit 5-09-105. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by the coastal development permit 5-09-105. Accordingly, any future improvements to the structures authorized by this permit shall require an amendment to permit 5-09-105 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. **Submittal of Revised Final Plans**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, two (2) sets of final building and foundation plans that substantially conform with the plans dated July 9, 2009, but shall be revised to provide a 5 foot setback from the bluff edge identified approximately at the 103 foot contour line for the proposed new ground level concrete patio as shown on Exhibit 3.
- B. The permittee shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **Conformance of Design and Construction Plans to Geotechnical Report**

- A. All final design and construction plans, including grading, foundations, site plans, and elevation plans shall meet or exceed all recommendations and requirements contained in *Updated Preliminary Geotechnical Investigation For Foundation Design of Residence Additions, 86 South La Senda*, prepared by Geofirm, dated April 22, 2009.
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

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

**6. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris**

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

**7. Irrigation Limitations/Irrigation Plans**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, a report from a soils engineer or geologist recommending irrigation watering limitations on the property, and, if changes to the existing irrigation are required, the applicant shall submit a plan prepared by a licensed landscape architect incorporating the recommended changes. In any event, no irrigation watering of the bluff beyond the bluff edge at the 103 ft. contour shall be permitted.

**8. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal

Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

### **III. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

#### **A. PROJECT DESCRIPTION AND LOCATION**

The proposed project is an addition and remodel to an existing 1,958 sq.ft. single family residence comprised of a new 860 sq. ft. lower level (semi-subterranean) consisting of two (2) bedrooms, two (2) baths, family room, 326 sq. ft. utility/storage room, new interior stairway; repairs to an existing rear-yard wood balcony deck including replacement of wood rails with a new glass screen (including anti-bird-strike treatment); a new lower level concrete patio with outdoor spa and shower and outdoor half spiral stairway to access new lower level concrete patio from the existing wood balcony deck (see Exhibit #3). Complete interior remodel of existing residence including all new windows, new entryway reconfiguration, new relocated fireplace and complete remodel of kitchen and existing bathrooms is also proposed. The addition will not result in an increase in height of the existing residence (12' 3" as measured from centerline of the frontage road). The applicant proposes deepened footing foundation system and two caissons along the bluff facing basement wall. The proposed development includes approximately 295 cubic yards of cut and 12 cubic yards of fill for the proposed basement level of the residence. No new landscaping or additional drainage improvements are proposed as part of the proposed addition and remodel.

The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach (see Exhibit #1). The residence is on an oceanfront, bluff top lot. Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification. Therefore, the standard of review for this project is Chapter 3 of the Coastal Act.



## **B. GEOLOGIC STABILITY**

Coastal bluff development is inherently hazardous and poses potential adverse impacts to the geologic stability of coastal bluffs, shoreline processes, and to the stability of residential structures. Bluff stability has been an issue of historic concern throughout the City of Laguna Beach. The Commission has traditionally followed a set of setback and string-line policies as a means of limiting the encroachment of development seaward to the bluff edges on coastal bluffs and preventing the need for the construction of revetments and other engineered structures to protect new development on coastal bluffs. However, the existing single-family residence and balcony deck appear to have been constructed prior to passage of the Coastal Act. The residence is located approximately 12 feet from the bluff edge and the approximately 13-foot wide balcony deck extends from the residence to the bluff edge. The applicant proposes an addition of a new 860 sq. ft. lower level (semi-subterranean) entirely within the footprint of the existing residence, as well as remodeling the portion of the existing structure to be retained. The project also includes hardscape improvements (new rear yard ground level paved patio, outdoor spa and outdoor shower and repairs to an existing wood raised balcony deck).

### Coastal Act Policies

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

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms...*

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

*New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The subject site is a rectangular shaped oceanfront bluff top lot. The bluff at the site consists of a very steep sea cliff that extends from an elevation of approximately 86 feet to the beach below. Above this break in slope a series of terraces separated by low walls (3'-5' tall) have been cut into the marine terrace deposits that overlie the San Onofre breccia at the site, and no artificial fill occurs on this part of the site. Scattered fill at 3+/- feet thick was described in the geologic report, but is not depicted on the geologic cross section.. A trench drain is located on the bluff face adjacent to the lowest of the four garden walls leading to the steep, locally vertical, lower sea cliff backed by bedrock material that descends to beach level. The toe of the bluff is subject to marine erosion.

### Project Site Geotechnical Report

The applicant submitted a geotechnical study conducted by Geofirm dated April 22, 2009. The geotechnical investigation consisted of the review of available geologic literature, maps, aerial photographs, geotechnical reports and other geotechnical data for the site and surrounding area; geotechnical analysis of subsurface conditions as related to slope stability, foundation design, and construction recommendations.

Based on the results of stability analyses provided by the geotechnical investigation prepared by Geofirm dated April 22, 2009, the site is considered to be grossly stable, with a 1.88 factor of safety under static conditions and a 1.5 factor of safety under pseudo-static conditions. Wave erosion along the base of the slope and lateral retreat of the bedrock seacliff was considered unlikely over the next 75 years and no faults were located on the property. The report states that due to the resistant character of the bedrock materials of the bluff face, the rate of surface erosion is very slow and not a factor in bluff retreat over the expected economic life of the development.. The bluff closest to the existing residence has been previously modified with the construction of four backyard garden walls cut into the terrace deposits, and may have involved a limited amount of fill on the bluff face which are subject to episodic erosion from rainfall, sheet flow and weathering of the loose materials along the bluff top.

Regarding drainage on the site, the geotechnical report states, “No evidence of uncontrolled, concentrated, and erosive runoff onto or from the developed areas of the property has been observed. The proposed development will locally modify the site and should improve site drainage, with proper design consideration by the Civil Engineer. The western, unimproved areas of the property consist of sloping terrain and drainage areas that flow toward the slope and ultimately to the beach. Improvement of the drainage on the undeveloped sloping portions of the site is not proposed.” There is an existing trench drain immediately west of an existing 5’ wide sewer easement on the bluff face which collects surface runoff from the site and conveys it via pipe down to the beach.

Furthermore, the geotechnical report states, “Although evidence of active groundwater was not observed in the terrace deposits onsite, groundwater commonly occurs locally along the terrace-bedrock contact in this area. Groundwater is not anticipated to adversely affect proposed development because such development will be at an elevation substantially above any anticipated rise; however, it could promote localized sloughing of terrace deposits along the bedrock contact. Heavy groundwater seepage was observed at the lower portions of the sea cliff during our previous onsite exploration.”

### Bluff Edge Setbacks and Stability

In the project vicinity, the Commission typically imposes either a minimum bluff edge setback of 25 feet from the edge of the bluff for primary structures (e.g. the enclosed living area of residential structures) and minimum 5 to 10 foot setback for secondary structures (e.g., patios, decks, garden walls) or requires conformance with the stringline setbacks. Consistently applying an appropriate bluff edge setback provides equitability for developments within the same general area. A stringline is the line drawn between the nearest adjacent corners of the residences that are adjacent to the subject property. A stringline setback allows an applicant to have a setback that averages the setback of the adjacent neighbors provided it is otherwise consistent with Coastal Act policies. This allows equity among neighbors and recognizes existing patterns of development. The structural stringline setback applies to enclosed structural area and the deck stringline applies to minor development such as patios and decks. These setbacks are deemed acceptable within the Three Arch Bay community based on the relatively stable, underlying bedrock. The intent of the setback is to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff erosion rates as a result of rising sea level.

The topographic survey submitted by the applicant identifies a bluff “crest” generally located along the 72 foot to 80 foot contour elevation (see Exhibit #3, page 1 and page 2) providing the existing residence more than the required 25 foot setback from the bluff “crest.” The edge of bluff line identified on the topographic survey cuts across contours and does not seem to correspond to the break in slope depicted by them. Based on the bluff edge definition contained in Section 13577 of Title 14 of the California Code of Regulations which states, in part: *“the edge shall be defined as that point nearest the cliff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.”* The Coastal Commission staff geologist, Mark Johnsson, has determined the bluff edge to be along the contour of the existing uppermost rock garden wall at approximately the 103 foot contour line. The bluff has an overall height of 100+/- feet and consists of a moderately sloping upper terrace slope which has been previously modified with the construction of backyard garden walls that terrace down the bluff with heights ranging from 3 to 5 feet and an existing trench drain on the bluff face adjacent to the lowest of the four garden wall terraces. At the lowest garden wall, this moderately sloping upper terrace becomes a steeper, locally vertical sea cliff backed by bedrock material descending down to beach level. The staff geologist reviewed the topographic survey of the site and determined the upper most break in slope to be at the upper most of the garden walls (see Exhibit #3, page 1 and page 11). Regardless of where the bluff edge may have been located before the minor grading for the garden walls that were cut into the marine terrace deposits, the bluff edge is clearly now at approximately the 103 foot contour. Further, the presence of any fill on the bluff face would not alter the position of the bluff edge where it has been altered by grading (cut).

