

CALIFORNIA COASTAL COMMISSION

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Th11a

ADDENDUM

July 10, 2012

TO: Coastal Commissioners and Interested Parties

[Click here to go to the original staff report.](#)

FROM: South Coast District Staff

SUBJECT: ADDENDUM TO **ITEM Th11a**, COASTAL COMMISSION PERMIT APPLICATION #**5-09-105(Norberg)** FOR THE COMMISSION MEETING OF **July 2012**.

Correspondence and Revisions to the Staff Report in Response to Correspondence

On July 6, 2012, staff received the attached letter with exhibits from Sherman L. Stacey, acting agent to the applicant Donald Norberg detailing two objections to the staff recommendation, 1) the special conditions in the staff recommendation do not comply with the court's Peremptory Writ of Mandate and 2) the location of the bluff edge. The exhibits attached to the letter are not included in this addendum as they are already included as exhibits to the staff report, Item Th11a as follows:

- Mr. Stacey's Letter Exhibit A: Peremptory Writ of Mandate is Staff Report Exhibit # 4
- Mr. Stacey's Letter Exhibit B: Mark Johnsson's 3/22/12 letter is Staff Report Exhibit #5
- Mr. Stacey's Letter Exhibit C: Mark Johnsson's 1/16/03 Memorandum on Establishing Development Setbacks from Coastal Bluffs – this 2003 memo is a public document that provides applicants guidance and information on bluff setbacks per the Coastal Act; it is not included as an Exhibit in the staff report; therefore, the excerpts from that memorandum included with Mr. Stacey's letter remain attached to Mr. Stacey's letter (furthermore, staff includes a reference to this 2003 staff memorandum to the Staff Report's list of Substantive Documents in this addendum).
- Mr. Stacey's Letter Exhibit D: Geofirm 4/30/12 Memo is Staff Report Exhibit #6

Commission staff recommends the following addition of new language to Special Condition 2 and Special Condition 4 plus additional staff report findings to address the objections made by the applicant in their correspondence. Deleted language is shown in ~~striketrough~~ and new language is in **bold, underlined italic.**

#1. Special Condition 2 on page 6 of the staff report: Staff recommends new additional language to clarify intent of special condition.

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 would substantially alter natural landforms along bluffs and cliffs** 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 **if no future Coastal Development Permit is issued to construct protection for the development authorized by this Permit.** 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 **through 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 or through ~~which shall include~~ removal of the threatened portion of the structure.

#2. Top of page 17 of the staff report, at the end of the first incomplete paragraph, addition of the following language to clarify the intent of the new language added to Special Condition 2 in this addendum.

Special Condition 2 does not forego the property owner's right to apply for a permit for protective measures that would not substantially alter natural landforms along bluffs and cliffs.

#3. Bottom of Page 7 of the staff report: Staff recommends modifying the language of Special Condition 4 as follows:

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. **The three uppermost bluff terraces located closest to the existing residence shall be shaded and clearly marked "this element not permitted by any coastal development permit" on each set of plans.**
- 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.

#4. Bottom of page 19 of the staff report: Under Findings and Declarations, the addition of Section F: Unpermitted Development." Staff recommends additional findings in response to Mr. Stacey's statement on page 2 of his letter remarking that the existing garden terrace walls were constructed prior to passage of the Coastal Act. Mr. Stacey's comment reads as follows: "The findings acknowledge that the area lying between the 103 foot contour and approximately 84 foot contour has been substantially altered from the natural landforms with the pre-Coastal Act installation of garden walls, terraces and a railroad tie stair. Any protective device which Norberg might propose in this area would not alter natural landforms" as there are no natural landforms to be altered."

F. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit, including grading and terracing of a coastal bluff face. All work

occurred on the bluff face or within 50 feet of the edge of a coastal bluff. A review of historical photographs from the California Coastal Records Project (Exhibit #7) indicate the cut and fill garden walls are not pre-Coastal Act. The garden walls can be seen on the California Coastal Records Project 23 Oct 2004 and 23 Sep 2010 images of the site; they are not seen on the 16 Sep 2006 or earlier images. Only the railroad tie steps on the bluff face appear to be pre-Coastal Act as they can be seen on the California Coastal Records 1972 image. The topographic map submitted with the project application dated 2009 depicts the garden walls and railroad tie steps as existing development on the site.

Consequently, even if it were considered to be the sort of work that is normally associated with a single-family residence, the work that was undertaken constitutes development that requires a coastal development permit application. Special Conditions 4 requires revised project plans showing the upper bluff terraces shaded and clearly marked "this element not permitted by any coastal development permit."

Special Condition 8 is imposed to require the applicant to record a deed restriction against the property so as to notify all prospective future property owners of the terms and conditions of approval to which they will also be required to adhere. It thus ensures that future owners of the property will be informed of the conditions as well as of the risks and the Commission's immunity for liability.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. The certified Laguna Beach Land Use Plan was used as guidance by the Commission in reaching its decision. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit. The Commission's enforcement division will evaluate further actions to address unpermitted development not resolved under this permit.

#5. Bottom of page 12 of the staff report: Staff recommends additional findings in response to Mr. Stacey's objection regarding the location of the bluff edge:

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, which is the landward edge of the topmost riser (See Exhibit #3). The bluff has an overall height of 100+/- feet and consists of a moderately sloping upper terrace slope which has been previously modified with by minor cut and fill and 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 uppermost break in slope to be at the upper most of the garden walls (see Exhibit #3). The Commission generally makes bluff-edge determinations consistent with the existing conditions of the natural landform. As noted in Dr. Johnsson's memorandum to Commissioners and interested parties, dated January 16, 2003, "a bluff edge may be changed by a variety of processes, natural and anthropogenic" (page 4, paragraph 3). Dr. Johnsson continues in this memo, noting that anthropogenic bluff-edge changes occur when a property-owner cuts into and removes natural materials during grading operations resulting in a landward migration of the bluff-edge. Conversely, Dr. Johnsson notes, "placing artificial fill on or near the bluff edge generally does not alter the position of the natural bluff edge; the natural bluff edge still exists, buried beneath fill, and the natural bluff edge is used for purposes of defining development setbacks." On page 4 of Exhibit 3, Geofirm provided a cross-section of the subject site's topography. In this cross-section, Geofirm generally depicts its opinion of where the former natural profile of the subject site's topography existed before development on the site, using a dotted line which portrays the former natural slope profile over the graded benched areas on the subject site. Geofirm did not provide any documentation to support its former natural slope profile depiction. Following the dotted line on page 4 of Exhibit 3, Geofirm depicts the former natural slope profile as ending its landward upward gradient below the existing structure on the subject site. Based on Geofirm's depiction of the former natural slope profile, the uppermost edge of that slope appears to be under the existing residence, arguably placing the edge of the bluff under the existing residence. Given the lack of geologic studies to designate the former natural slope profile on site and the exact location of minor fill as compared to natural terrace deposits, Dr. Johnsson does not, at this time, designate the former natural profile of the slope on site as it existed before disturbance of the slope.²

Given the lack of definitive evidence as to the exact former natural slope profile, the Commission finds that it would be most consistent with the Commission's regulation to delineate the bluff edge as the 103-foot contour line, as that is the current landward edge of the topmost riser. This finding is consistent with the Commission's practice of designating bluff edges that have moved landward as a result of grading activities that removed natural material from the bluff (5-02-357[Saczalski] and 5-01-409[Conger]). Further, given the Commission's practice of designating the bluff edge beneath artificial fill on a site, if the Commission were to adopt Geofirm's designation of the former natural slope profile, then the bluff edge would be further landward than the Commission-delineated bluff edge at the 103-foot contour because Geofirm's exhibit, Exhibit 3, clearly depicts fill over the former natural profile landward of the Commission-delineated bluff edge. 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).

² Personal communication with Mark Johnsson, July 9, 2012.

In a March 21, 2012 memorandum (Exhibit 5) the staff geologist identifies the top of bluff or the bluff edge at the 103 foot contour line, pursuant to the California Code of Adm. Regulations (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) 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.

In his July 6, 2012 letter, Mr. Stacey states; “The [staff report] findings acknowledge that the area lying between the 103 foot contour and approximately 84 foot contour has been substantially altered from the natural landforms with the pre-Coastal Act installation of garden walls, terraces and a railroad tie stair. Any protective device which Norberg might propose in this area would not “alter natural landforms as there are no natural landforms to be altered.” As discussed in the Unpermitted Development section of this staff report, much of the alteration between the 103 foot and 84 foot contours of the coastal bluff occurred without benefit of a coastal development permit and are not pre-Coastal Act. Nevertheless, altering (grading) a coastal bluff does not turn it into an “artificial landform,” it is still a natural landform--one that has been altered. An artificial landform is one that did not exist prior to grading (i.e., a landfill, an open pit mine, etc.)²

#6. Appendix A: Staff recommends the inclusion of substantive file documents referenced in the staff report findings included in this staff report addendum:

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 2656).
- 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 2656).
- 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).

³ Personal communication with Mark Johnsson, July 6, 2012.

- 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);~~ **5-02-357(Saczalski); and 5-01-409(Conger)**
- 8) Mark Johnsson, Staff Geologist, "Geotechnical Review Memorandum," comment letter dated 22 March 2012 and signed by Mark Johnsson, (PhD, CEG, CHG)
- 9) Geofirm, 2012, "Response to California Coastal Commission Staff Report F9a, dated March 29, 2012, and Geotechnical Review Memorandum dated March 22, 2012, Proposed Residence Additions, 86 South La Senda, Laguna Beach, California," comment letter dated 30 April 2012 and signed by E. R. Hilde (CEG 2303) and E. J. Aldrich (GE 2656).
- 10) California Coastal Records Project (www.californiacoastline.org) image 201003218 **from 2010, image 200803543 from 2008, image 200603291 from 2006, image 200406973 from 2004 and image 7238107 from 1972**
- 12) Mark Johnsson, Staff Geologist, "Memorandum, Subject: Establishing development setbacks from coastal bluffs," dated 16 January 2003 and signed by Mark Johnsson, (PhD, CEG, CHG)**

#7. Bottom of Page 4 of the staff report: Staff recommends the addition of a new exhibit, Exhibit #7 to the list of exhibits and to the staff report.

EXHIBITS

Exhibit 1 – Location Map/Aerial Photo

Exhibit 2 – Assessor's Parcel Map

Exhibit 3 – Project Plans

Exhibit 4 – Court Statements of Decision

Exhibit 5 – Geotechnical Review Memo from Mark Johnsson

Exhibit 6 – Geofirm Response to previous staff report and Geotechnical Memo from Mark Johnsson dated April 30, 2012

Exhibit 7 - California Coastal Records Project (www.californiacoastline.org) image 201003218 from 2010, image 200406973 from 2004 and image 7238107 from 1972

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July 6, 2012

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

Re: CDP No. 5-09-105 (Norberg)
86 S. La Senda, Laguna Beach

RECEIVED
South Coast Region

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CALIFORNIA
COASTAL COMMISSION

Dear Commissioners:

On November 28, 2011, Judge Luis A. Ramirez of the Orange County Superior Court rendered a judgment against the Commission and issued a Peremptory Writ of Mandate directed to the Commission to set aside its decision on CDP No. 5-09-105. A copy of the Peremptory Writ of Mandate and Statement of Decision is attached as Exhibit A hereto and as Exhibit 4 to the Staff Report. The Commission did not appeal the decision and the decision is final. The Executive Director has issued a recommendation that the Commission adopt a new decision approving CDP No. 5-09-105 with modified Special Conditions.

