

**CALIFORNIA COASTAL COMMISSION**

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# F6c

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Staff:	M.Revell-LB
Staff Report:	12/22/16
Hearing Date:	1/13/17

## STAFF REPORT: CONSENT CALENDAR

<b>Application No.:</b>	<b>5-16-0485</b>
<b>Applicant:</b>	<b>Fred and Celia Saldena</b>
<b>Location:</b>	303 W. Avenida de los Lobos Marinos, San Clemente, Orange County
<b>Project Description:</b>	Major remodel to the existing 1,856 sq. ft. single family residence, including addition of 928 sq. ft. to the first and second floor, construction of a detached 430 sq. ft. 2-car garage, and hardscape and landscape improvements on an 8,832 sq. ft. coastal canyon lot.
<b>Staff Recommendation:</b>	Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **approval** of the proposed project with **nine (9)** special conditions, which require 1) submittal of final plans; 2) conformance with the geotechnical report recommendations; 3) fuel modification plan; 4) Orange County Fire Authority approval; 5) landscaping; 6) assumption of risk and waiver of liability and indemnity; 7) future improvements come back to the Commission for review; 8) compliance with construction-related best management practices (BMPs) and 9) oak tree protection during construction. The primary issues associated with this development are canyon habitat protection and water quality.

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## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the Coastal Development Permit Applications included in the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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. **Submittal of Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director two (2) sets of final architectural plans, foundation plans, grading plans, drainage and erosion control plans that substantially conform with the plans submitted to the Commission on May 18, 2016, but shall be revised to include the following:
  - 1) All of the existing steps and pathway within the coastal canyon not proposed for removal under this coastal development permit shall be shaded and clearly marked *“this element not permitted by this or any other coastal development permit”* on each set of plans;
  - 2) No portion of the proposed deck or patio shall encroach any further into the canyon than the existing patio as depicted in plans received by Commission staff on May 18, 2016.

The applicant 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 to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, along with set of final plans, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations.

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

3. **Fuel Modification Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide to the Executive Director a Fuel Modification Plan for the proposed new structures including the minimum required area for fuel modification from

the structure depending on vegetation type, density, slope and aspect. The plan shall retain existing native vegetation and include minimal selective thinning and removal of fire hazardous material such as dead brush, dying or dead branches and trash to the maximum extent possible.

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

4. **Orange County Fire Authority Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide to the Executive Director a copy of a permit issued by the Orange County Fire Authority (OCFA) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the OCFA and/or any inconsistencies with the conditions of approval contained herein. Changes required by OCFA shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
5. **Landscaping – Drought Tolerant, Non-Invasive Plans.** Vegetated areas within the canyon portion of the project site disturbed during construction shall be re-vegetated to avoid erosion and shall only consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type. Native plants shall be from local stock wherever possible. No permanent in-ground irrigation systems shall be installed on the canyon-facing portion of the site. Temporary above ground irrigation is allowed to establish plantings. Vegetated landscaped areas on the street-side of the residence are encouraged to use native plant species, however, non-native drought tolerant non-invasive plant species may also be used in that area. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (<http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
6. **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, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (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.

7. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-16-0485. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit No. 5-16-0485. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-16-0485 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
8. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
  - (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - (3) 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;
  - (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
  - (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be

maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

9. **Oak Tree Monitoring.** To ensure that all oak trees located on the subject parcel are protected during construction activities, temporary protective barrier fencing shall be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then flagging shall be installed on trees to be protected.

## IV. FINDINGS AND DECLARATIONS:

### A. PROJECT LOCATION AND DESCRIPTION

The applicant proposes a major remodel to the existing one-story, 22 ft. high, 1,856 sq. ft. single family residence, including the addition of 928 sq. ft. to the first and second floor, increasing the square footage of the residence to approximately 1,856 sq. ft. The applicant also proposes to construct a detached 430 sq. ft. 2-car garage on the north side of the residence. Proposed hardscape improvements include a new paved patio canyonward of the new addition and new garage that is approximately 45 ft. x 15 ft, and a new approximately 30 ft. x 10 ft. deck with a new spa proposed to be located canyonward of the existing residence. There are several oak trees on the property, two of which are within 15 feet of the proposed construction. Project plans are included in **Exhibit 2 and 3.**