In a March 21, 2012 memorandum, the staff geologist identifies the top of bluff or the bluff edge at the 103 foot contour line, pursuant to CCR Title 14 §13577(h), which states, in relevant part: *“In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.”* This contour line demarcation is more or less consistent with what he would identify as the bluff edge on the upcoast and downcoast properties as seen in the California Coastal

Records Project ([www.californiacoastline.org](http://www.californiacoastline.org)) image 201003218 (Exhibit #1, page 2). An exception is the property immediately upcoast of the subject site, where fill retained by a low wall seems to cover the natural bluff edge.

The applicant submitted plans identifying a 25 foot setback from an oceanfront bluff edge (Exhibit 3, page 1 and page 11) utilizing the City of Laguna Beach's definition of oceanfront bluff, "An ocean front bluff is an oceanfront landform having a slope of forty-five degrees or greater from horizontal whose top is ten or more feet above mean sea level." However, as the site is located in Three Arch Bay an area of deferred certification, Chapter 3 of the Coastal Act is the standard of Review, not the City's LCP.

Although, the existing residence is located approximately 12 feet from the bluff edge, as identified by the Commission's staff geologist, the existing residence meets the stringline setback for principal structures along this segment of shoreline. The proposed modifications to the existing residence do not result in demolition of more than 50% of the exterior walls or replacement of more than 50% of the existing structure. Due to the geologic stability present on-site, the Commission finds that a minimal geologic setback is appropriate in this case. Applying a stringline setback would be appropriate for the proposed partial subterranean enclosed living space addition considering that the addition is entirely within the footprint of the existing residence. There is no new interior living space proposed seaward of the existing residential footprint.

Additionally, the Commission typically imposes a setback for hardscape/patio type development. Hardscape/patio type improvements can be moved away from hazards more readily than primary structures. The proposed hardscape development includes a new approximately 36' long by 10' wide on-grade concrete patio with spa and outdoor shower to be constructed directly beneath an existing 27' long by 13' wide (355 sq. ft.) wood balcony deck and a half-spiral stair from the balcony down to the proposed new concrete patio. The existing wood balcony deck is supported by three wood beams and overhangs the 103 contour line giving the existing wood balcony deck a zero (0) setback from where the Commission has identified the bluff edge. At this time, the applicant proposes to replace only the wood railing on the existing balcony with a steel frame and tempered glass railing (to meet City safety codes), however, no work is proposed to replace other components of the existing non-conforming balcony deck such as the decking, support poles or foundation requiring substantial demolition of the existing balcony; therefore, the deck is not required to be brought into conformance with current bluff setbacks. As proposed, the applicant has included a bird-strike avoidance treatment to the proposed new glass balcony railing. In the future, should the non-conforming deck require substantial repairs (such as replacing support beams), the Commission would require that the deck be brought into conformance with current setback requirements.

Although the proposed ground level concrete patio improvements meet the patio stringline, conformance solely with stringline would result in a zero (0) foot setback from the bluff edge. While the rate of erosion is minimal at this site, a zero foot setback would not be adequate to accommodate even minimal erosion. In Three Arch Bay, the Commission has found that in some cases, a 5-foot bluff edge setback is the minimum necessary for accessory structures (e.g., CDP 5-

04-414 [Swartz]); typically a 10-foot bluff edge setback is applied for accessory structures. The proposed new ground level patio improvements do not meet the minimum 5-foot bluff edge setback typically applied in this area for secondary structures. Therefore, the Commission imposes **Special Condition 4** requiring revised final plans bringing all proposed ground level patio improvements into conformance with the minimum 5-foot bluff setback for accessory structures.

Additionally, correspondence submitted to staff from the adjacent downcoast property owner identified a major slope failure that occurred in 1992 on his property and four other properties immediately downcoast of the subject site that severely damaged the foundations of several houses and led to the condemnation of one home. The letter indicates that one major theme mentioned in geological reports of the area after the slide was moisture, i.e. the soil on top of the rock base below was wet. The letter also indicates there was another slope failure beneath his property in October 2009. As a result, the neighbor asked a consulting firm (Geofirm) to examine the problem to determine the cause, if possible. The response from Geofirm was also submitted as a letter to the applicant (Norberg) dated 11/17/2009 which states:

“During our site review we observed significant free running surface water on your portion of the slope adjacent to the failure. Based on our experience, the amount of water observed on your bluff face significantly reduces the local stability of onsite soils. Although such surficial instability may not pose an immediate risk to your existing improvements or residence above, progressive failures may eventually impact your site, and ongoing failures also pose a potential risk to persons on the beach below.

The presence of running surface water on a bluff face is commonly related to upslope irrigation. Therefore, our office recommends that the irrigation of onsite landscaping be reduced to minimize surface runoff and perching of groundwater on the underlying bedrock, which daylight on the bluff face. In an effort to effectively plan and manage site irrigation, our office recommends consulting with a landscape architect.”

As seen from the past history of bluff erosion on the adjacent properties, surficial soils may slough off the bluff face, undermining the patio improvements proposed with a 0 ft. setback seaward of proposed residential addition. This is additional support for the minimal 5 ft. setback required through **Special Condition 4**. As stated above, the proposed design would not accommodate even a minimal erosion rate and concerns from undermining of the patio could lead to requests for additional stabilization measures on the bluff face. Although **Special Condition 2** makes clear no shoreline or bluff protective devices that would substantially alter natural landforms along bluffs and cliffs would be permitted to protect the patio, prudent siting of the patio requires at least minimal setback to avoid risk and assure stability of the proposed improvements consistent with Section 30253. The applicant’s geotechnical report acknowledges the natural bluff on this site has already been modified by the construction of four backyard garden walls cut into the terrace deposits and limited fill materials which are subject to episodic erosion from rainfall, sheet flow and weathering of the loose materials along the bluff top.

To further address potential instability of the on-site soils on the bluff related to significant amounts of irrigation, the Commission is requiring **Special Condition 7**. The condition requires a

report from a soils engineer or geologist recommending irrigation watering limitations on the property. If the report recommends changes to the existing on-site irrigation, the applicant shall submit a plan prepared by a licensed landscape architect incorporating the recommended changes. However, as a preventative measure, the condition does not allow irrigation watering of the bluff beyond the bluff edge at the 103 ft. contour; thus, the revised irrigation plan must include, at a minimum, removal of any permanent irrigation system located seaward of the bluff edge as determined by the Commission's staff geologist. This requirement is consistent with the acknowledgement by Geofirm that reducing upslope irrigation can minimize surface runoff and perching of groundwater on the underlying bedrock and, thus, increase stability of on-site soils.

#### Future Bluff and Shoreline Protection

The subject site is a bluff top oceanfront lot. In general, bluff top lots are inherently hazardous. It is the nature of bluffs to erode. Bluff failure can be episodic, and bluffs that seem stable now may not be so in the future. Even when a thorough professional geotechnical analysis of a site concludes that a proposed development is expected to be safe from bluff retreat hazards for the life of the project, it has been the experience of the Commission that in some instances, unexpected bluff retreat episodes that threaten development during the life of a structure sometimes do occur (e.g. coastal development permits 5-99-332 A1(Frahm); P-80-7431(Kinard); 5-93-254-G (Arnold); 5-88-177(Arnold)). In the Commission's experience, geologists cannot predict with absolute certainty if or when bluff failure on a particular site may take place, and cannot predict if or when a residence or property may become threatened by natural coastal processes.

Section 30253 of the Coastal Act requires that new permitted development shall assure stability and not in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed development could not be recommended for approval and deemed consistent with Section 30253 of the Coastal Act *if* projected bluff retreat would affect the proposed development and necessitate construction of a protection device. A protective device may include, but not be limited to, a seawall at the base of the bluff, or a rock anchor system, or shotcrete wall on the bluff face. If new development necessitates future protection, the landform and shoreline processes could be dramatically altered by the presence of the protective system.