The modified Special Conditions contained in the Staff Recommendation do not comply with the Peremptory Writ of Mandate. The Peremptory Writ of Mandate ordered the Commission to rehear this matter in accordance with the Court's Statement of Decision. Special Condition No. 2B and 2C and Special Condition No. 4A in the current Staff Recommendation are not consistent with the Court's Statement of Decision.

1. **Special Condition No. 2B and 2C are not Consistent with the Statement of Decision.**

On Page 3 of the Court's Statement of Decision, the Court ruled:

"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 it 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

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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."

In the present recommendation, Special Condition 2A was modified to include the language from Public Resources Code §30253 that would prohibit only those protective devices that "would substantially alter natural landforms along bluffs or cliffs". Norberg requestes that this language be added to the last line of Special Condition 2A which would then read "... devices that would substantially alter natural landforms along bluffs and cliffs that may exist under Public Resources Code Section 30235."

However, the Staff Recommendation leaves 2B and 2C in place which would obligate Norberg to agree to remove his home in certain events. This cannot be required of Norberg as he has the right to apply to the Commission for a permit for a protective device that would not "substantially alter natural landforms along bluffs and cliffs". If denied, he has a right to have that decision reviewed.

The findings acknowledge that the area lying between the 103 foot contour and approximately 84 foot contour has been substantially altered from the natural landforms with the pre Coastal Act installation of garden walls, terraces and a railroad tie stair. Any protective device which Norberg might propose in this area would not "alter natural landforms" as there are no natural landforms to be altered.

Further, Norberg may seek to construct a protective device that does not cause any "substantial" alteration. The Commission cannot force Norberg to forego the right to apply to a future Commission and make the case that a proposal is not a "substantial" alteration. Special Conditions 2B and 2C ignore Norberg's rights and require that he remove the home if it is threatened, foreclosing his right to seek and obtain a permit to protect the home. The language of 2B requires the removal of the development if declared unsafe. No opportunity to protect the development is provided. Even though the language in 2C appears to contemplate a report presenting alternative protections that do not substantially alter natural landforms, Norberg is obligated to present a remedy to the hazard "which shall include removal of the threatened portion of the structure."

Special Conditions 2B and 2C should be stricken. Norberg cannot be obligated to a present agreement that has a permanent impact on his property about what future circumstances might require. The prohibition in Special Condition 2A is sufficient to protect the Coastal Act's interest in enforcement of Public Resources Code §30253. Going further in 2B and 2C to dictate what results in the event of unknown and unpredicted future events conflicts which Norberg's right to be judged by the law and technology available at such time and not foreclosed by a present agreement. The Commission will have to rely upon future Commissions, or the local

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government under a certified LCP, to administer the Coastal Act in the future. It is neither necessary nor proper for the Commission to decide today what the law might be in 75 years and prevent Norberg and his successors from whatever benefit (or detriment) might arise from the law in the future.

2. The Location of the Bluff Edge is Between Elevation 84 and 87, not 103 Feet.

Special Condition No. 4A continues to apply a bluff edge elevation of 103 feet. The Court found that the finding that the bluff edge was at 103 feet and not 84 feet was not supported by substantial evidence. The Court said nothing about gathering new evidence. However, to remedy this deficiency, Mark Johnsson wrote a memorandum dated March 22, 2012. This memorandum is not provided to the Commission with the Staff Report. The memorandum is attached at Exhibit B hereto.

Johnsson first acknowledges that the top of the steep seacliff is at approximately elevation 86. But Johnsson does not place "bluff edge" at this location even though it is the "upper termination of a . . . cliff". Johnsson based his determination that the bluff edge is at elevation 103 on the "steplike feature" which he observed on the Norberg property. A photograph is attached which he claims shows this feature. Johnsson's memorandum states:

"The uppermost wall is approximately coincident with the seaward edge of the existing deck at the site, and is at an elevation of approximately 103 feet. This is the top of the bluff, or the bluff edge, pursuant to CCR Title 14 §13577(h), which states, in relevant part, that:

"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."

Johnsson memorandum acknowledges, and the photograph is clear, that the "steplike feature" consists of small garden retaining walls with fill behind each of them. These are not natural features. But Johnsson opines that the "steplike features" move the "bluff edge" to the "topmost riser". This opinion is not supported by the evidence.

Alterations to natural features do not change the position of the natural bluff edge. On page 4 of his memorandum on "Establishing Development Setbacks from Coastal Bluffs" dated January 16, 2003, Johnsson states that "placing artificial fill on or near the bluff edge generally does not alter the position of the natural bluff edge; the natural bluff edge still exists, buried beneath fill, and the natural bluff edge is used for purposes of defining development setbacks." (See, Exhibit C hereto.) Yet Staff now relies upon a determination that the top of the seacliff acknowledged at 84-86 feet is not the "bluff edge" because artificial fills supported by small

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retaining walls creates a "steplike feature" that moves the "bluff edge" from the location "nearest the cliff" where the "gradient increases more or less continuously until it reached the general gradient of the cliff." The Commission must note that the word use for the general gradient is of the cliff, not the "bluff". The cliff is the steep portion on Norberg's property. The location "nearest the cliff" is at elevation 84-87 feet.

I have attached as Exhibit D hereto a report dated April 30, 2012 from Geofirm which reaches a contrary opinion based upon the same facts. The opinion of Engineering Geologist Erik R. Hilde and Geotechnical Engineer Erick J. Aldrich is that:

"the bluff edge located in [Johnsson's] Geotechnical Memorandum does not appear consistent with the language of the Code. In our opinion, the Code indicates the bluff edge should be located at the grade break at elevation $87\pm$ feet, which is consistent with the geologic bluff edge governing site stability, erosion, and the establishment of setbacks relevant to proper foundation design." Exhibit D, page 3.

This opinion is consistent with the opinion of Felix Lim referenced on Page 4 of the Statement of Decision. Norberg recognizes that the Commission's decision need only be supported by substantial evidence. When the substantial evidence is in the form of an opinion, the opinion must be supported by the record. Substantial evidence is not synonymous with any evidence. (*Newman v. State Personnel Board* (1992) 10 Cal.App.4th 41, 47.) Under CEQA, "[argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, ... is not substantial evidence. Substantial evidence shall include facts reasonable assumptions predicated upon facts and expert opinion supported by facts." (Pub.Res.Code, § 21080(e).) Expert opinion does not constitute substantial evidence when it is based upon conclusions or assumptions not supported by evidence in the record. (*Hongsathavij v. Queen of Angels/Hollywood Presbyterian Medical Center* (1998) 62 Cal.App.4th 1123, 1137.)

Johnsson's opinion is not supported by evidence in the record. The photograph attached to his memorandum clearly shows the cliff falling away below the vegetation at the bottom of the railroad tie stairs. The photograph also clearly shows that the "steplike features" are manmade, not natural features. Accordingly, the garden walls do not change the location of the bluff edge from the location nearest the cliff (84 - 87 feet) to a higher location at the top of the topmost retaining wall fill (103 feet).

This difference is significant to Norberg, not only because the setback required by Special Condition 4A would eliminate exterior accessory improvements which Norberg has included in his application for permit, but would also affect future development and Norberg's obligation under Special Condition 2C (unless the Commission eliminates 2C as requested).

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3. Conclusion.

The Applicant seeks the Commission's approval of CDP No. 5-09-105 on an amending motion to remove Special Conditions Nos. 2 B and C and 4A.

Sincerely,



SHERMAN L. STACEY

SLS/sh

cc: Mr. Donald A. Norberg

CALIFORNIA COASTAL COMMISSION

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W11.5

MEMORANDUM

Date: 16 January 2003
To: Commissioners and Interested Parties
From: Mark Johnsson, Staff Geologist
Subject: **Establishing development setbacks from coastal bluffs**

STAFF NOTE

Consistency with section 30253 of the Coastal Act requires that:

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.

...

This section requires that new development be located such that it will not be subject to erosion or stability hazard over the course of its design life. Further, the last clause requires the finding that no seawall, revetment, jetty, groin, retaining wall, or other shoreline protective structure, inasmuch as such a structure would substantially alter natural landforms along bluffs and cliffs, will be needed to protect the development over the course of its design life. The Commission has found on many occasions that siting new development away from eroding bluffs is the preferred means of assuring consistency with this section, and the establishment of bluff-top setbacks for new development is an integral part of most local coastal programs. Further, the State's draft Policy on Coastal Erosion Planning and Response states that avoidance of geologic hazards, such as eroding coastal bluffs, should be the primary means of safeguarding new development.

EXHIBIT C

stepped bluff edge, a sloping bluff top, or previous grading or development near the bluff edge. Accordingly, a set of standards for defining the bluff edge is necessary.

Under the California Coastal Act, the bluff edge is defined as:

... the upper termination of a bluff, cliff, or seacliff. 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 steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge..." (California Code of Regulations, Title 14, §13577 (h) (2)).

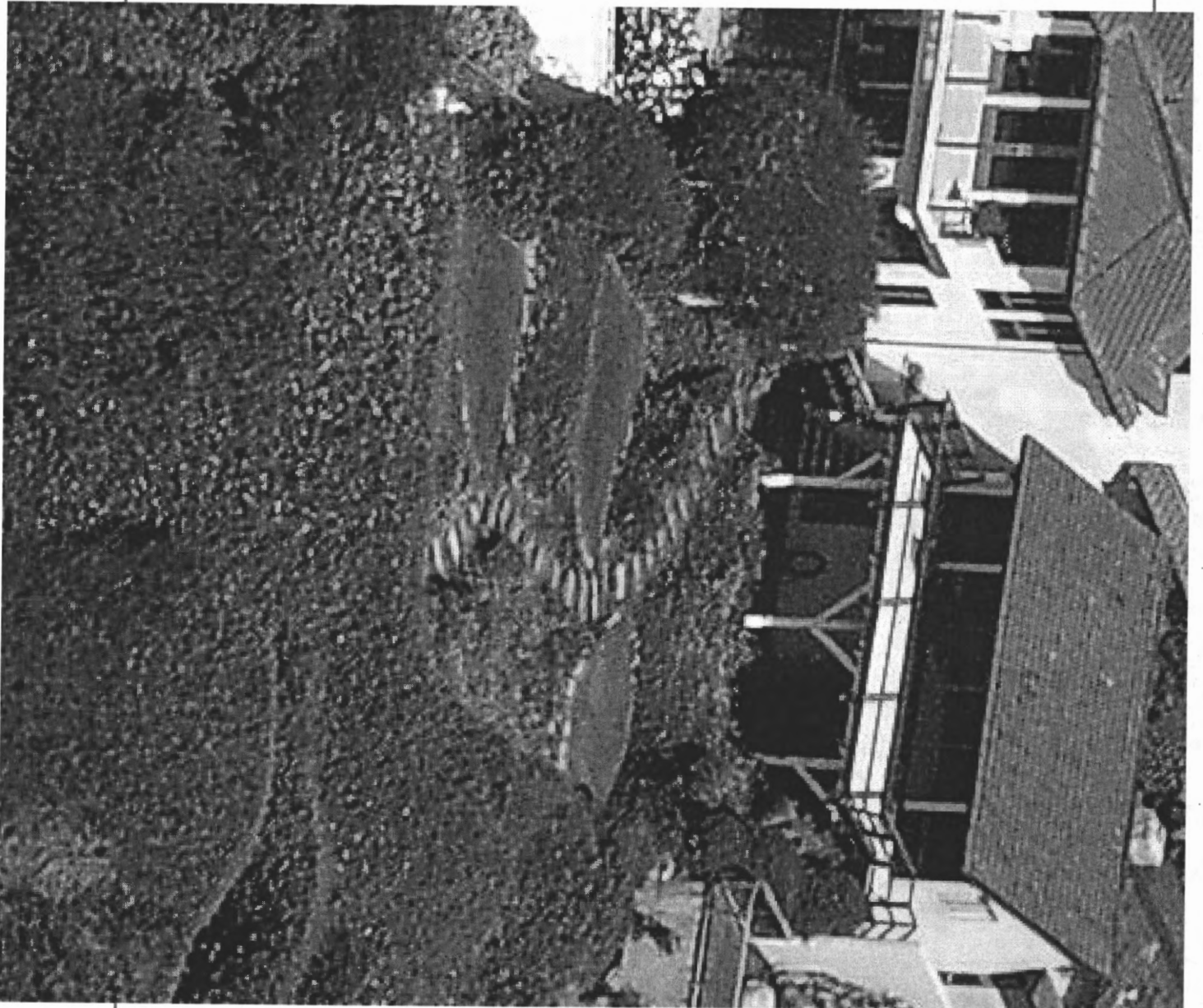
This definition is largely qualitative, and the interpretation of the topographic profile to yield a bluff edge determination at any given coastal bluff may be subject to various interpretations. Accordingly, it may be useful to use more quantitative means to define "bluff edge." One approach, adopted, for example, by the City of Laguna Beach, is to define the bluff edge as that point at which the coastal bluff attains a certain specified steepness. This steepness is equivalent to the first derivative of the topographic profile. Such a definition may, however, be inconsistent with the legal definition above. Further, ambiguous results may be obtained when the upper portion of the bluff fluctuates around the specified steepness value. Better results may be obtained by finding the point at which the second derivative, the rate of change in steepness, of the topographic profile increases sharply. This approach may be amenable to computer analysis, although such analysis is rarely employed.