The proposed development is located at 303 W. Avenida de los Lobos Marinos in the City of San Clemente, Orange County. The subject site is located on an inland lot between the first public roadway and the sea on a coastal canyon lot (**Exhibit 1**). The site is an 8,832 square foot lot designated Low Density Residential by the City of San Clemente Land Use Plan (LUP); the proposed project adheres to this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development. The nearest coastal access is available approximately 700 feet south of the subject site at the Lost Winds public access path that provides public access down the coastal bluff face to the beach below (**Exhibit 5**).

According to City records, the subject parcel was developed in 1948 (prior to the Coastal Act) with a single family home, and the garage that was utilized by the previous owners was constructed on the adjacent parcel, directly south of the site (305 Avenida De Los Lobos Marinos), which is now owned by a different party. These two individual legal lots were owned by a single owner; however, the lots are now under separate ownership. No lot split occurred. Because the lot with the garage was sold, the project site at 303 Avenida de los Lobos Marinos no longer has City required covered parking. Therefore, as a requirement for the addition, the City is requiring the construction of a 2-car garage on the single lot.

In addition to the existing house, the property is improved with landscaping, paths, and steps within the canyon. It has not been determined when the path and steps were constructed, and/or if they existed prior to the Coastal Act. There is no record of any previous coastal development permits for the subject site. At this time, the applicant is not proposing to remove the existing apparently pre-Coastal Act path and steps constructed within the coastal canyon. Therefore, staff imposes **Special Condition 1** requiring the applicant submit final plans clearly identifying all of the existing development within the coastal canyon proposed to be retained as shaded and clearly marked “this element not permitted by this or any other coastal development permit” on the final plans approved by Commission staff.

The subject lot slopes gradually from the street westerly down to steeper slope on the face of the canyon.

The City’s certified LUP (Policy VII.15), to which the Commission may look for guidance, requires new development on coastal canyon lots to be set back as follows:

*New development shall not encroach into coastal canyons and shall be set back either:*

- a. a minimum of 30% of the depth of the lot, and not less than 15 feet from the canyon edge; or*
- b. a minimum of 30% of the depth of the lot, and set back from the line of native vegetation (not less than 15 feet from coastal sage scrub vegetation or not less than 50 feet from riparian vegetation); or*



- c. *in accordance with house and deck/patio stringlines drawn between the nearest corners of the adjacent structures.*

*The development setback shall be established depending on site characteristics.*

There are seven canyons identified in the LUP and these setback choices exist because conditions from canyon to canyon, and within each canyon, are highly variable. Each canyon has a different shape, width and depth. The degree of existing disturbance within each canyon is also different. The project site is located along the rim of the Lobos Marinos Canyon, an area identified in the certified San Clemente Land Use Plan as an environmentally sensitive habitat area (ESHA). While rare or endangered species have not been reported to exist within the coastal canyon habitat of San Clemente, the City has designated all coastal canyons as ESHA, as depicted in **Exhibit 4**. The coastal canyons act as open space and potential wildlife habitat, as well as corridors for native fauna. Decreases in the amount of native vegetation due to displacement by non-native vegetation and prior vegetation have resulted in cumulative adverse impacts upon the habitat value of the canyons. As such, the quality of canyon habitat must be assessed on a site-by-site basis.

In general, due to pre-Coastal Act development, the Lobos Marinos Canyon is degraded due to development associated with residences in adjacent lots that extend to the bottom of the canyon. On this particular lot, the portion of the canyon that is part of this property, is degraded due to grading, construction of steps and paths, and the presence of non-native plants. No portion of the applicant's site contains resources that rise to the level of ESHA.

Of the three setback criteria articulated above for canyon development in San Clemente, the structural stringline canyon setback is the most protective of canyon resources in this case based upon this site's characteristics and the degraded nature of the canyon. The proposed addition, new garage, and new concrete patio behind the new addition and garage conform to this designation. However, given the steepness of the grade of the canyon and the lot configuration, staff finds that the patio/deck stringline is not sufficiently protective of canyon resources, and has determined that to allow the construction of the proposed deck and spa to encroach approximately 10 feet canyonward of the structural stringline (which would be consistent with the designated patio/deck stringline setback as shown on **Exhibit 2**) would not be sufficiently protective of canyon resources in this case.