The Coastal Act limits construction of these protective devices because they have a variety of negative impacts on coastal resources including 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. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for residential development only for existing principal structures. The construction of a shoreline protective device to protect new residential development would not be

required by Section 30235 of the Coastal Act. In addition, the construction of a shoreline protective device to protect new residential development would conflict with Section 30251 of the Coastal Act which states that permitted new development shall minimize the alteration of natural land forms, including coastal bluffs which would be subject to increased erosion from such a device.

The proposed development includes minimal demolition of exterior walls/windows as part of the first level remodel and new 860 sq. ft. lower level/semi-subterranean addition to the existing structure on the western (bluff side) portion of the lot. The proposed new expansion area constitutes new development for the purposes of Sections 30235 and 30253. Because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline/bluff protective device that would substantially alter natural landforms along cliffs and bluffs will not be required in the future. The applicant's geotechnical consultant has indicated that the site is grossly stable and, with the proposed deepened footing/caisson foundation system that will not be exposed over the life of the structure, the project should be safe for the life of the project (75 years), and no shoreline protection devices will be needed. If not for the information provided by the applicant that the site is safe for development, the Commission could not conclude that the proposed development will not in any way "require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." The proposed development appears to be safe from erosion on the basis of available information and is therefore consistent with Coastal Act section 30253(a). Nonetheless, the addition is located on the seaward portion of the lot and the proposed new development would increase the amount of development close to the bluff edge. In addition, as explained above, irrigation problems have caused erosion problems on adjacent and nearby properties. As stated above, the record of coastal development permit applications and Commission actions has also shown that geologic conditions change over time and that predictions based upon the geologic sciences are inexact. Even though there is evidence that geologic conditions change, the Commission must rely upon, and hold the applicant to their information which states that the site is safe for development without the need for protective devices. To minimize the project's potential future impact on shoreline processes, **Special Condition 2** prohibits construction of future bluff or shoreline protective device(s) that would substantially alter natural landforms along bluffs and cliffs to protect the new development approved pursuant to Coastal Development Permit No. 5-09-105 including, but not limited to, additions to the residence, foundations, patios, balconies and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. Special Condition 2 requires the applicant, by accepting the permit, to agree that he will not construct a future bluff top or shoreline protective devices such as revetments, seawalls, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise would substantially alter natural landforms along bluffs and cliffs to protect the proposed new development and waives any rights under section 30235 of the Coastal Act to build such a protective device. Special Condition 2 does not preclude the applicant from applying for future coastal development permits for maintenance of existing development or future improvements to the site (other than bluff top or shoreline protective devices that substantially alter natural landforms along bluffs and cliffs) including landscaping and drainage improvements to address

natural groundwater seepage and aimed to prevent slope and bluff instability. The Commission would determine the consistency of such proposals with the Coastal Act in its review of such applications.

The imposition of a “no future shoreline protective device” condition to new substantial development on bluff tops, for new residential construction projects and for projects consisting of additions to existing residences in Three Arch Bay is fairly typical. For example, in Three Arch Bay, the following actions in the last decade have included such conditions: CDP 5-02-345 at 88 N. La Senda, remodel and addition of 1,132 sq ft to an existing two-level (including basement) single family residence; CDP 5-04-414(Swartz) at 1 Barranca Way, substantial demolition and reconstruction resulting in a 2,925 sq ft, two-story, 22 ft high, single family residence; CDP 5-06-165(Hibbard) at 36 N. La Senda Dr, remodel and 586 sq ft addition to an existing 2,015 sq ft, single-family residence and ancillary improvements; CDP 5-06-258(Stranton) at 50 N. La Senda Dr., remodel and 1,021 sq ft addition to an existing two-story, 2,701 sq ft single-family residence, new pool, spa, hardscape improvements and landscaping; and CDP 5-07-163(Hammond) at 58 N. La Senda Dr., remodel and addition to an existing single family residence resulting in a two level, 25 feet high, 6,135 sq ft residence with one attached 425 sq ft, 2-car garage and a second 400 sq ft 2-car garage.

In this instance, the proposed semi-subterranean basement addition, although no further seaward than the existing residence, is located on the seaward side of the lot and could be threatened at a future date from the previously mentioned hazards. Section 30251 of the Coastal Act requires that permitted development be sited and designed to prevent impacts to visual resources by minimizing the alteration of natural land forms. New development, which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, visual resources and shoreline processes. Therefore, only as conditioned with Special Condition 2 (which applies to the proposed addition only), Special Condition 4 (requiring revised final plans bringing all proposed ground level patio improvements into conformance with the minimum 5-foot bluff setback for accessory structures), and Special Condition 7 (prohibiting irrigation seaward of the bluff edge and requiring any other modifications to the existing irrigation system, recommended through geotechnical review) does the project conform to Sections 30251 and 30253 of the Coastal Act.

#### Future Development

The proposed development is located within an existing developed area and is compatible with the character and scale of the surrounding area. The proposed addition is entirely within the footprint of the existing residence. However, the proposed project raises concerns that future development at the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability concerns expressed in this staff report, the Commission imposes **Special Condition 3**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-09-105) or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping, fencing and shoreline protective devices.



As conditioned, the project is required to provide an appropriate set-back from the blufftop; prohibit construction of protective devices that substantially alter natural landforms (such as blufftop or shoreline protective devices) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. Only as conditioned, does the Commission find that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in a hazardous location.

**C. PUBLIC ACCESS**

Section 30212(a)(2) of the Coastal Act states, in pertinent part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

*(2) adequate access exists nearby*

The 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 locked gate community does not currently exist in the immediate vicinity of the project site. The nearest public access exists at 1000 Steps County Beach approximately one half mile upcoast of the site (Exhibit 4). The proposed development, basement level addition and remodel to a single-family residence on an existing residential lot, will not affect the existing public access conditions. It is the locked gate community, not this home that impedes public access. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

**D. LOCAL COASTAL PROGRAM**

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

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993, the Commission concurred with the Executive Director’s determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from

preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies of the Coastal Act.

**E. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The City of Laguna Beach is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA as a Class 3-A and Class 5-A exemption. As such, the project is exempt for CEQA's requirements regarding consideration of mitigation measures and alternatives. The Commission, however, has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding geologic hazards. These special conditions address 1) assumption of risk; 2) no future blufftop or shoreline protective devices that substantially alter natural landforms along bluffs and cliffs; 3) future development; 4) submittal of revised final plans; 5) conformance with geotechnical recommendations; 6) construction best management practices, 7) irrigation requirement and 8) a deed restriction against the property referencing all of the Special Conditions contained in this staff report. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project is consistent with the requirements of the Coastal Act and CEQA.

