

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

Filed: July 15, 1997
49th Day: September 2, 1997
180th Day: January 11, 1997
Staff: LRO-SD
Staff Report: August 18, 1997
Hearing Date: September 9-12, 1996

STAFF REPORT AND RECOMMENDATION ON APPEAL

Wed 16a

LOCAL GOVERNMENT: City of San Diego

DECISION: Approved With Conditions

APPEAL NO.: A-6-LJS-97-86

APPLICANT: La Jolla Museum of Contemporary Art

PROJECT LOCATION: 700 Prospect Street, La Jolla, San Diego, San Diego County. APN 350-171-10

PROJECT DESCRIPTION: Amend previously approved City of San Diego Permit #CDP/LJS/SUP 90-0747 for renovation of existing art museum as follows: 1) amend Condition 2.a. to permit the existing 6'0" high open security fence surrounding a sculpture garden on the west side of the property to be relocated to observe a minimum 3'6" front yard setback from Coast Boulevard where 15' is required; and 2) that Condition 14 be deleted, which required that the gate remain unlocked during normal business hours such that the gate may remain locked during normal museum business hours.

APPELLANTS: La Jolla Town Council & Melinda Merryweather

SUBSTANTIVE FILE DOCUMENTS: Certified City of San Diego LCP/La Jolla-La Jolla Shores segment; La Jolla Planned District Ordinance; City of San Diego Coastal Development Permit No. 90-0747 and 96-0257; City of San Diego Manager's Report to the City Council dated 6/3/97; City of San Diego Memo dated 6/3/97

STAFF NOTES:

The public hearing for the subject appeal was opened at the August 13, 1997 Commission meeting and continued to the September 9-12, 1997 Commission meeting.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed.

I. Appellants Contend That:

The proposed development will encroach upon an existing physical accessway legally used by the public which will adversely affect recreational or coastal scenic resources located adjacent to a park and recreation area; that the fence will obstruct the view to the ocean from the sculpture garden and will be visually incompatible with the surrounding area; is inconsistent with the policies of the certified LCP which call for protection and enhancement of scenic vistas to the shoreline; and that the proposed development is inconsistent with the La Jolla Planned District Ordinance, which is part of the certified LCP, in that a variance was granted to allow a reduced front yard setback.

II. Local Government Action.

The Coastal Development Permit was initially approved by the Hearing Officer on October 2, 1996, and subsequently appealed to the Planning Commission. On January 23, 1997 the Planning Commission heard the appeal and approved the appeal. Subsequently, the museum submitted a request for extraordinary appeal to the City Council on January 31, 1997; the request was granted on April 29, 1997 and scheduled for City Council action on 6/3/97. On 6/3/97 the City Council approved the Museum's request to amend the two conditions of the previously approved permit.

III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission

will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

MOTION

Staff recommends a YES vote on the following motion:

I move the Commission determine that Appeal No. A-6-LJS-97-86 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

Findings and Declarations.

1. Project Description. Proposed is a permit for the La Jolla Museum of Contemporary Art to amend two conditions of a previously approved permit (90-0747) which was for the addition of 7,555 sq.ft. of accessory space and construction of a six-foot high fence (surrounding an existing sculpture garden). The proposed changes to the conditions of approval are to allow the relocation of a 6'0" high open fence to observe a minimum 3'6" front yard setback adjacent to Coast Boulevard, where 15'0" is the minimum required, and to allow the gate in the fence to remain closed/locked during normal museum business hours. The La Jolla Museum of Contemporary Art is located between

Coast Boulevard South and Prospect Street near the central business district in the commercial core area of La Jolla on a 91,656 sq.ft. site. It is located on the inland side of the first coastal road, Coast Boulevard, immediately across from the ocean and several recreational areas. The nearby shoreline consists of gentle coastal bluffs with footpaths and improved stairways in some areas which lead to sandy pocket beaches below.

The subject of the appeal is focused on the permitted 6-foot high security fence in the front yard setback of the site around an existing sculpture garden which is located on the west side of the property. The entrance to the museum is gained from its Prospect Street frontage on the east side of the property. The sculpture garden consists of a landscaped garden area with a meandering walkway with seatwall benches and other seating interspersed throughout the area. The garden is presently surrounded by a 6-foot high security wrought-iron fence and affords views of the ocean to the west. According to the City, the gate in the fence is presently locked but members of the public who wish to enter the sculpture garden from Coast Boulevard South may press an intercom button to request admittance to the garden.