The position of the bluff edge may be changed by a variety of processes, natural and anthropogenic. Most obvious is the landward retreat of the bluff edge through coastal erosion. A bluff edge also may move seaward, through tectonic processes, but such movement is rare and usually small on human time scales. More significant is the anthropogenic modification of the bluff edge by grading or the construction of structures. A landward shift of the bluff edge commonly occurs through cutting into and removing natural materials during grading operations or the construction of seawalls. Conversely, placing artificial fill on or near the bluff edge generally does not alter the position of the natural bluff edge; the natural bluff edge still exists, buried beneath fill, and the natural bluff edge is used for purposes of defining development setbacks.

Slope Stability

Once the bluff edge is located, the first aspect to consider in establishing development setbacks from the bluff edge is to determine whether the existing coastal bluff meets minimum requirements for slope stability. If the answer to this question is "yes," then no setback is necessary for slope stability considerations. If the answer is "no," then the distance from the bluff edge to a position where sufficient stability exists to assure safety must be found. In other words, we must determine how far back from the unstable or marginally slope must development be sited to assure its safety.

Th 11a



COASTAL COMMISSION

EXHIBIT # 7
PAGE 1 OF 3

California Coastal
Records Project Image
(grading of terrace walls)

2010

Th11a



COASTAL COMMISSION

EXHIBIT # 1
PAGE 2 OF 3

California Coastal
Records Project Image
(no terrace walls visible)

2004

Th119



(only steps visible)

California Coastal
Records Project Image

1972

COASTAL COMMISSION

EXH # 7
PAGE 3 OF 3

CALIFORNIA COASTAL COMMISSION

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



Th11a

Staff:	L. Roman-LB
Staff Report:	6/21/12
Hearing Date:	7/12/12

STAFF REPORT: REGULAR CALENDAR

Application No.:	5-09-105
Applicant:	Donald Norberg
Agents:	Sherman Stacey Felix Lim
Location:	86 South La Senda, City of Laguna Beach (Three Arch Bay) (Orange County)
Project 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 an 11, 620 square foot bluff top lot.
Staff Recommendation:	Approval with conditions.

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

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, but includes addition of a new 860 sq. ft. lower level/semi-subterranean liveable space 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.

Commission staff recommends **approval** of coastal development permit application 5-09-105, as conditioned with **Eight (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future blufftop or shoreline protective devices that substantially alter natural landforms along bluffs or cliffs; **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.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program (LCP). The City of Laguna Beach has a certified LCP, however, that LCP does not include the Three Arch Bay community (i.e. Three Arch Bay is white-holed).. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map/Aerial Photo

Exhibit 2 – Assessor’s Parcel Map

Exhibit 3 – Project Plans

Exhibit 4 – Court Statements of Decision

Exhibit 5 – Geotechnical Review Memo from Mark Johnsson

Exhibit 6 – Geofirm Response to previous staff report and Geotechnical Memo from Mark Johnsson dated April 30, 2012

I. MOTION AND RESOLUTION

Motion:

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

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:

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. STANDARD CONDITIONS

This permit is granted subject to the following 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following 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.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

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 do all of the following:

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

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. These 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). 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 (Exhibit 5) the staff geologist identifies the top of bluff or the bluff edge at the 103 foot contour line, pursuant to the California Code of Adm. Regulations (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) 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 originally submitted plans identifying a 25 foot setback from an oceanfront bluff edge generally located along the 72 foot to 80 foot contour elevation (Exhibit 3, page 1) 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. Subsequently, in response to the March 21, 2012 memorandum from the staff geologist, the applicant submitted a revised updated geotechnical plot plan and cross section of the bluff identifying a revised bluff edge at the 87 foot contour line (Exhibit 6). This updated bluff edge determination is pursuant to CCR Title 14 §13577(h) in the opinion of Geofirm, the applicant’s geologist and geotechnical engineer consultants. The Commission’s geologist has reviewed the applicant’s response and concluded it provided no new information that would change his bluff edge determination.¹

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

¹ June 21, 2012 phone conversation between Mark Johnsson and Liliana Roman.

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 daylights 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/b). 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. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

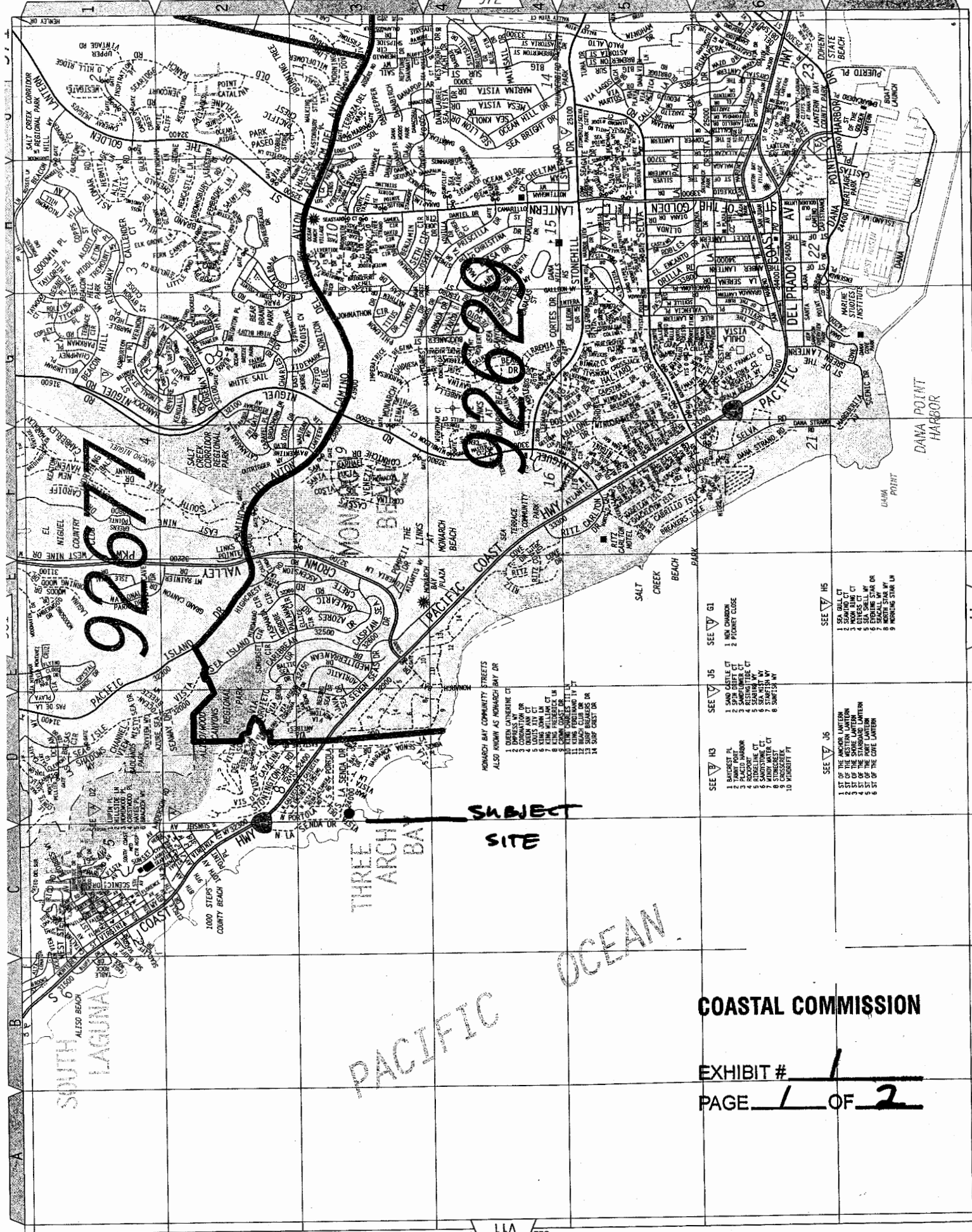
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental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