The applicant proposes to construct a new approximately 30 ft. x 10 ft. deck with spa canyonward of the existing patio, which extends approximately 10 feet beyond the structural stringline setback. Given the steep topography of the slope of the canyon in this location, staff is of the opinion that the location of the proposed spa is not sufficiently protective of the canyon, and therefore imposes **Special Condition 1** which requires the applicant provide final plans including foundation and grading/drainage plans that no portion of the proposed patio and spa will extend beyond the existing patio. Furthermore, the proposed patio and spa encroach within the dripline of the existing oak trees as shown in **Exhibit 3**. The Commission consistently requires setbacks to protect oak trees because they are a native species that is considered sensitive, and thus require protection.

The applicant provided a Geotechnical Investigation Report prepared by Heatherington Engineering, Inc. dated November 3, 2016. Topographically, the report describes the site as having elevations on the site ranging from approximately 123 feet above mean sea level at the of the lot near the street to approximately 90 feet above sea level at southeast corner of the lot along the bottom of the canyon. The canyon slope has been modified somewhat by placement of fill, mainly along the canyon rim adjacent to the street. No groundwater was encountered in subsurface explorations and no faults were identified on the site. The report concludes that the site is suitable for the proposed development from a geotechnical aspect provided the recommendations outlined in the report are implemented. The report provides recommendations regarding site grading/preparation, foundations and drainage.

During project construction, in order to minimize adverse construction-related impacts upon marine resources, **Special Condition 8** requires the applicant comply with construction-related best management practices (BMPs) to ensure that construction materials, debris and waste does not enter receiving waters or be subject to dispersion and that prevent spillage and/or runoff of demolition or construction related materials and to contain sediment or contaminants associated with demolition or construction activities.

The applicant has submitted a landscape plan and vegetation removal in the canyon is not proposed. However, as construction is proposed on the canyonward side of the lot, staff imposes **Special Condition 5** requiring vegetated areas within the canyon portion of the project site disturbed during construction be re-vegetated to avoid erosion. Vegetation on the canyon facing side of the lot shall only consist of drought tolerant plants native to coastal Orange County and appropriate to the habitat type and no permanent in-ground irrigation systems shall be installed on the canyon-facing portion of the site; only temporary above ground irrigation is allowed to establish plantings. Any vegetated landscaped areas on the street-side of the residence are encouraged to use native plant species, however, non-native drought tolerant non-invasive plant species may also be used in that area.

As stated above, there are also two existing oak trees approximately 15 feet canyonward of the existing patio. To ensure the oak trees are protected during construction, Commission staff is imposing **Special Condition 9** requiring temporary protective barrier fencing to be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations.

Additionally, because the proposed project (construction of a new single family residence) is located adjacent to a coastal canyon, the applicant is required to contact the Orange County Fire Authority (OCFA) to determine whether their review and approval is required for this development. According to the OCFA code, fuel modification plans are required for new habitable structures, or additions to habitable structures, which is the case for the proposed development. The applicant has not provided written evidence from OCFA that the proposed development is in conformance with OCFA fuel modification requirements for canyon sites, therefore, **Special Condition 4** requires the applicant provide written evidence of either OCFA approval or that OCFA review is not required for this development and Special Condition 4

requires submittal of a fuel modification plan for the site if required by OCFA. The special conditions of this staff report are designed to protect the remaining habitat value of the Canyon.

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that any future repair and maintenance of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act and the Commission's regulations. Therefore, to assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission imposes **Special Condition 7** requiring the applicant to apply for an amendment to this CDP or a new CDP, if applicable, for any future development within the subject site.