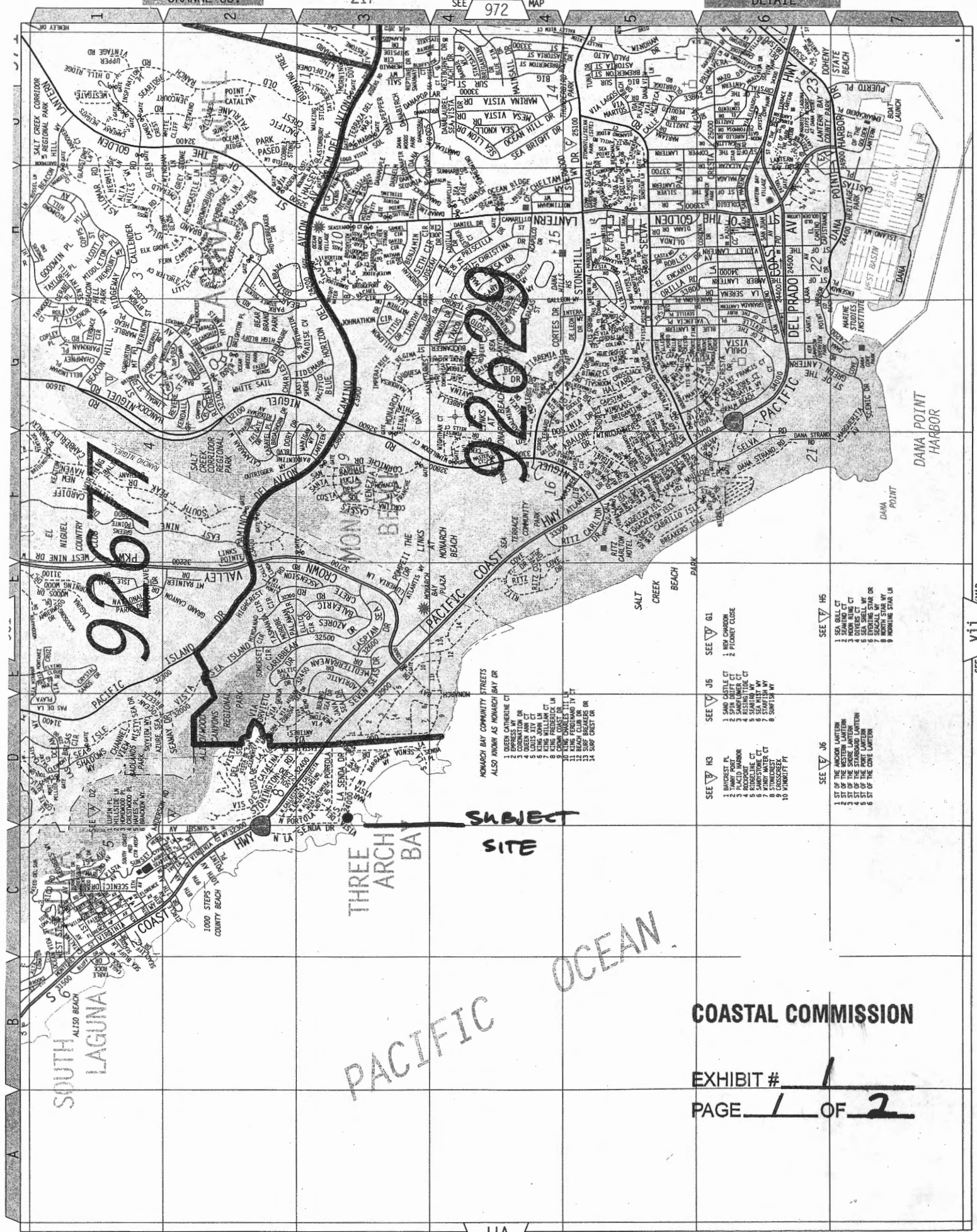
**APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

- 1) Geofirm, 2009, "Updated preliminary geotechnical investigation for foundation design of residence addition, 86 South La Senda, Laguna Beach, California", geotechnical report dated 22 April 2009 and signed by E. R. Hilde (CEG 2303) and E. J. Aldrich (GE 2565).
- 2) Geofirm, 2009, "Comments on California Coastal Commission staff report W5c, Special Condition 2: No future blufftop or shoreline protective devices, proposed residence additions, 86 South La Senda, Laguna Beach, California", comment letter dated 2 November 2009 and signed by E. R. Hilde (CEG 2303) and E. J. Aldrich (GE 2565).
- 3) Geofirm, 2009, "Recommendations to reduce potential bluff instability, 86 South La Senda, Laguna Beach, California", letter dated 17 November 2009 and signed by E. R. Hilde (CEG 2303).
- 4) Smull, L.C., 2010, "86 South La Senda, Laguna Beach, California", letter dated 11 January 2010 and signed by L. C. Smull.

- 5) Felix Lim, undated, "Application No. 5-09-105 (Norberg), 86 South La Senda, Laguna Beach, California", letter signed by F. Lim.
- 6) City of Laguna Beach certified Local Coastal Program (as guidance only).
- 7) Coastal Development Permits: 5-95-047(Norberg); 5-02-345(Markland); 5-04-414(Swartz); 5-06-165(Hibbard); 5-06-258(Stranton); 5-07-163(Hammond); 5-99-332 A1(Frahm); P-80-7431(Kinard); 5-93-254-G(Arnold); and 5-88-177(Arnold)
- 8) Mark Johnsson, Staff Geologist, "Geotechnical Review Memorandum," comment letter dated 21 March 2012 and signed by Mark Johnsson, (PhD, CEG, CHG)

## **APPENDIX B: STANDARD CONDITIONS**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



92629

9267

SUBJECT  
SITE

PACIFIC OCEAN

COASTAL COMMISSION

EXHIBIT # 1

PAGE 1 OF 2

- SEE  $\Delta$  K3
- 1 BAYVIEW PL
  - 2 PLACITA HARBOR
  - 3 ROCKPORT
  - 4 SANDSTONE CT
  - 5 WINDY WATER CT
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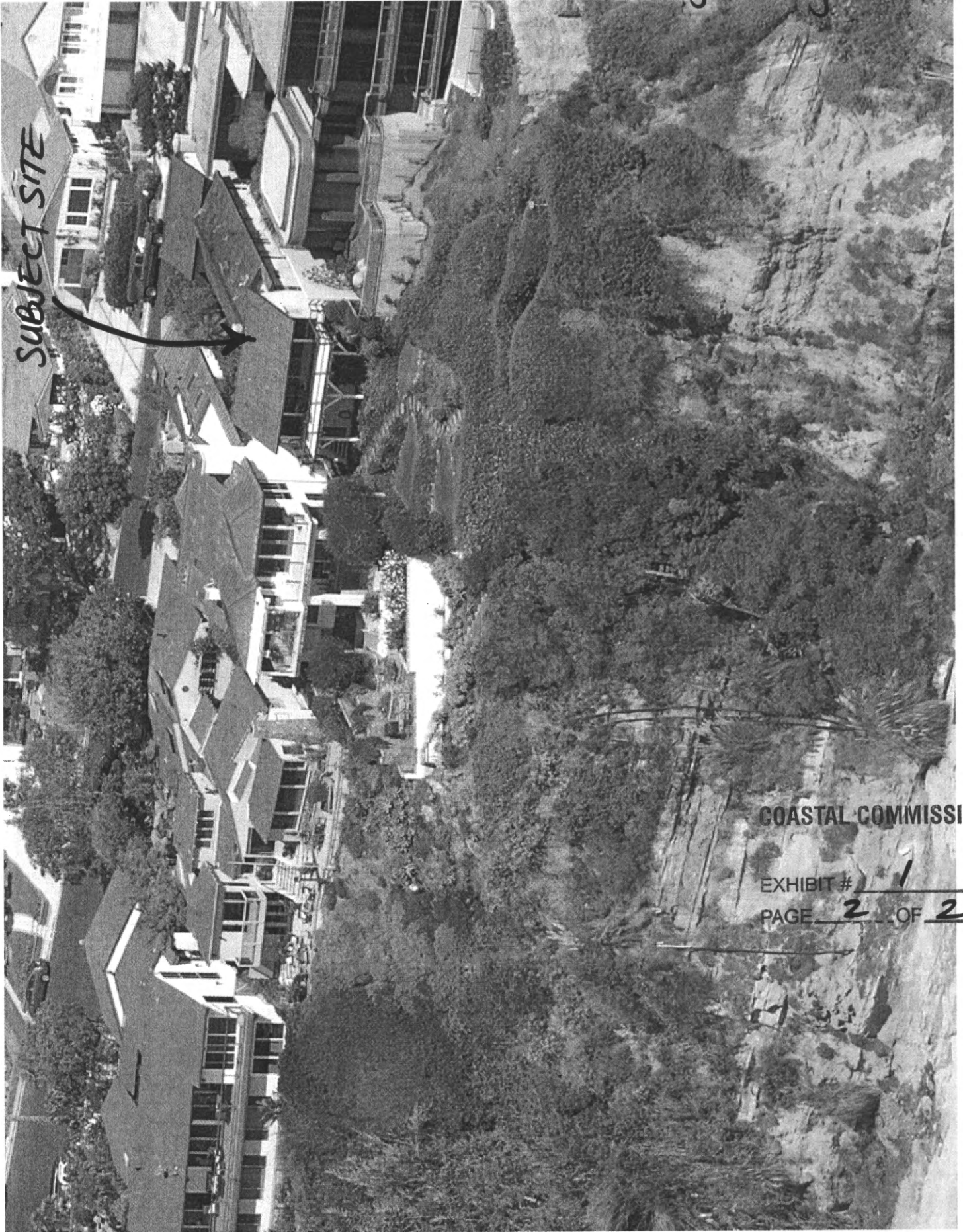
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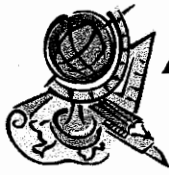