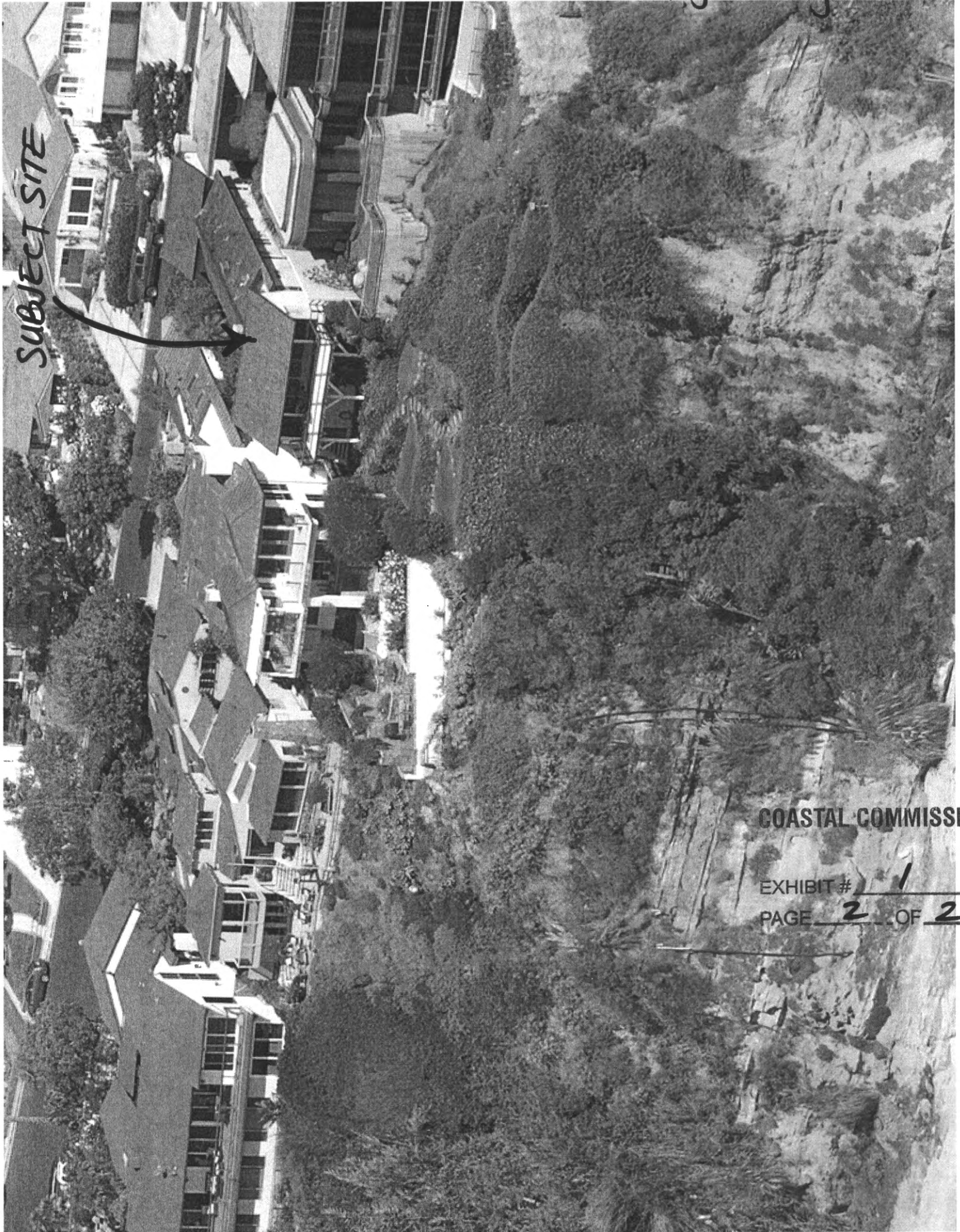
- 1) Geofirm, 2009, "Updated preliminary geotechnical investigation for foundation design of residence addition, 86 South La Senda, Laguna Beach, California", geotechnical report dated 22 April 2009 and signed by E. R. Hilde (CEG 2303) and E. J. Aldrich (GE 2656).
- 2) Geofirm, 2009, "Comments on California 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 2656).
- 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 22 March 2012 and signed by Mark Johnsson, (PhD, CEG, CHG)
- 9) Geofirm, 2012, "Response to California Coastal Commission Staff Report F9a, dated March 29, 2012, and Geotechnical Review Memorandum dated March 22, 2012, Proposed Residence Additions, 86 South La Senda, Laguna Beach, California," comment letter dated 30 April 2012 and signed by E. R. Hilde (CEG 2303) and E. J. Aldrich (GE 2656).
- 10) California Coastal Records Project (www.californiacoastline.org) image 201003218

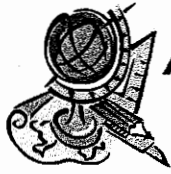


COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 2

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Advanced Listing Services

Ownership Listings & Radius Maps

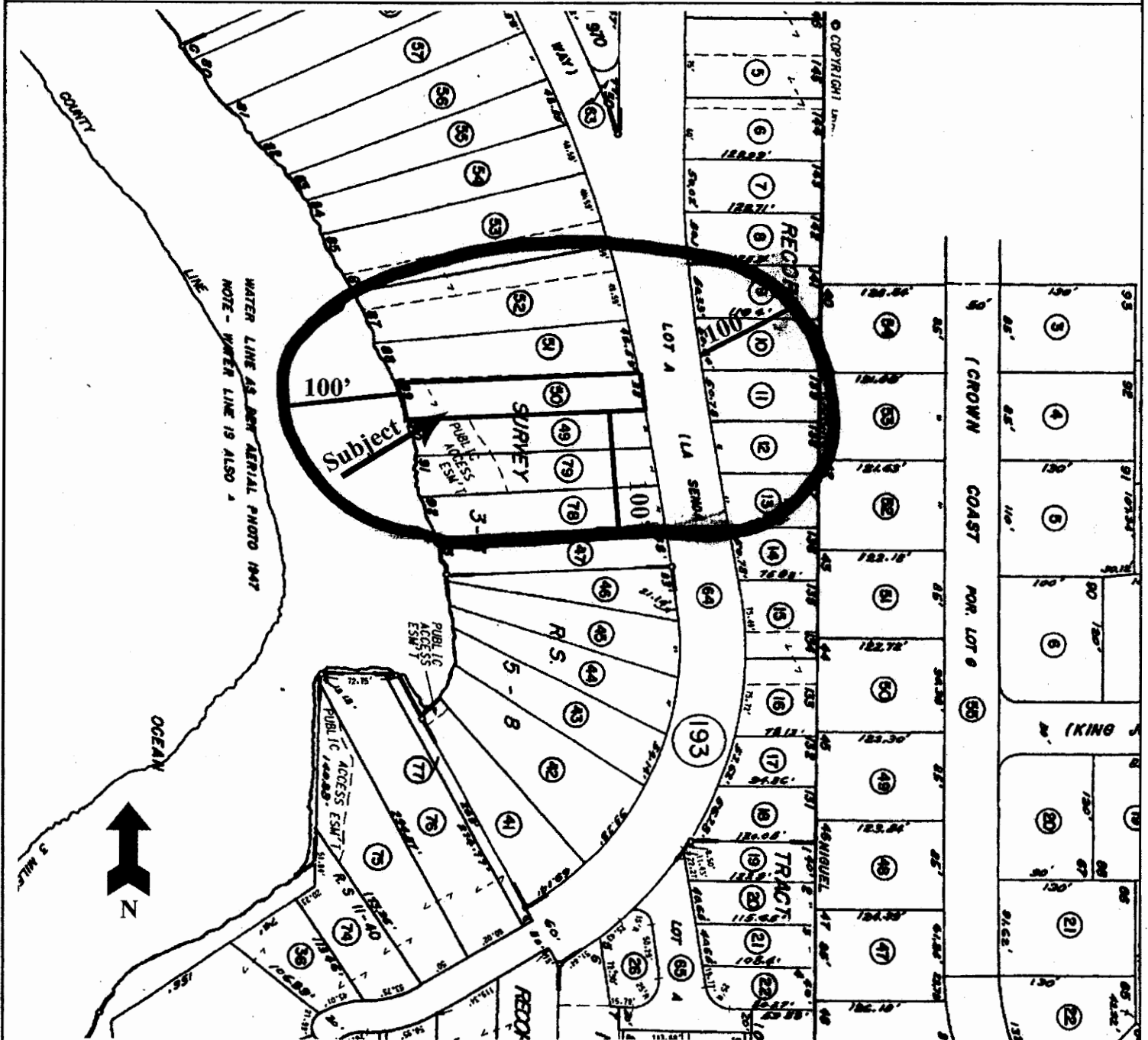
P.O. Box 2593 • Dana Point, CA • 92624

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

[illegible]

	08-29-04
	
	
NO	DATE

RECEIVED
South Coast Region

JUL 14 2009

MISSION

LEGEND

- AREA OF NEW ADDITION ABOVE
- EXISTING BUILDING FOOTPRINT
- AREA OF NEW ADDITION BELOW
- EXISTING BUILDING FOOTPRINT TO BE REMOVED

SITE PLAN

PROJECT: PROPOSED REMODEL AND ADDITION
LOCATION: 26 SOUTH LA SENDA, THREE ARCH BAY LAGUNA BEACH, CA 92651

OWNER: MR. & MRS. 1250 LORAIN SAN MARINO

DATE: 7-9-09
JOB NO.: 7-9-09

SHEET NO.: 1

CALIFORNIA

SITE PLAN

3
OF 10

DATE: 7-9-0
JOB NO.:
SHEET NO. T-1

CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION

EXHIBIT # 3
PAGE 1 OF 10



TOPOGRAPHIC MAP

8 SCALE LOT 88 THREE ANCHES PARALLEL

MARCH 2008

THREE ANCHES BAY

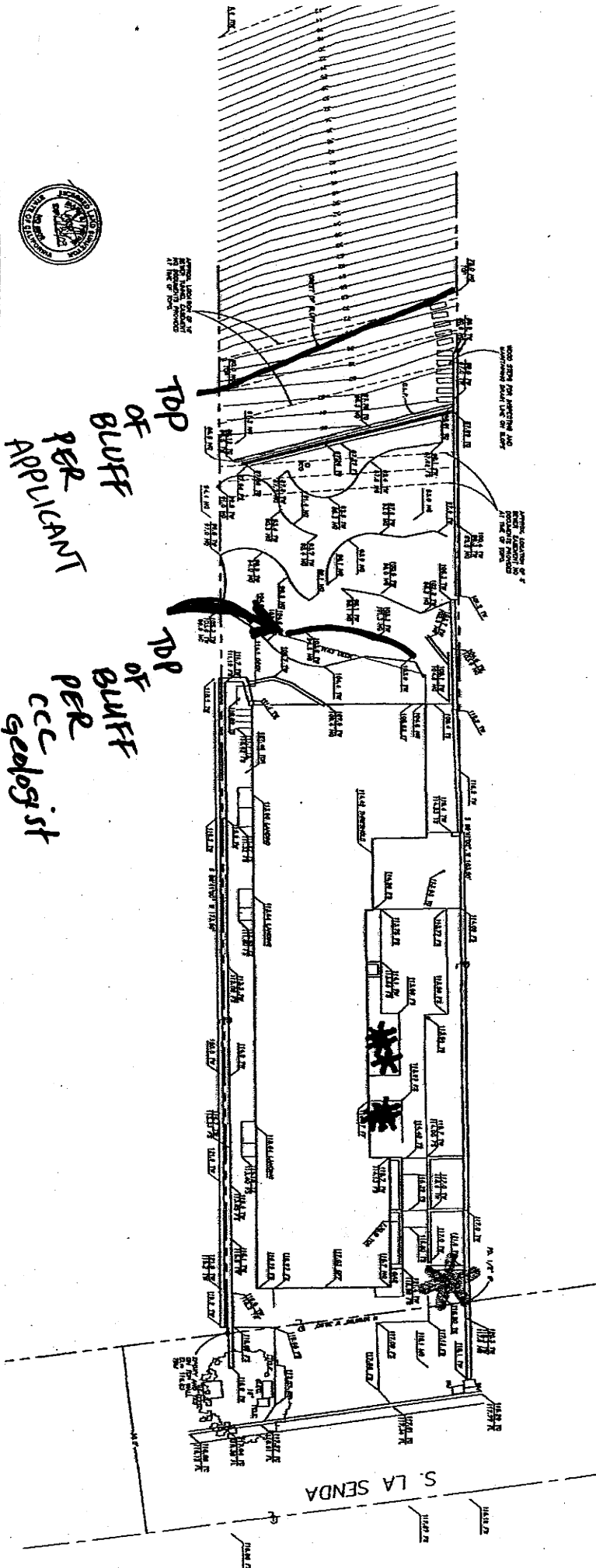
88 S LA SENDA LAGUNA BEACH, CA

DIVISION 8454 FROM PARCELS 7095 DATED NOV. 14, 1994

307TH COURT BUNCHED 2012 0417 ST. ANTHONY BEACH, CA (PUBLISHED)