## **B. HAZARDS**

Development adjacent to the edges of hillsides and bluffs is inherently hazardous. 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, public access and visual resources. To minimize risks to life and property and to minimize the adverse effects of development on hillsides and bluffs, the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit construction of protective devices (such as a retaining wall) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

## **C. HABITAT**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms to Section 30240(b) of the Coastal Act.

## **D. DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition must be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

#### **E. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed and as conditioned, the project conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **F. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates construction best management practices to minimize the effect of construction activities on the marine environment. These conditions include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials and construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

#### **G. LOCAL COASTAL PROGRAM**

The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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 Land Use Plan for the City of San Clemente was effectively certified on March 14, 1996. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

**APPENDIX A - SUBSTANTIVE FILE DOCUMENTS**

- 1) City of San Clemente LUP
- 2) City of San Clemente Approval in Concept dated May 4, 2016
- 3) Geotechnical Investigation for the Subject Property located at 303 W. Avenida de los Lobos Marinos, San Clemente, CA 92672, dated November 3, 2016, prepared by Hetherington Engineering, Inc.

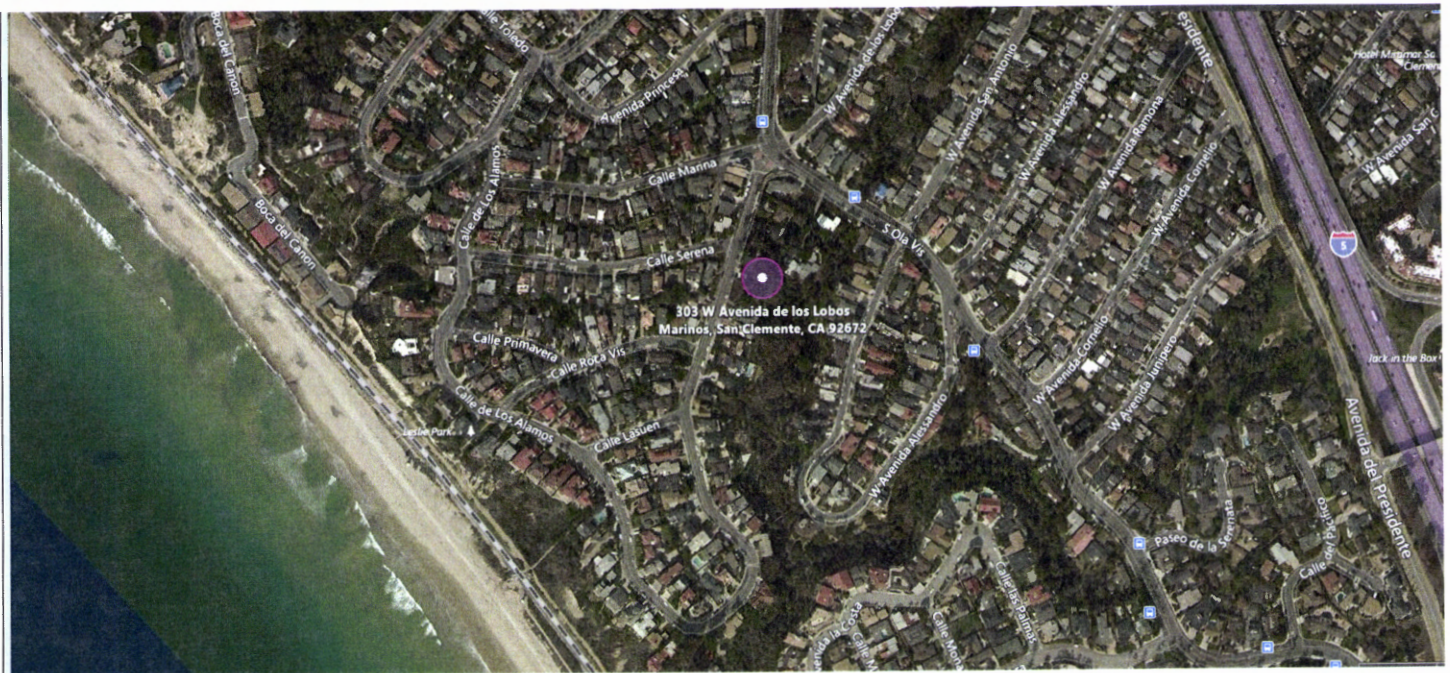
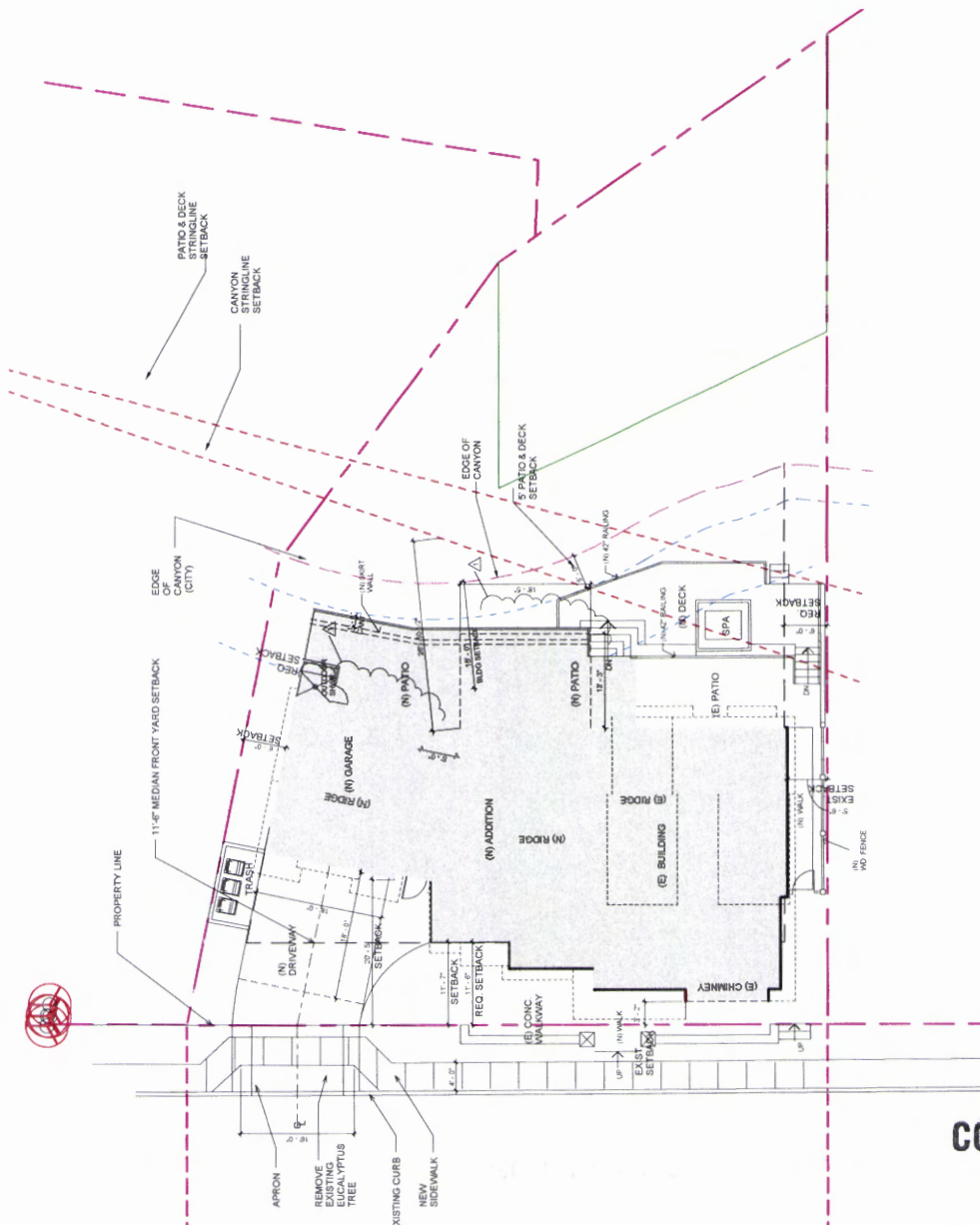
**COASTAL COMMISSION**