COASTAL COMMISSION

EXHIBIT # 1

PAGE 2 OF 2



# Advanced Listing Services

Ownership Listings & Radius Maps

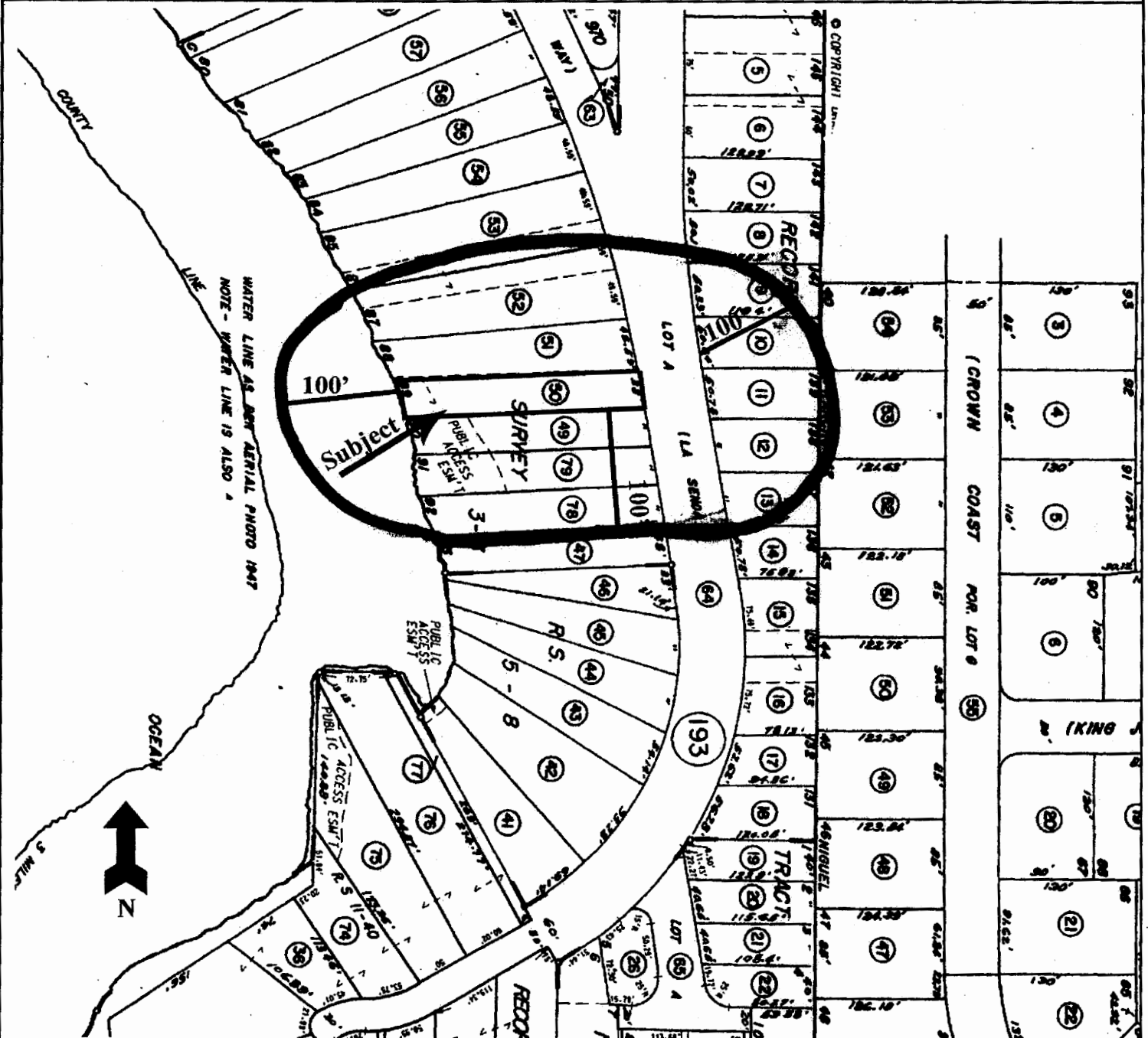
P.O. Box 2593 • Dana Point, CA • 92624

Office: (949) 361-3921 • Fax: (949) 361-3923

www.Advancedlisting.com

Subject APN: 056-193-50  
100' Radius (excluding streets)

Address: 86 S La Senda.  
Laguna Beach CA 92651



COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1

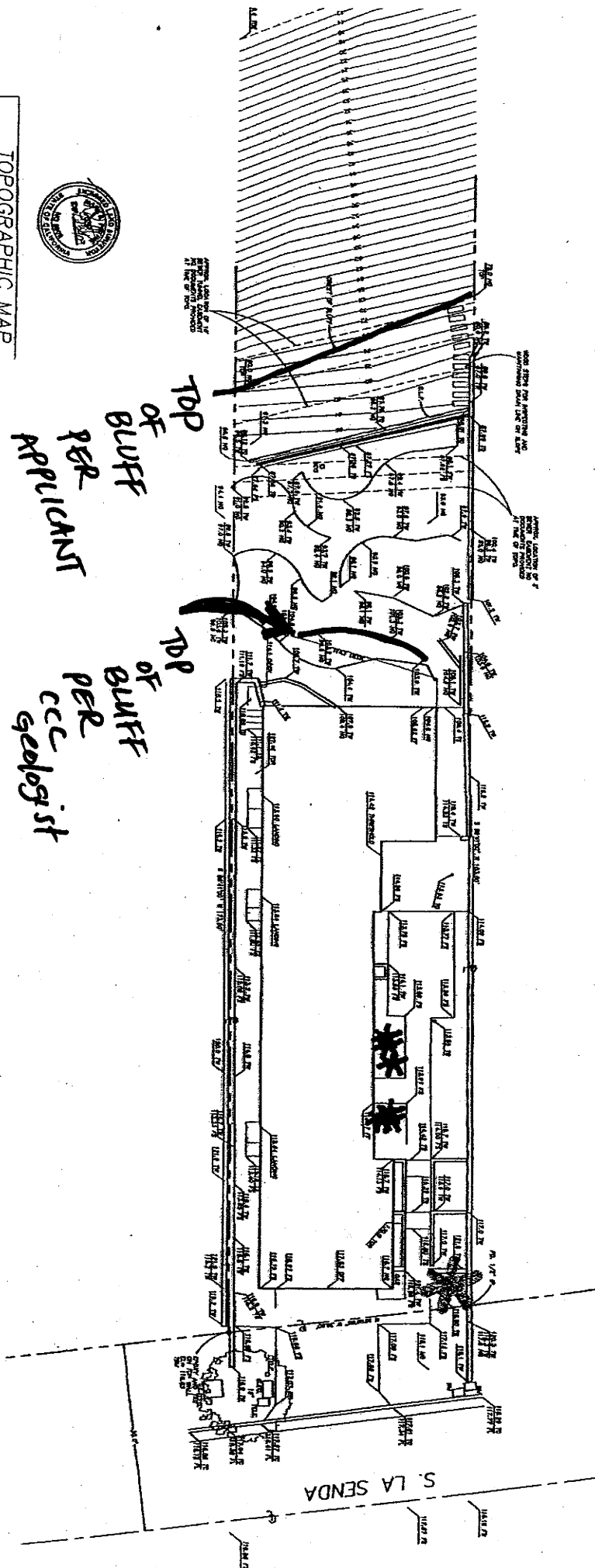


TOPOGRAPHIC MAP	
1:50,000	U.S. GEOLOGICAL SURVEY
86 S LA SENDA LAGUNA BEACH, CA.	
SOUTH COAST SANCTUARY 2011 MAY 11, 11:00 AM	



TOP  
of  
BLUFF  
PER  
APPLICANT

TOP  
of  
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PER  
CCC  
geologist