TOP
of
BLUFF
PER
APPLICANT

TOP
of
BLUFF
PER
CCC
geologist

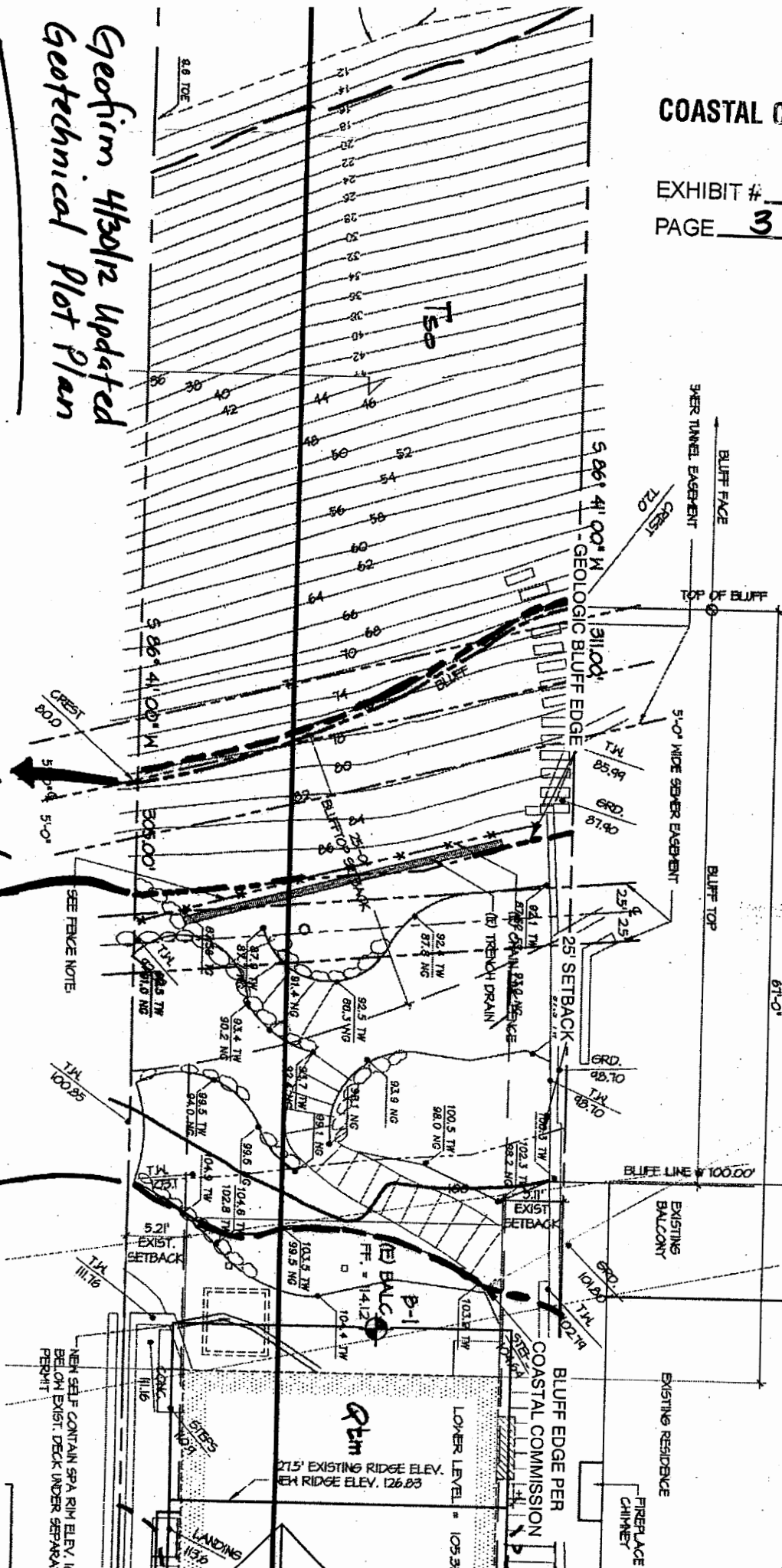


COASTAL COMMISSION

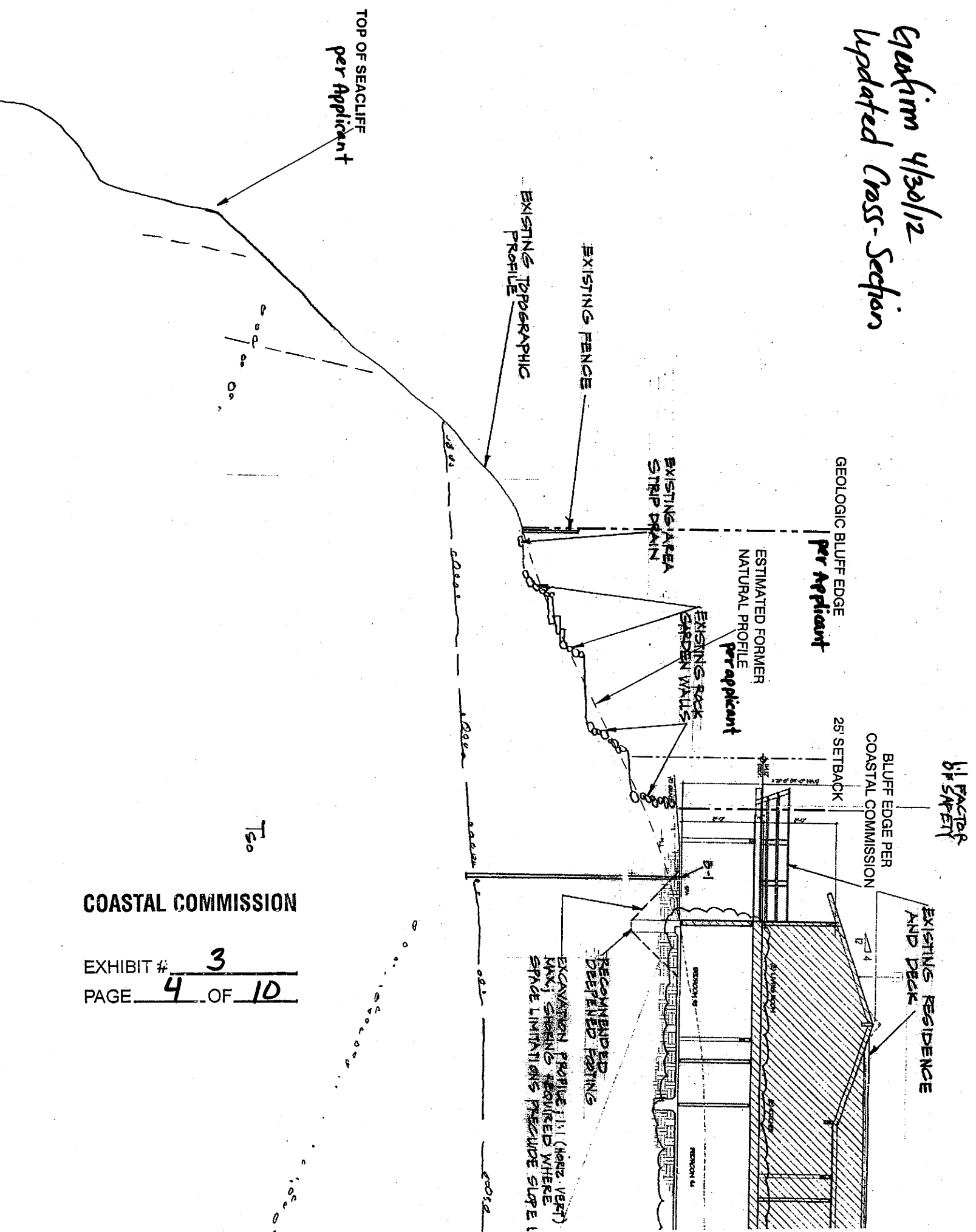
EXHIBIT # 3
PAGE 2 OF 10

EXHIBIT # 3
PAGE 3 OF 10

bluff edge
by Coastal
Commission



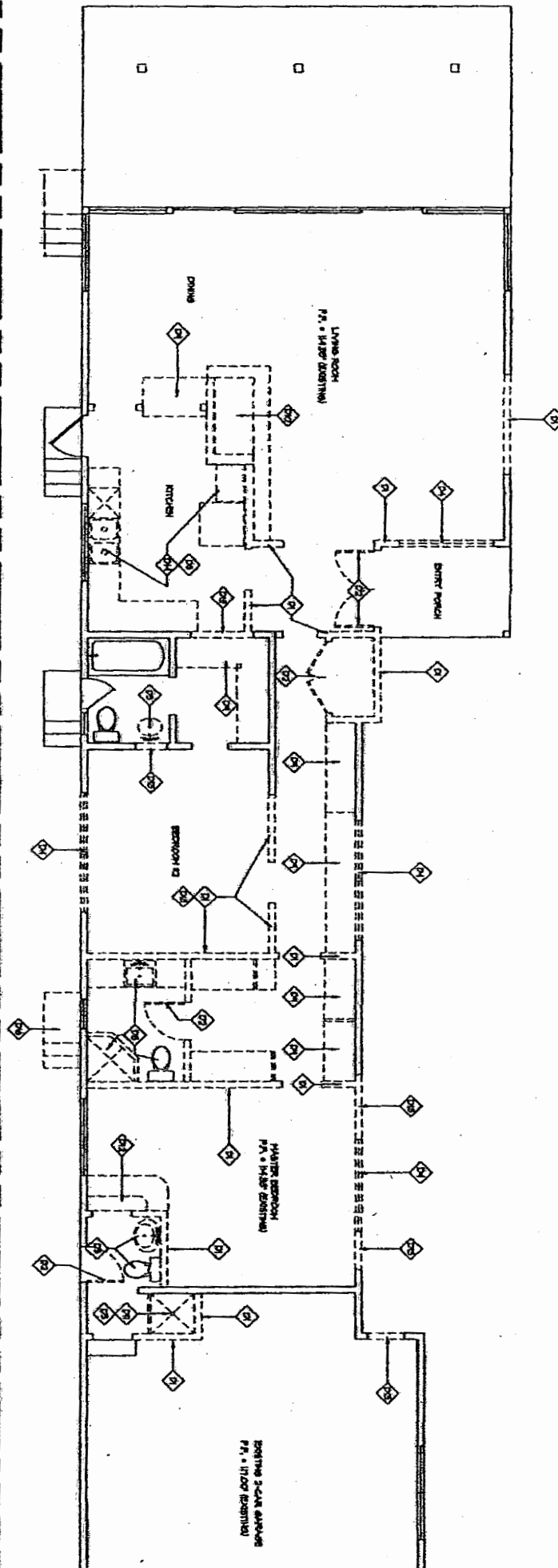
Environ 4/30/12
Updated Cross-Section



COASTAL COMMISSION

EXHIBIT # 3
 PAGE 4 OF 10

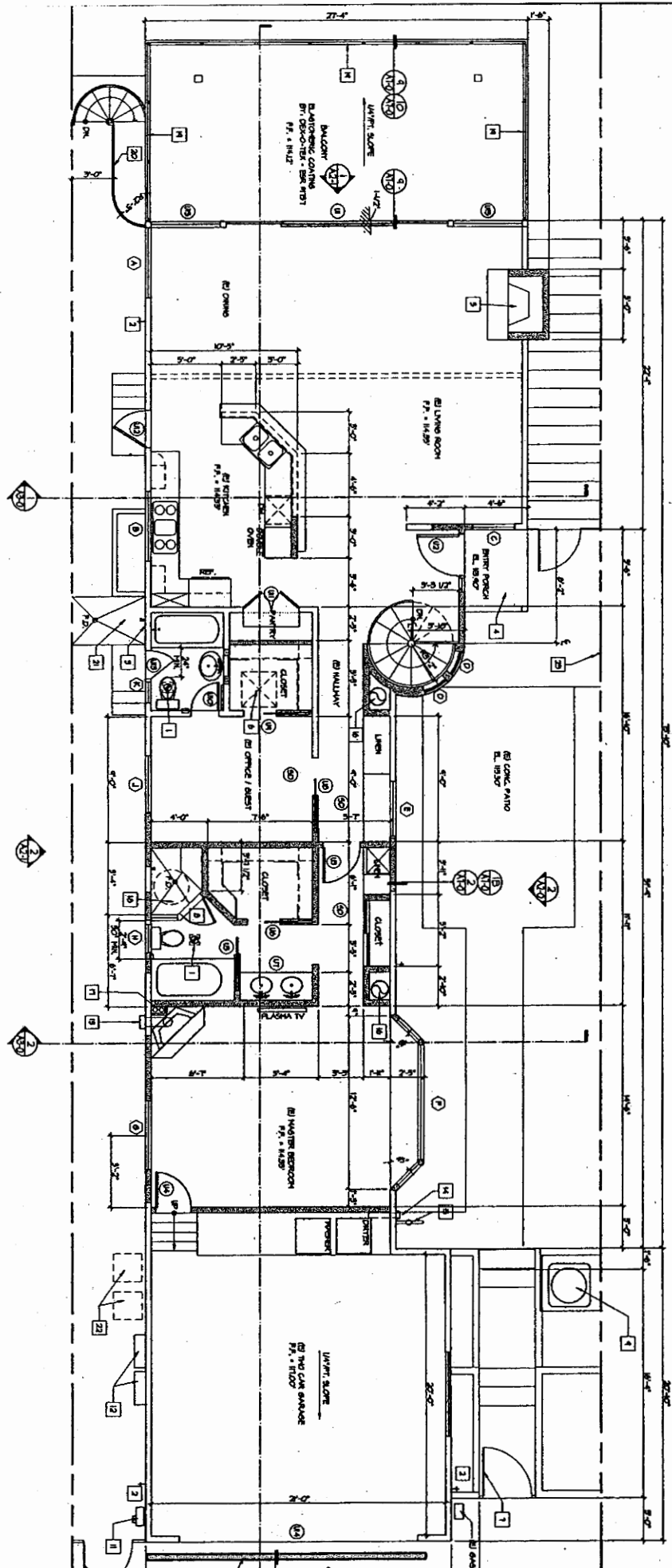
EXISTING / DEMOLITION PLAN



COASTAL COMMISSION

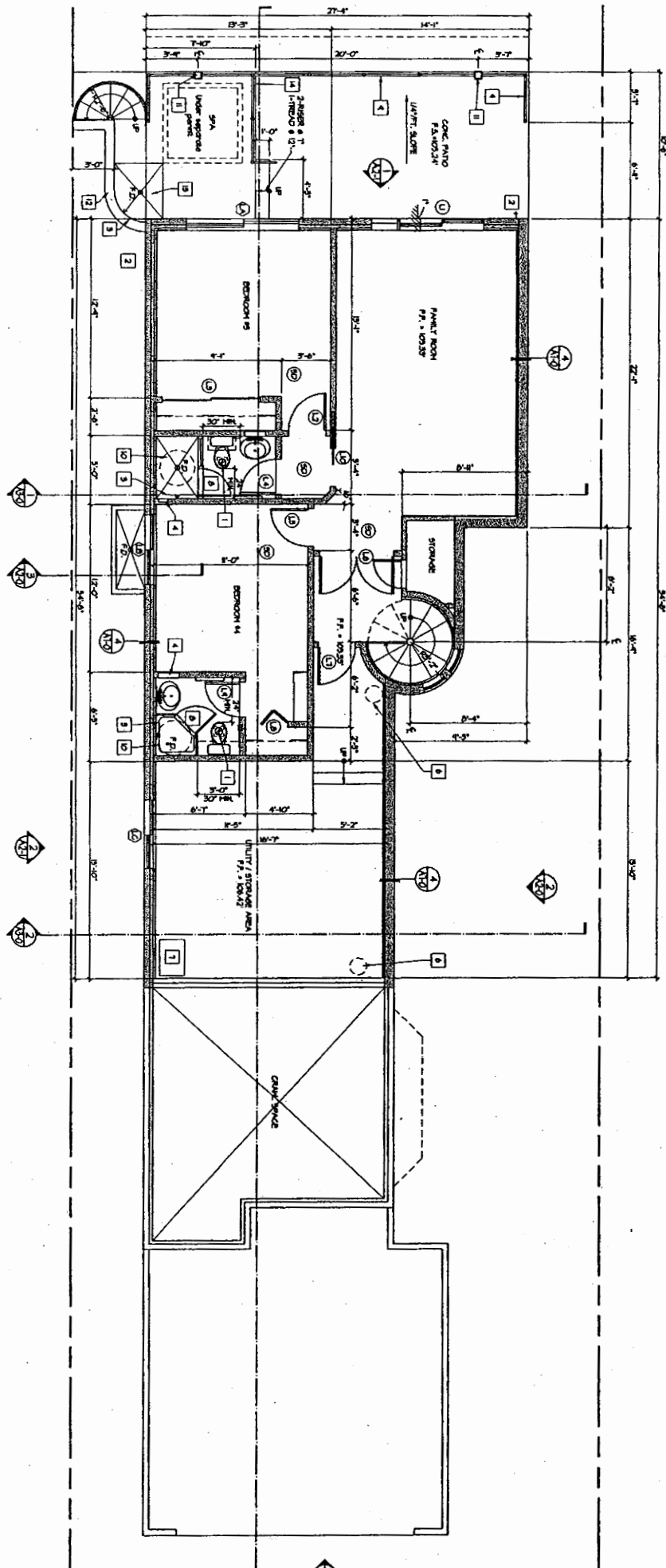
EXHIBIT # 3
PAGE 5 OF 10

PROPOSED NEW UPPER FLOOR PLAN (REMODEL)



COASTAL COMMISSION

EXHIBIT # 3
PAGE 6 OF 10

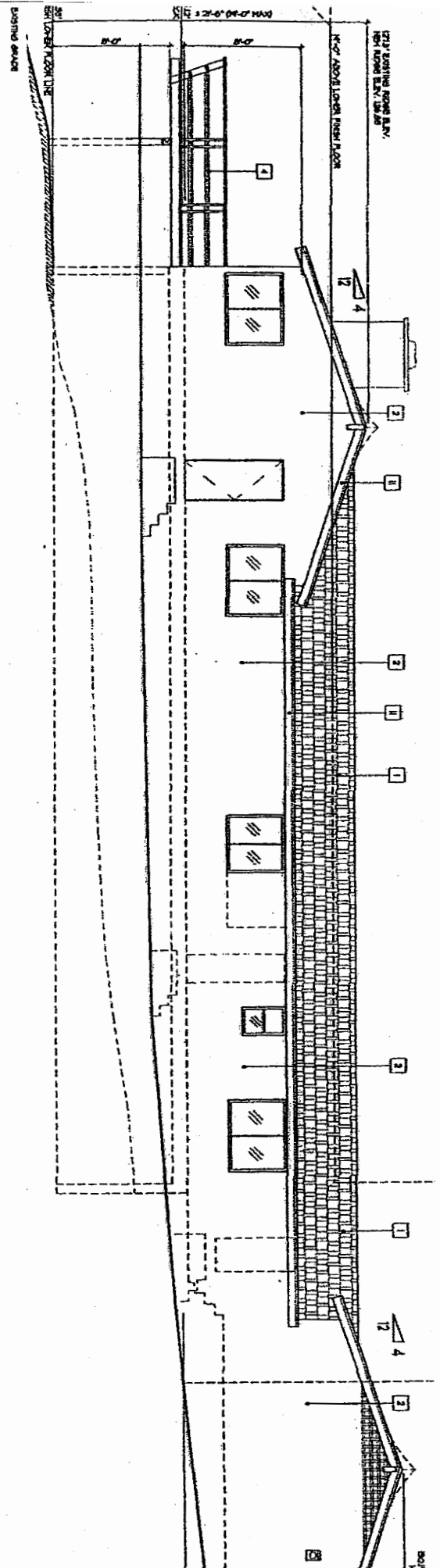


COASTAL COMMISSION

EXHIBIT # 3
PAGE 7 OF 10

NORTH (RIGHT SIDE) ELEVATION |

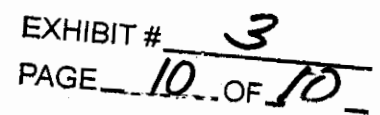
EXHIBIT # 3
PAGE 8 OF 10



SOUTH (LEFT SIDE) ELEVATION

COASTAL COMMISSION

EXHIBIT # 3
PAGE 9 OF 10



EAST (FRONT) ELEVATION

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

Attorneys for Petitioner

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 6

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.



23
24 Dated: Nov. 28, 2011

ALAN CARLSON

Clerk of the Superior Court

25 By L. Fuentes
Deputy Clerk

L. FUENTES

COASTAL COMMISSION

26
27 EXHIBIT # 4
28 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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DATE: 10/04/2011

MINUTE ORDER

DEPT: C06

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Calendar No.

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 or 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

COASTAL COMMISSION

EXHIBIT # 4
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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.

COASTAL COMMISSION

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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.

COASTAL COMMISSION

EXHIBIT #

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CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
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TDD (415) 597-5885



22 March 2012

COASTAL COMMISSION**GEOTECHNICAL REVIEW MEMORANDUM**

To: Liliana Roman, Coastal Program Manager