EXHIBIT # 1  
PAGE 1 OF 1





## Site Plan

Michael  
Luna

&  
ASSOCIATES

Architect

Project Status

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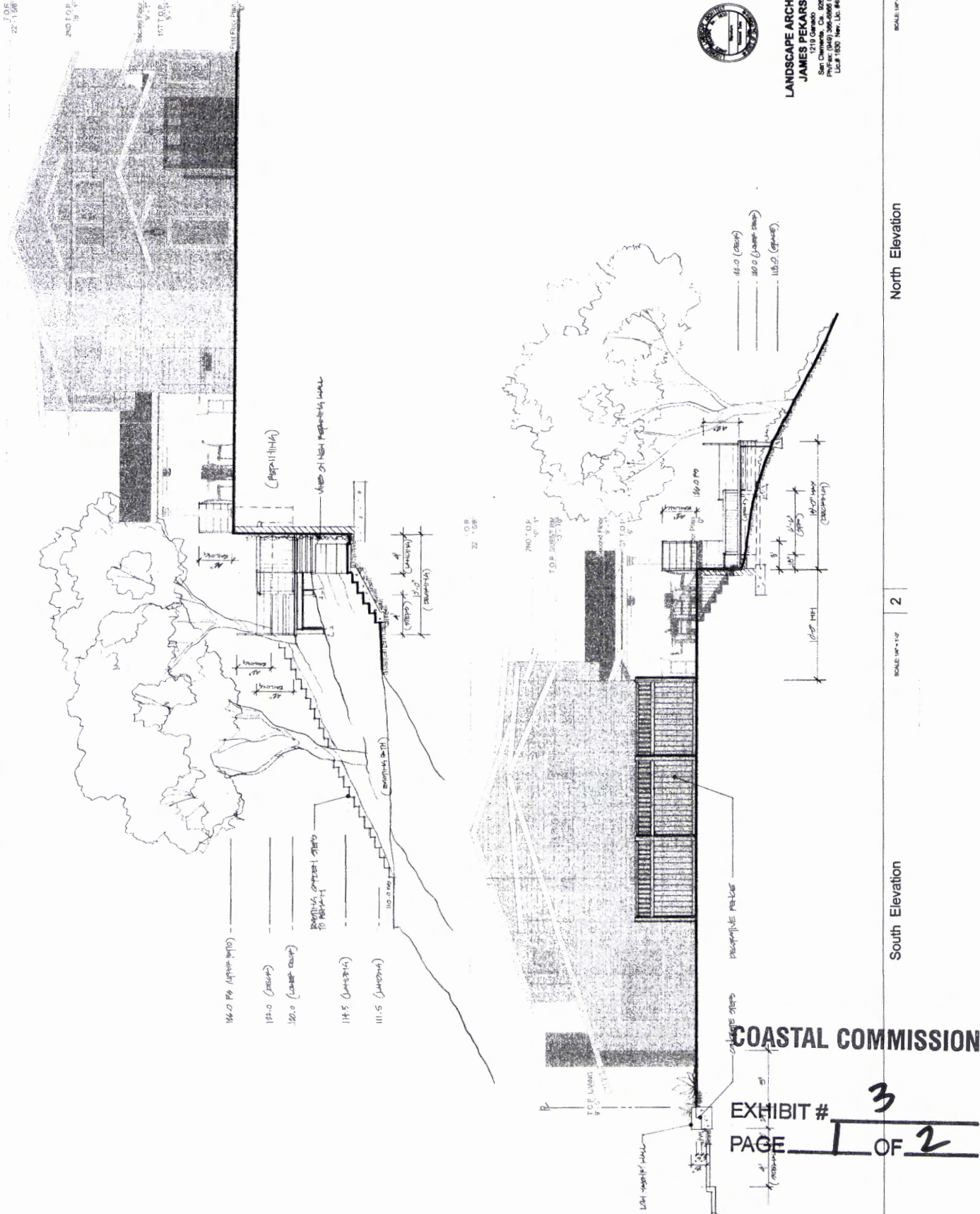
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**LANDSCAPE ARCHITECT**  
**JAMES PEKARSKE**  
1211 Camino  
San Clemente, CA 92673  
Phone: (949) 341-1111  
Fax: (949) 341-1112  
Lic. 1300 Nov. 15, 2007