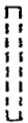

COASTAL COMMISSION

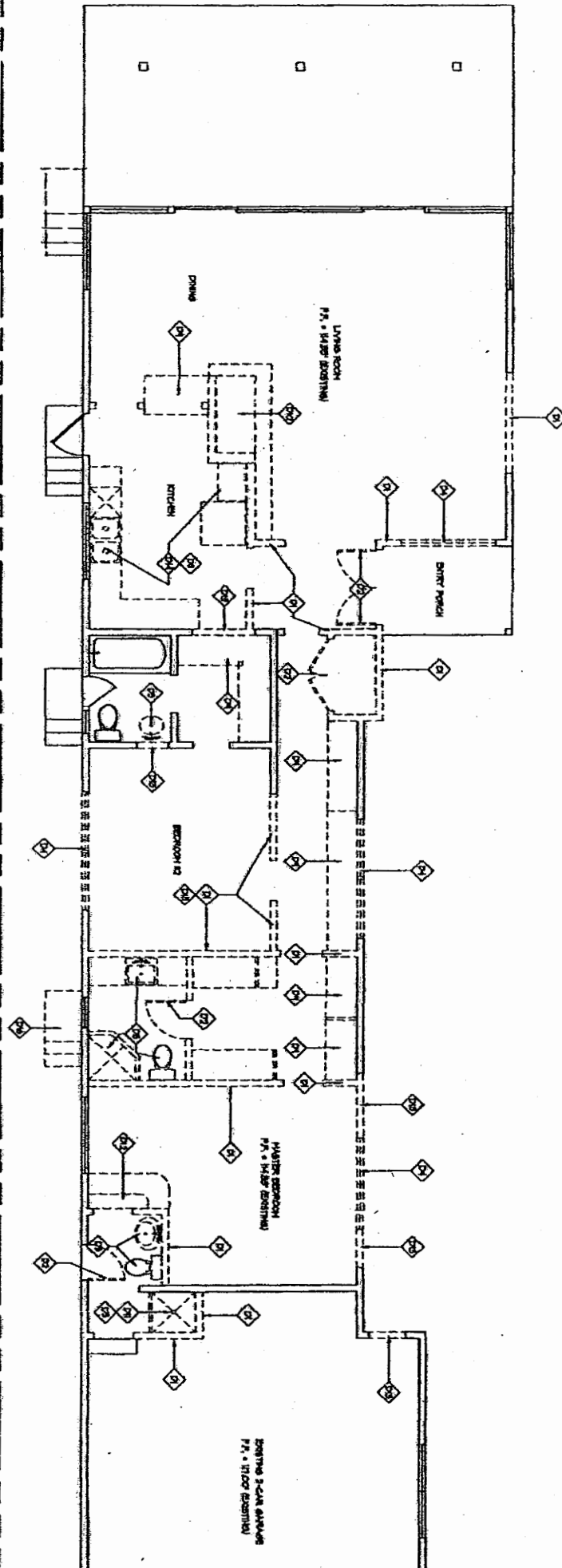
EXHIBIT # 3  
PAGE 2 OF 8



# EXISTING / DEMOLITION PLAN

## LEGEND:

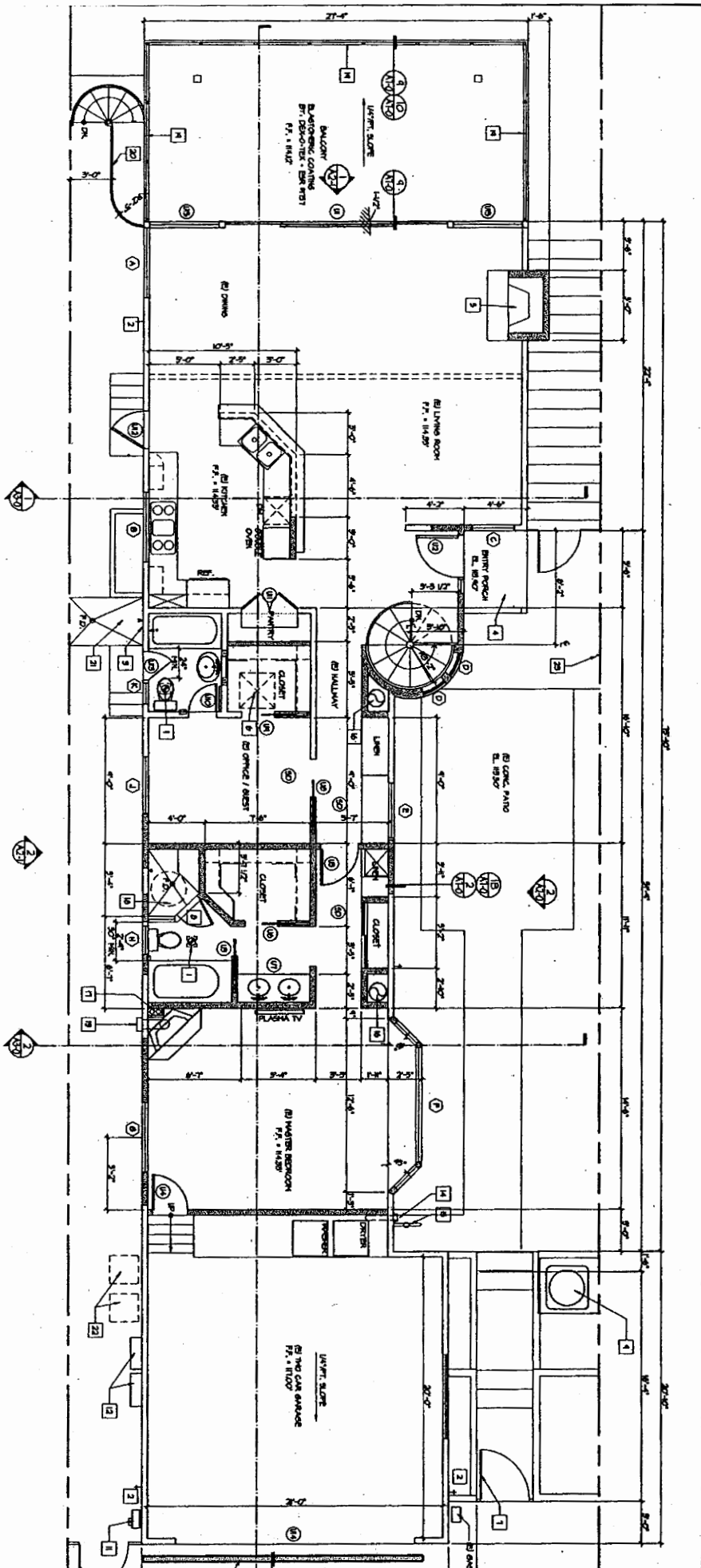
-  EX. WALLS TO BE REMOVED
-  EX. WALLS TO REMAIN



COASTAL COMMISSION

EXHIBIT # 3  
PAGE 3 OF 8

PROPOSED NEW UPPER FLOOR PLAN (REMODEL)