From: Mark Johnsson, Staff Geologist
Re: Norberg CDP (5-09-105)

EXHIBIT # 5
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In connection with the above-referenced permit application, I have reviewed the following documents:

- 1) Geofirm, 2009, "Updated preliminary geotechnical investigation for foundation design of residence addition, 86 South La Senda, Laguna Beach, California", 17 p. 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", 2 p. 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", 1 p. 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", 1 p. 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", 1 p. letter signed by F. Lim.

In addition, I have reviewed the site plans, especially the topographic survey prepared by South Coast Surveying on the applicant's behalf. The purpose of this memo is to address the question of the location of the bluff edge on the subject property.

The coastal bluff at the site consists of a very steep sea cliff that extends from an elevation of approximately 86 feet to the beach below. The topographic survey submitted by the applicant identifies an "edge of bluff" line near this point., although it cuts across contours and does not seem to correspond to the break in slope depicted by them. Above this break in slope, a series of terraces separated by low walls have been cut into the bluff. The geologic cross section in

reference (1) indicates that these terraces are cut into the marine terrace deposits that overlie the San Onofre breccia at the site, and that no artificial fill occurs on this part of the site. The uppermost wall is approximately coincident with the seaward edge of the existing deck at the site, and is at an elevation of approximately 103 feet. This is the top of the bluff, or the bluff edge, pursuant to CCR Title 14 §13577(h), which states, in relevant part, that

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 is more or less continuous with what I would identify as the bluff edge on the upcoast and downcoast properties as seen in the California Coastal Records Project (www.californiacoastline.org) image 201003218. 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.