L-3

SCALE: 1/4" = 1'-0"

North Elevation

2

South Elevation

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EXHIBIT # 3  
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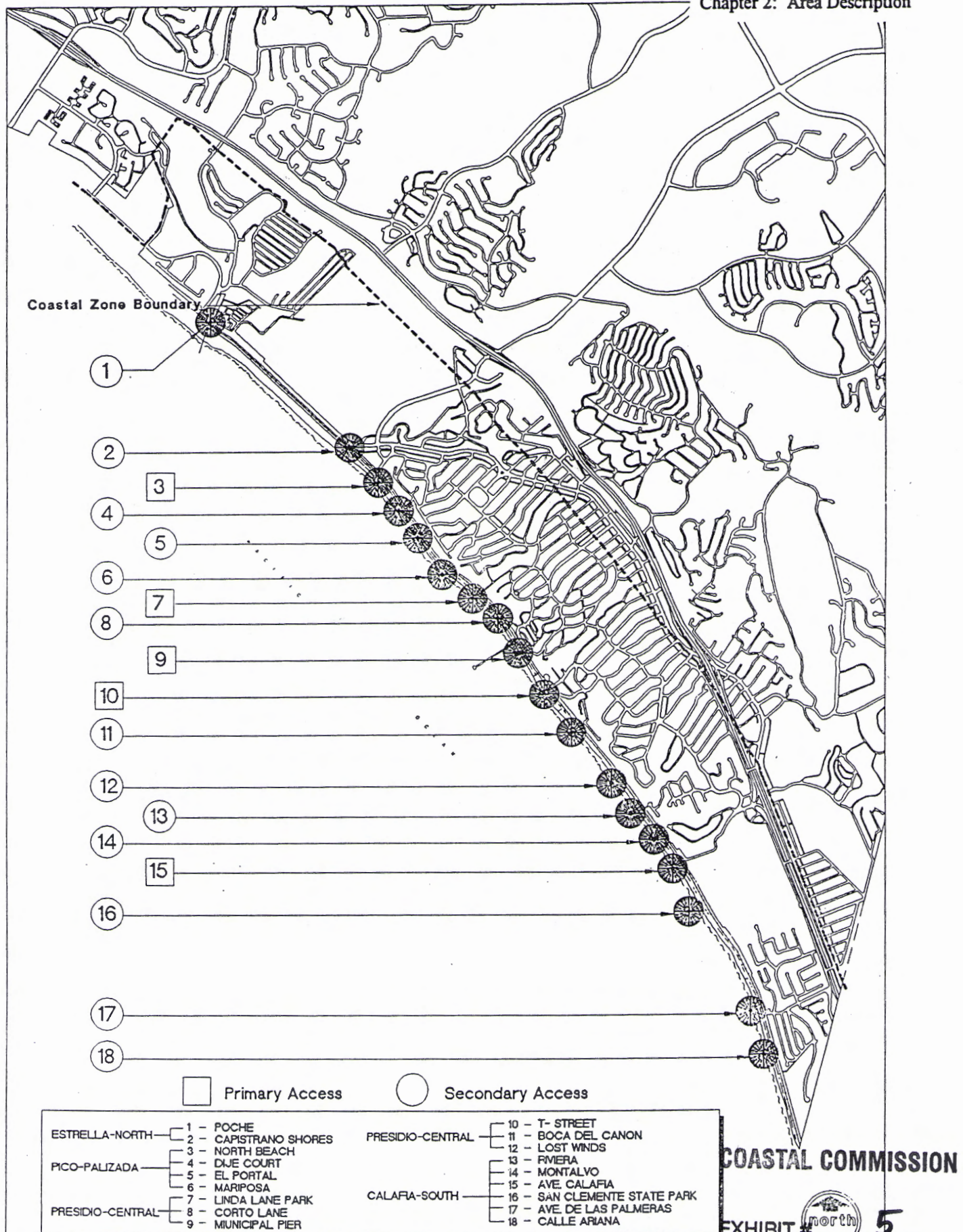


FIGURE 2-5