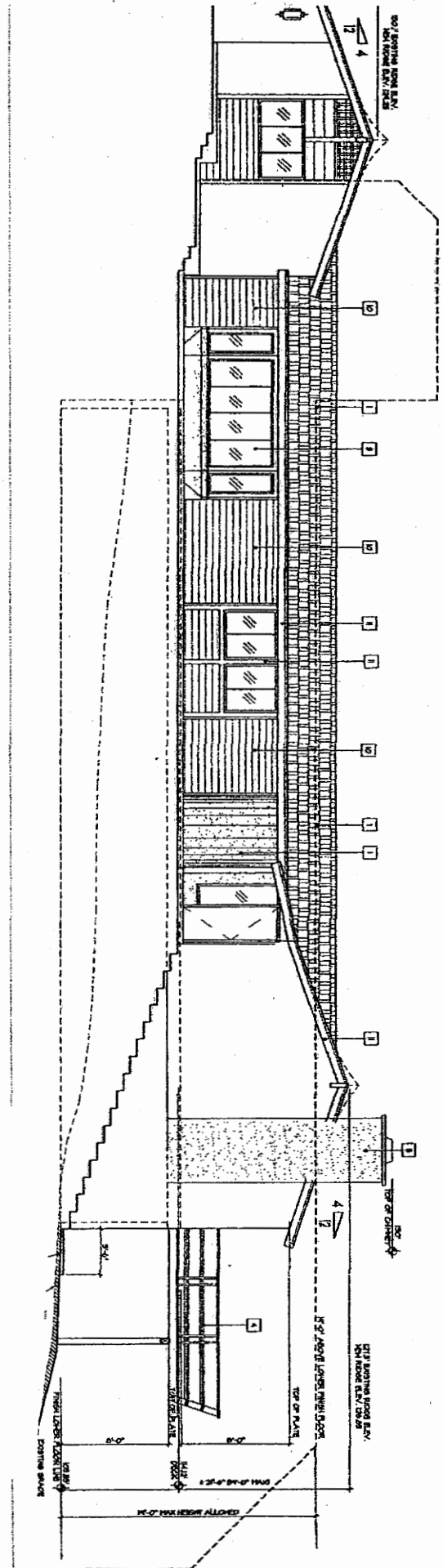
COASTAL COMMISSION

EXHIBIT # 3  
PAGE 4 OF 8

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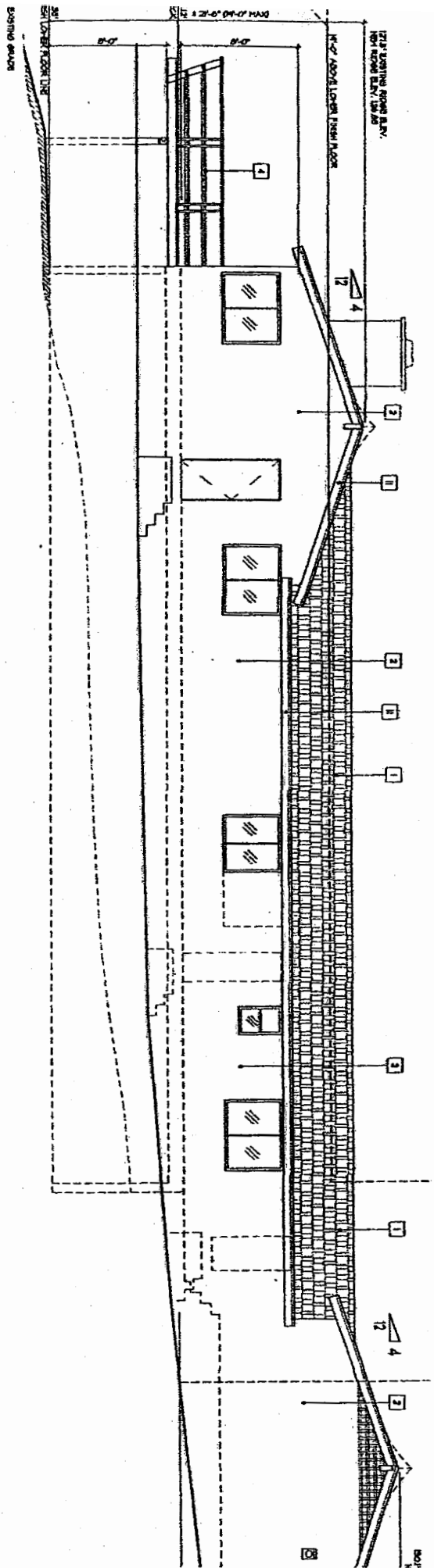
EXHIBIT # 3  
PAGE 5 OF 8

NORTH (RIGHT SIDE) ELEVATION



COASTAL COMMISSION

EXHIBIT # 3  
PAGE 6 OF 8



SOUTH (LEFT SIDE) ELEVATION

COASTAL COMMISSION

EXHIBIT # 3  
 PAGE 7 OF 8

EXHIBIT # 3  
PAGE 8 OF 8

1 Sherman L. Stacey (State Bar No. 62879)  
2 Nanci S. Stacey (State Bar No. 210295)  
3 GAINES & STACEY, LLP  
4 1111 Bayside Drive, #280  
5 Corona del Mar, CA 92625  
6 TEL: (949)640-8999  
7 FAX: (949)640-8330

8 Attorneys for Petitioner

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 1 OF 6

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

DONALD A. NORBERG, trustee of The )  
Norberg Family Trust )

Petitioner, )

v. )

CALIFORNIA COASTAL )  
COMMISSION, PETER DOUGLAS, )  
Executive Director of CALIFORNIA )  
COASTAL COMMISSION, and DOES 1 )  
through 10, inclusive, )

Respondents. )

CASE NO. 30-2010-00351770

PEREMPTORY WRIT OF MANDATE

Trial Date: July 29, 2011

Dept. C-06  
Judge Luis A. Rodriguez

TO Respondents CALIFORNIA COASTAL COMMISSION and PETER DOUGLAS, or  
his successor in interest:

JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE in the above  
captioned matter having been entered directing that the Clerk of the Los Angeles Superior Court  
issue a PEREMPTORY WRIT OF MANDATE in accordance with the JUDGMENT;

YOU ARE HEREBY ORDERED AS FOLLOWS:

1. Respondent CALIFORNIA COASTAL COMMISSION shall set aside its decision of  
January 14, 2010 to approve with conditions Application for Coastal Development Permit No. 5-  
09-105 made by Petitioner DONALD A. NORBERG, trustee of The Norberg Family Trust, for a

1 permit to remodel and add to a single family residence owned by Petitioner and located at 86 S.  
2 La Senda, Laguna Beach, California; and

3 2. Respondent CALIFORNIA COASTAL COMMISSION shall take further action in  
4 connection with Application for Coastal Development Permit No. 5-09-105 consistent with the  
5 Statement of Decision filed by this Court on October 4, 2011, including (i) to set aside Special  
6 Condition No. 2 A, B, and C on Permit 5-09-105, (ii) to set aside Special Condition No. 4A on  
7 Permit No. 5-09-105, (iii) to set aside Special Condition No. 7 on Permit No. 5-09-105, (iv) to  
8 modify Special Condition No. 8 on Permit No. 5-09-105 as set forth in the Court's Statement of  
9 Decision, and (v) to take such actions as may be reasonable and necessary to comply with the  
10 Statement of Decision of the Court issued on October 4, 2011. Except as specially enjoined by  
11 this Writ, this Writ does not limit or control in any way the discretion legally vested in the  
12 CALIFORNIA COASTAL COMMISSION.

13 3. Respondents shall file a return to this Peremptory Writ of Mandate issued under this  
14 Judgment stating what Respondents have done, and intend to do, to comply with this Peremptory  
15 Writ of Mandate within sixty (60) days of service of the Peremptory Writ of Mandate upon them,  
16 and shall file a supplemental return to the Peremptory Writ of Mandate issued under this  
17 Judgment stating what final action the Respondents have taken on the Application for Coastal  
18 Development Permit No. 5-09-105 within thirty (30) days after such final action.



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24 Dated: Nov. 28, 2011

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ALAN CARLSON  
Clerk of the Superior Court

By L. Fuentes  
Deputy Clerk **L. FUENTES**  
**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 2 OF 6



**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 10/04/2011

TIME: 08:46:00 AM

DEPT: C06

JUDICIAL OFFICER PRESIDING: Luis Rodriguez

CLERK: Katherine Palacios

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Barbara Allen

CASE NO: **30-2010-00351770-CU-WM-CJC** CASE INIT.DATE: 03/09/2010

CASE TITLE: **Donald A. Norberg, trustee of the Norberg Family Trust vs. California Coastal Commission**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Writ of Mandate

---

**APPEARANCES**

---

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 7/29/11, now makes the following ruling:

The matter having been submitted the court taking careful consideration of the evidence and argument of counsel now rules as follows:

THE PETITION FOR WRIT OF MANDATE IS DENIED in part and GRANTED in part.

Petitioners Donald A. Norberg, Trustee of the Norberg Family Trust brought under CCP § 1094.5 a Writ of Mandamus petitioning this court to set aside the following specific decisions of Respondent California Coastal Commission(Commission) imposing as conditions of approval of Permit No. 5-09-105. The matter having been submitted the court after considering the evidence, administrative record, and arguments of counsel rules as follows on the issues submitted:

- (1) **The Writ of Mandate Is Denied As to Special Condition No. 1 on CCC Permit No. 5-09-105**
- (2) **The Writ Of Mandate Is Granted And California Coastal Commission is Ordered To Set Aside Special Condition No. 2 A ,B, and C on Permit 5-09-105**
- (3) **The Writ of Mandate Is Granted and California Coastal Commission Is Ordered To Set Aside Special Condition 4a on Permit 5-09-105**
- (4) **The Writ Of Mandate Is Granted and California Coastal Commission is Ordered To Set Aside Special Condition 7 on Permit 5-09-105**
- (5) **The Writ of Mandate Is Granted but only as to the finding of bluff line not the irrigation plan requirement in Special Condition 8 on Permit 5-09-105**

**The Administrative Record**

As background to the court's rulings, The Norbergs (Petitioner) have owned the property at 86 S. La Senda in the Three Arch Bay community since the 1950s. Three Arch Bay is a gated or closed community within Laguna Beach California. Under the normal procedure for building along the coast the city would approve all permits through a certified coastal program but because of the closed nature of Three Arch Bay, the California Coastal Commission (Commission) exercises direct control over permitting along the coast in this neighborhood. In 1995 the Norbergs sought after and obtained a permit