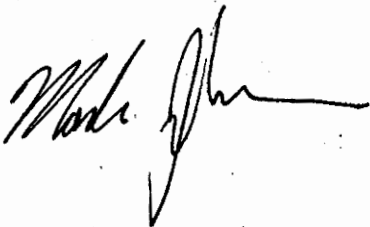
Reference (5), cites another passage from CCR Title 14 §13577(h):

...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.

The letter is accompanied by a reproduction of the geologic cross section from reference (1), with a bold line drawn through the terraced area, averaging the gradient between the step-like terraces. The letter describes this as the "natural soil surface" and indicates that the terraced area is partially non structural fill. The cross section in the geologic report (reference 1), however, shows no artificial fill in this area, but rather shows the terraces as cut into the marine terrace deposits. Further, the report does not include fill in the quantitative slope stability analyses. The report does, however, make mention of fill: "The upper slope profile is mantled with terrace deposits and limited fill materials. This portion of the slope is subject to episodic erosion largely of the fill or terrace materials..." Regardless of this ambiguity, the presence of fill on the bluff face would not alter the position of the bluff edge where it has been altered by grading (cut). Regardless of where the bluff edge may have been located before this minor grading, it clearly now is at approximately the 103 foot contour.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

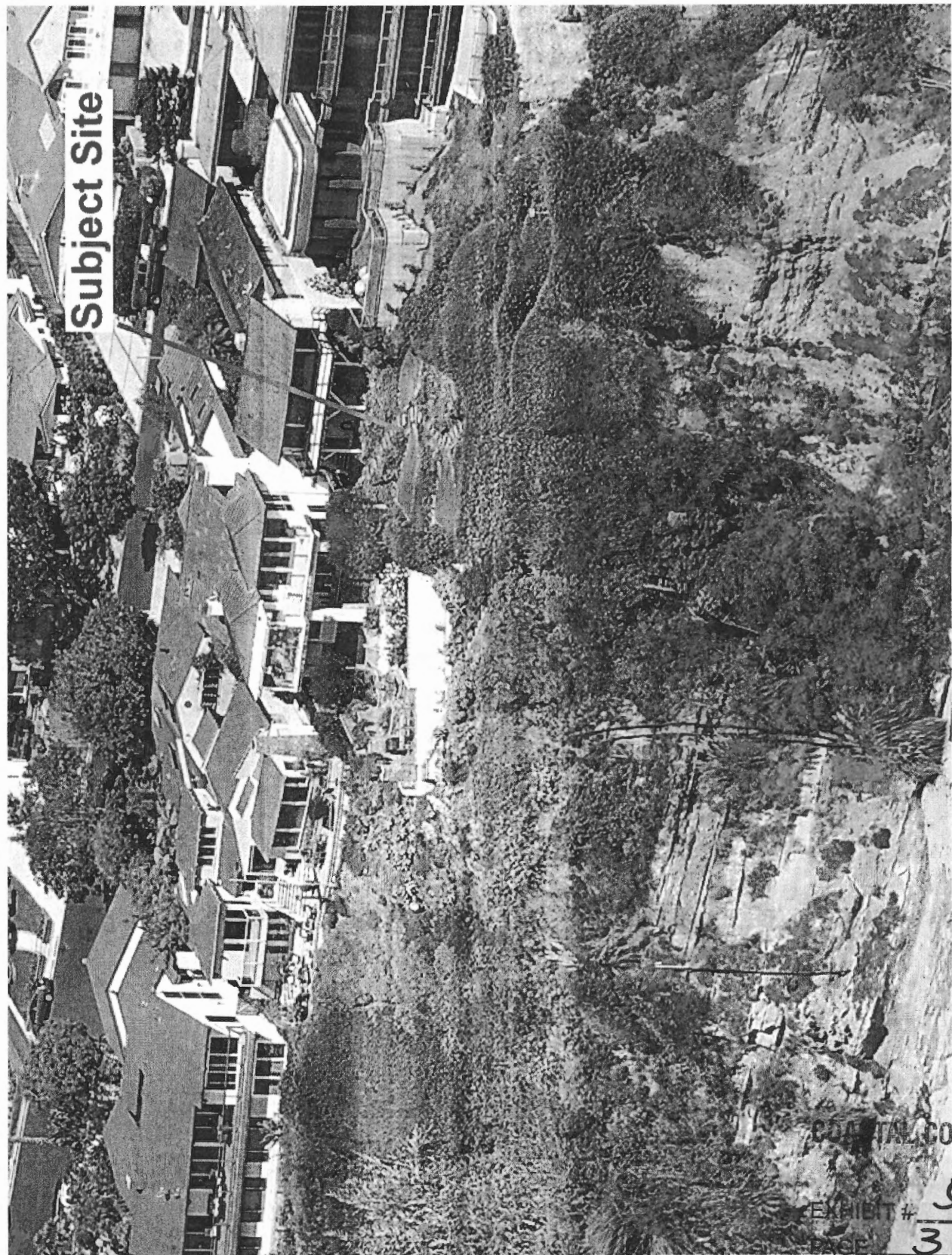
Sincerely,



Mark Johnson, Ph.D., CEG, CHG
Staff Geologist

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 3





Geofirm

801 Glenneyre St. • Suite F • Laguna Beach • CA 92651
(949) 494-2122 • FAX (949) 497-0270

RECEIVED
South Coast Region

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 9

April 30, 2012

MAY 24 2012

Mr. Donald Norberg
c/o Gaines & Stacey, LLP
1111 Bayside Drive, #280
Corona del Mar, CA 92625

CALIFORNIA
COASTAL COMMISSION

Project No: 71836-02
Report No: 12-7100

Attention: Mr. Sherman L. Stacey

Subject: **Response to California Coastal Commission Staff Report F9a, dated March 29, 2012, and Geotechnical Review Memorandum dated March 22, 2012**
Proposed Residence Additions
86 South La Senda
Laguna Beach, California

INTRODUCTION

In accordance with your attorney's request, this letter is in response to the California Coastal Commission Staff Report, Item F9a, dated March 29, 2012 (Appendix A, Reference 1) and Geotechnical Review Memorandum dated March 22, 2012 (Reference 2) regarding the proposed residence improvements at the subject site. Based on our review of the documents and discussions with your attorney, the recent Staff Report and Memorandum are in response to the July 2011 decision by the Superior Court of Orange County that held select conditions presented in the previous Commission decision on January 14, 2010, were invalid.

In general, the Staff Report establishes setbacks from the coastal bluff edge location consistent with the Geotechnical Review Memorandum prepared by the Commission's geologist. Additionally, the Staff Report reiterates previous opinions in support of the Special Conditions connected with approval of the coastal development permit.

Please note the focus of this letter is limited to the geotechnical conditions discussed in the Staff Report and Memorandum as they relate to the proposed site improvements and the findings presented in our Preliminary Geotechnical Report (Reference 3).

Background

The overall intent of the Coastal Act regarding private coastal development is *to protect views to and along the ocean and scenic coastal areas [and] to minimize the alteration of natural land forms* (Section 30251) and ensure that any such development does not *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 (Section 30253).

To achieve these goals, the Commission has developed a framework for the establishment of bluff edge setbacks intended to protect existing or proposed structures from erosion and instability and to preclude any new development from requiring the installation of future protective devices. This framework is primarily based on the technical paper published by the Commission's geologist Dr. Mark Johnsson entitled "Establishing Development Setbacks from Coastal Bluffs" published in 2002. In effect, the Commission has the authority to locate the coastal bluff edge at a given property and the setbacks they consider necessary to protect new development and the public from the adverse effects of erosion and instability.

The location of a coastal bluff edge from a geotechnical perspective is a routine task based on geologic field mapping, subsurface exploration, and site topographic survey data. Stability analyses of existing and proposed site conditions, coupled with a review of historic aerial photographs, refine this interpretation and enable our staff to estimate a reasonable rate of future bluff retreat due to erosion or slope instability. These findings form the basis of our geotechnical foundation design criteria in accordance with the California Building Code, which also satisfies the intent of the Coastal Act as outlined above. We often find, however, that despite our extensive site-specific analyses, our findings regarding bluff edges and setbacks are not consistent with the findings of the California Coastal Commission.

RESPONSE

Coastal Bluff Edge

We have reviewed the Geotechnical Memorandum published by Dr. Mark Johnsson of the California Coastal Commission dated March 22, 2012, related to the above referenced property. Dr. Johnsson has interpreted that the bluff edge on the subject property is located at the top of a small landscape retaining wall at elevation 103± feet, which is located below a raised deck extending from the rear of the residence.

The definition Dr. Johnsson references for locating the bluff edge is contained in the California Code of Adm. Regs., Title 14, §13577(h)(2), which is as follows:

Bluff line or edge shall be defined as the upper termination of a bluff, cliff, or seacliff. 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 steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge.

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It is our understanding that the Code intends bluff edges to follow natural landforms, and thus we are of the opinion that the bluff edge defined in the Geotechnical Memorandum is incorrect as it is based on a set of man-made walls. The line is also at the furthest of two prominent grade breaks above the seacliff and inconsistent with geologic criteria governing site stability, potential retreat due to erosion, and the establishment of relevant setbacks.

Our Updated Geotechnical Plot Plan and Cross Section A-A' attached as Plate 1 depicts the bluff edge on the landscape retaining wall as described in the Geotechnical Memorandum. Based on discussions with the homeowner, the landscape walls and terraces were artificially created by cutting and filling the former natural slope, which is described as having been relatively uniform, descending from the rear of the existing residence. The estimated former natural profile, which is presented on the cross section, reasonably coincides with the cut-fill transitions that likely existed prior to landscape terracing.

As depicted in the updated cross section, the former natural top of slope along rear of the existing residence defines one of three significant grade breaks above the natural seacliff. Geomorphically speaking, the cliff comprises the broad and steepest portion of the bluff generally located below the grade break at elevation $52\pm$ feet. Therefore, our office interprets the Code to delineate the bluff edge at the next higher grade break at elevation $87\pm$ feet, which is "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." This revised bluff edge now coincides with the key geomorphic feature pertinent to site stability, erosion potential, and the establishment of setbacks for proper foundation design.

In conclusion, the bluff edge located in the Geotechnical Memorandum does not appear consistent with the language of the Code. In our opinion, the Code indicates the bluff edge should be located at the grade break at elevation $87\pm$ feet, which is consistent with the geologic bluff edge governing site stability, erosion, and the establishment of setbacks relevant to proper foundation design.

Bluff Edge Setbacks and Stability

The location of the coastal bluff edge per the Coastal Act as defined by the Commission's geologist in the Reference 2 letter is the basis for the setbacks presented in the Staff Report. As discussed above, the Staff Report relates the necessity of bluff edge setbacks with the protection of existing and proposed improvements from the effects of bluff instability and erosion.

The Report concludes that construction of proposed rear yard improvements would require a "zero-foot setback" from the bluff edge, which "would not be adequate to accommodate even minimal erosion." This conclusion supports their recommendation for a 5-foot setback for secondary structures. While this logic may appear intuitive,

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neither the delineation of the coastal bluff edge nor the establishment of setbacks is based on geologic field conditions technically relevant to natural processes or proper foundation design. From a geotechnical perspective, the site is stable, and proposed improvements may be constructed 25-feet landward of the revised bluff edge per the section above. These recommendations are based on site-specific slope stability and bluff retreat analyses consistent with the Coastal Act and local and State Building Codes governing new construction on or near slopes.

While the Commission's bluff edge location, erosion potential, and site stability may coincide on some properties, they do not at the subject site, and the construction of the proposed improvements is geotechnically acceptable. Our office recommends utilizing the revised bluff edge location as discussed above to safely locate proposed improvements landward a 25-foot bluff edge setback.

Special Condition 2

In support for re-implementing Special Condition 2 (no protective devices), Commission Staff reasserts that proposed development "would increase the existing residence's exposure to threats from erosion by increasing the amount of development close to the blufftop edge". As previously reported (Reference 4), this is not true as proposed construction does encroach upon the bluff edge. More importantly, the proposed addition, which is the conversion of existing crawl space under the existing residence, includes the deepening of existing foundations to withstand anticipated erosion over the next 75 years. Additionally, as proposed improvements would require removal of existing soil within the crawl space, loading on the bluff would be reduced, and the stability of the property arguably increased.

Ultimately, the proposed residence addition would actually reduce the existing residence's exposure to threats from future erosion, not increase it. Our office concludes that the application of Special Condition 2 is not technically related to site conditions or the proposed designs, contradicts earlier statements in the Staff Report supporting coastal development permit approval (per Section 30253), and is therefore unwarranted.

CONCLUSIONS

The bluff edge as located in the Geotechnical Memorandum does not appear consistent with the language of the Code. In our opinion, the Code indicates the bluff edge should be located at the grade break at elevation 87± feet, which is consistent with the geologic bluff edge governing site stability, erosion, and the establishment of setbacks relevant to proper foundation design. A coastal bluff edge consistent with the Code and the site's geology indicates that construction of improvements landward of a bluff edge setback of 25 feet is geotechnically acceptable.

The opinions presented in the Staff Report supporting the application of Special Condition 2 contradict our analyses, which are otherwise relied upon in the staff report.

COASTAL COMMISSION

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Project No. 71836-01

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to recommend coastal development permit approval. Special Condition 2 is therefore unwarranted unless substantiating data is provided that indicates construction of the currently proposed improvements would increase risk to the existing residence, create instability, or that secondary structures would be unable to accommodate erosion at their proposed locations relative to the bluff edge.

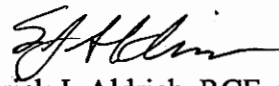
This opportunity to be of continued service is appreciated. If you have any questions, please contact this office.

Respectfully submitted,

GEOFIRM


Erik R. Hilde, PG
Engineering Geologist, EG 2303
Registration Expires 10-31-13




Erick J. Aldrich, RCE, GE
Geotechnical Engineer, G.E. 265
Registration Expires 6-30-12
Date Signed: 5/1/12



ERH/EJA/:fp

Distribution: Addressee (3)

Attachments: Appendix A – References
Plate 1 – Update Geotechnical Plot Plan and Section A-A

COASTAL COMMISSION

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APPENDIX A
REFERENCES

COASTAL COMMISSION

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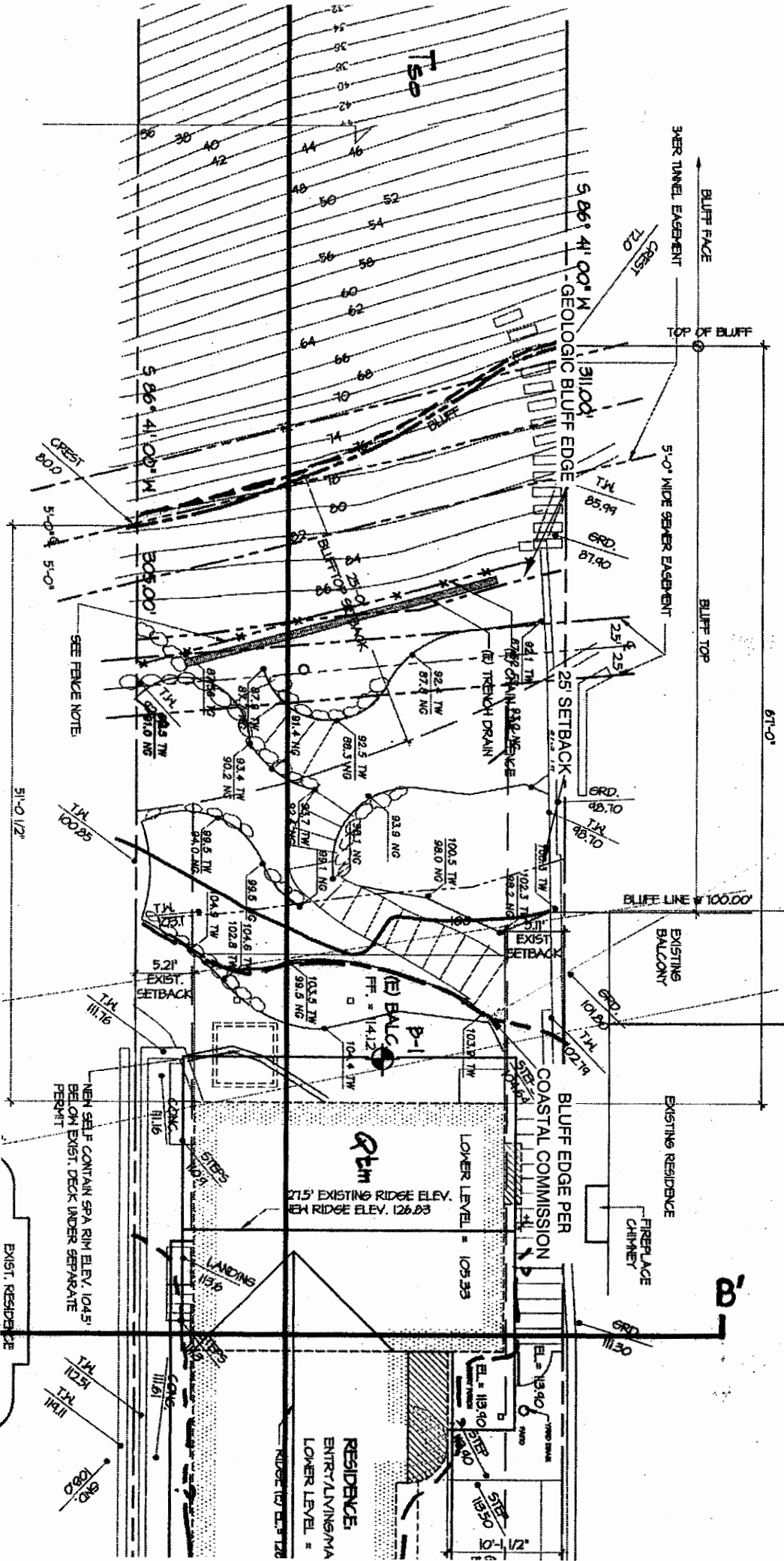
APPENDIX A

REFERENCES

1. California Coastal Commission, 2012, "Item F9a, Staff Report: Regular Calendar", Application Number 5-09-105, Applicant: Donald Norberg, Project Location: 86 South La Senda, City of Laguna Beach, dated March 29
2. California Coastal Commission, 2012, "Geotechnical Review Memorandum", To: Liliana Roman, Coastal Program Manager, From: Mark Johnsson, Staff Geologist, Re: Norberg CDP (9-09-105), dated March 22.
3. Geofirm, 2009, "Updated Preliminary Geotechnical Investigation for Foundation Design of Residence Additions, 86 South La Senda, Laguna Beach, California", Project No. 71836-00, Report No. 09-6484, dated April 22.
4. Geofirm, 2009, "Comments on California Coastal Commission Staff Report W6c Special Condition 2: No Future Blufftop of Shoreline Protective Devices, Proposed Residence Additions, 86 South La Senda, Laguna Beach, California", Project No. 71836-01, Report No. 09-6594, dated November 2.

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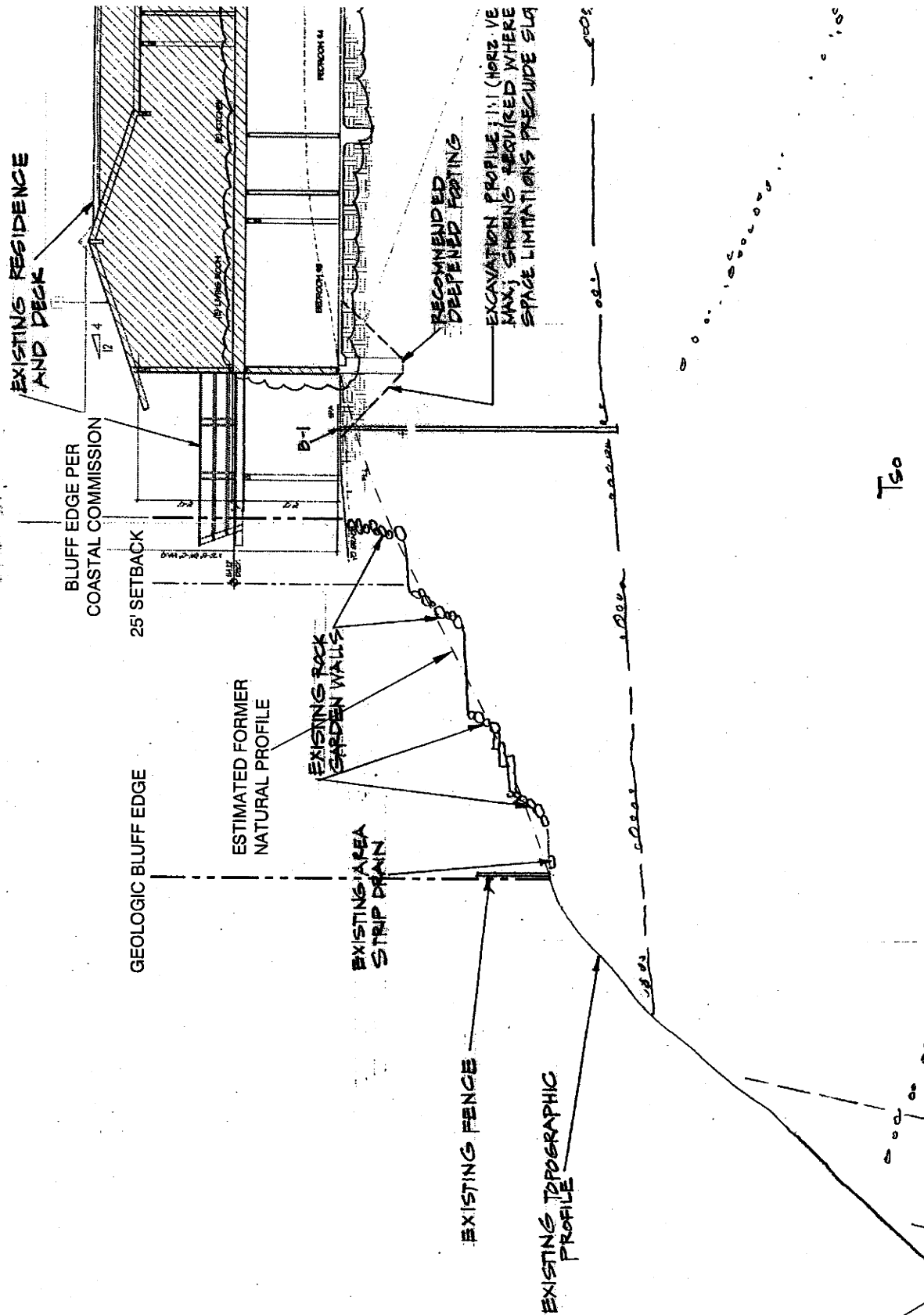
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