**COASTAL COMMISSION**

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for an expansion of the home with one special condition, that the Norbergs follow the advice of the geologist in expanding their home. The planned expansion included adding 1,376 square feet of habitable space beneath the existing floor and 118 square feet to the main floor. The Norbergs did not go through with the expansion at the time and the permit expired unused. On June 22, 2009 the Norbergs applied for a permit to add 1,186 square foot addition below the main floor. This addition is split up into 806 square feet of livable space and 326 square feet of storage space. The renovation and expansion will add two bathrooms, two bedrooms and a storage area. The addition also includes a cement patio that includes a spa and outdoor shower. The rest of the remodel will include a half spiral staircase and an interior remodel of the main floor. The process of obtaining the permit from the CCC took several months of communication and interaction between the CCC and the Norbergs. A hearing was conducted January 14, 2010 concerning the permit. During this hearing the Norberg's representative objected to several of the conditions then listed. As a result of the hearing and a letter from a neighbor a last special condition was imposed that required an irrigation plan be developed. The bulk of objections that Norberg's counsel raised concerned whether Cal Pub Resources Code § 30253 applied to this project as a "new development." The Commissioners and staff stated that they believed that "new development" is "if it does not exist today, this is new development." (AR 4:231) Commissioner Sanchez stated "Just that it is a substantial change, and that is what makes this new development...I think it is pretty much black and white." (AR 4:235) The Commission went on to state that the bluff line was correctly identified by their staff geologist at 103 feet of elevation but did not give any as to why their geologist was correct. (AR 4:231-2) The Norberg's objected to Special Conditions 2,4A, 7 and 8 mandated by the Commission if they were to legally proceed with their intended renovation of their home.

#### **Standard of Review**

The writ of mandate has been properly submitted under the Cal Pub Resources Code §30800. The standard of review outlined in CCP 1094.5 states that the court is to determine whether the action was without or in excess of jurisdiction. The court may also determine whether there was a prejudicial abuse of discretion. "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." *Id.*

The main issues surrounding their protests are whether Public Resource Code 30253 applies to this project as a new development and where the bluff line is located. The secondary issues are whether the CCC can require an express waiver of liability and if the California Coastal Commission (hereinafter the CCC) can restrict the deed with the special conditions listed in the permit.

#### **- The Commission is authorized to find Petitioner's project a new development under Public Resources Code §30212(b)**

The key issue is whether Commission can require Petitioner to waive the option to build a "shoreline protective device" if necessary. It appears that the Commissioner has this authority. **Petitioner** project plans to excavate the main floor to use the space to increase the intensity of the use of his property. For example the addition of two bedrooms and two bathrooms will permit a greater increase in the residential use of the house it will allow for a additional persons to visit or live at the home. Further it will enhance the value of the property since it will double the available square footage of the home. Public Resources Code § 30253 (b) states that "**New development**" shall "Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Therefore, for "New Development," the Commission has authority to apply restrictions on shoreline protective devices. Notwithstanding, the Commission is only authorized to impose a condition on approval if (1) the condition is reasonable relative to the nexus between the impact of development and extraction of a property right.(2) the condition is authorized to ensure that development will be in accordance with the provisions of the

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Coastal Act. (. (Cites omit) First reviewing the latter element the Petitioner's project calls for approval of a interior renovation that will result in almost a doubling of his homes square footage. The Commission can look to and apply as authority on these facts that this plan falls outside of the exclusions of new development. Public Resource Code § 30212 (b) (3) defines "new development" by exclusion. Thus, it does not include the following:

(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. ....As used in this subdivision, "bulk" means total interior cubic volume as measured from the exterior surface of the structure."*

Petitioner's ignores the obvious fact that the project under any scenario qualifies under this provision the claim that the because the original footprint is not being expanded is not relevant in light of the clear metrics expressed in subsection 3. Therefore, by having established that the Commission had authority to treat Petitioner project as a new development, the next issue is whether the Commissions conditions as set forth in the Special Conditions are also supported in law.

**Special Condition 1**

This special condition one assigns the Norbergs an assumption of risk, waiver of liability and indemnity against the CCC for all damage or injury occurring from building on the bluff. the CCC is already under protection from being sued under Gov. Code 818.4 for immunity for issuance of permits the CCC does have the authority under Cal Pub Resource Code § 30607 to impose reasonable terms in accordance with the Coastal Act. An express assumption The Commission is immune from liability. Further, although this condition appears to the court to be overkill it is not unreasonable to impose and to require petitioner to record the indemnification

**Special Condition 2 (a, (b), and (c)**

This special condition states that Petitioners will waive any rights he had to construct a shoreline protective device under Cal Pub Resources Code § 30235.[1] However, **Public Resources Code Section 30253 specifically states** that new development should not "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."

The omission of this qualifying language is significant because by prohibiting all shoreline protective devices the Commission has failed to justify that this condition reflects the necessary nexus between Commission authority and petitioners property rights. The court agrees with Petitioner cannot blithely ignore or disregard the express limitation of excluding only those protective devices "that substantially alter natural landforms" This violates the rule of statutory construction that all words, phrases and sentences are to be given legal significance. Tucker Land Co. v. State of California 94 Cal.App4th 1191. In disregarding the word substantially the Commission without any regulatory or legislative direction imposed a standard that "all shoreline protective devices are prohibited even though a finding may be made that the proposed device does not substantially alter the natural landform" in effect the Commission is denying the opportunity prohibiting all when the legislature expressed that to prohibit the Commission must find evidence that it would substantially alter the natural land form. After reviewing the prohibitory conditions that are applicable to new development it is clear to the court that forcing Petitioner to accept that he will not construct **any** bluff or shoreline device to protect his home is overreaching on the Commissions part and is invalid as a condition in excess of its jurisdiction under the Coastal Act. Thus, Special Condition 2A is invalid as the Commission is not authorized under its powers under the Coastal Act to mandate a condition that requires Petitioner to waive all shoreline protective devices. Since is not supported by §30253 like a house of cards conditions b, and c also fail because they are linked and are triggered by the ban on all shoreline protective devices. For example, if petitioner agrees to not construct any shoreline device under a then he must also agree that if his home is damaged he must demolish all or a portion. This Hobson choice is not what was intended by the Coastal Act in regulating new development.

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Therefore the court finds that Special Conditions 2A, 2B and 2C exceed the jurisdiction of the Commission and the Commission is ordered to set aside its decision approving Special Condition No. 2 parts A, B, and C.

**Special Condition 4A**

This condition states that the plans for the renovation and addition need to conform to a bluff line of 103 feet instead of the submitted plans that put the bluff line at 84 feet.

The definition for what a bluff line is found in 14 CCR 13577 (2) and is shown in part below:

"Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or sea cliff. In cases where the top edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a step like feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge." 14 CCR 13577.

The court agrees with Petitioner the Commissions conclusion the bluff edge is 103 feet is not supported by substantial evidence but rather the generic and simplistic statements of non-testifying staff geologist. As pointed out the AR contains no memorandum, letters, e-mail or drawings as to what was relied on by this unidentified staff geologist. Juxtaposed against this oral hearsay is the substantial expert evidence of Petitioner refuting the bluff line finding. 4AR160 The bluff finding is critical if at some point as set forth in 2C consideration must be given to future demolition. In the court's view given the fatal flaw of 2C this condition's finding is also defective as it is not supported by substantial evidence.

**Special Condition 7**

Special Condition seven requires the special conditions be recorded on the deed.

Because the adopted Special Conditions #2 a, b, and c have been found invalid it this requirement is directed to those specific conditions. Thus the question is whether the Commission may require a applicant to agree to modify his title by executing and recording deed restrictions. It would appear that such a condition is moot and of no use to the present permit. Moreover, it is not reasonably related to because although the Commission rationalized that such a deed recordation would give actual notice future owners contemplating development would be required to obtain a permit before doing any work on the residence because it is within 50 feet of a bluff. Putting this on a deed would serve no reasonable objective other than to needlessly encumber the title of the property.

**Special Condition 8**

Special Condition eight requires that petitioner get recommendations from a geologist or soils engineer on an irrigation plan but that no irrigation shall occur below the 103 bluff line. The petitioner objects to the portion of the special condition that puts the bluff line at 103 feet. The court agrees and finds that this special condition only as to the finding that the bluff line is 103 feet is not supported by substantial evidence in all other respects the condition is valid.

Court orders clerk to give notice.

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