2. Permit History/Public Access/Public Views. The appellants contend that the proposed development, which will delete a previous condition of approval for the subject permit, that required that the gate to the sculpture garden remain open during normal museum hours, will result in the potential loss of prescriptive rights and public access to the garden. As noted in one of the subject appeals, the garden on the ocean side of the property is what remains of Ellen Browning Scripps' own seaside garden. Ms. Scripps was a prominent philanthropist and historical figure in the community of La Jolla. According to the appellants, Ms. Scripps permitted visitors from La Jolla and elsewhere to use the garden for a variety of reasons and this use of the garden continued for decades after the owner dedicated the garden for public use. For this reason, the garden is regarded as an important historical vantage point from which the public can enjoy the coast.

According to a City staff report, in 1992, the museum applied for a permit from the City of San Diego to remodel its building pursuant to CDP #90-0747. As part of the proposal, a security fence was proposed around the garden. In part, the Museum's request for a fence was to protect the art work that was proposed to be displayed in the garden. The Planning Director approved the permit for construction of a 6-foot high open fence with a 3 1/2-foot setback from the property line on Coast Boulevard. At that time, the yard area adjacent to Coast Boulevard was considered a rear yard, having no required setback. The Planning Director's approval was appealed to the Planning Commission because the proposed fence would have prevented continued public access to the garden and the community protested the exception to the setback for the fence. The community believed that the public had acquired prescriptive rights to continued access to the garden. Specifically, the certified LCP states the following:

"Where, based on available records and public testimony, evidence of potential prescriptive rights exists, then review procedures in accordance with the State Law as

further defined by the Attorney General's Implied Dedication and Prescriptive Rights Manual, should be utilized to further investigate the possibility of prescriptive rights or to protect such rights if necessary. Copies of the Implied Dedication and Prescriptive Rights Manual may be obtained by contacting the State of California, Department of Justice, Office of the Attorney General.

Development where potential prescriptive rights exist, may be approved, provided the siting of the development would not interfere with, or prejudice a legal resolution of the prescriptive rights issue."

The Planning Commission on 12/12/91 approved the project but deleted the proposed 6-foot high fence because the City Attorney found that the sculpture garden was a "front yard" as opposed to a "rear yard". Pursuant to the La Jolla Planned District Ordinance, fences within the front yard are not permitted to exceed three feet in height. However, the decision to deny that proposed fence was subsequently reconsidered by the Planning Commission on 2/27/92 based on the applicant's proposal of a new 6-foot high fence to observe a 15-foot setback from Coast Boulevard. The Planning Commission approved the proposed fence with a 15-foot setback with a condition that required the gate of the fence to remain open during normal business hours to allow the public to access the sculpture garden from Coast Boulevard South. The decision of the Planning Commission was appealed to the City Council; however, the appeal was withdrawn on 5/5/92 shortly before the Council heard the item by members of the public since they believed that their access rights had been protected. The withdrawal of the appeal left standing the Planning Commission's decision.

Subsequently on 9/10/92 the Planning Commission considered an information item to clarify the intent of the condition as to whether or not the requirement that the gate remain open meant there should be no entrance charge to the sculpture garden. It was clarified that the intent was to admit the public free of charge. The museum then proceeded with development upon reliance of the approved City permit; however, the museum never opened the garden gates to the public, which the appellants assert was a violation of the terms of the condition of the City-approved permit.

The current permit application for an amendment to Condition No. 2 of the permit was approved by the Hearing Officer on 10/2/96 granting a variance to allow the fence to observe a minimum 3 1/2-foot setback and deleting Condition No. 14 allowing the gate of the fence to remain locked during business hours. The approval of the Hearing Officer was appealed to the Planning Commission. On January 23, 1997, the Planning Commission heard the appeal and voted to approve the appeal and deny the requested modifications. Subsequently, the museum submitted a request for "extraordinary appeal" to the City Council. The request was granted on 4/29/97 and scheduled for public hearing and review by the City Council at its 6/3/97 meeting. At that hearing, the City Council approved the museum's request to amend the two previous conditions of approval. As part of the approval of the permit to amend the previous

conditions of approval, the City's final action on the matter also resulted in the addition of two new conditions to address the community's concern regarding access to the garden. Specifically, the City added a condition that would require the applicant to mount a plaque in a conspicuous place where it can be seen by passersby along Coast Boulevard South honoring the memory of Ellen Browning Scripps and explaining the significance of the garden as the site of her original garden.

In addition, the City required that the museum allow public access to the sculpture garden during all hours when the museum is open to the public, provided that the admission of patrons is through the main entrance of the museum. In addition, the applicant agreed to install a sign near the gate in the sculpture garden visible from Coast Boulevard South informing the public of the free public access policy and directing people to the main entrance. A stipulation of the condition also provides that the museum may review the condition addressing free public access to the garden five years from the approval date of the subject permit. The burden to amend or eliminate this condition will need to be demonstrated by the applicant at that time, and presumably, reviewed by the City then.

In so doing, the City believes it has reached a compromise in that the public can still gain access to the garden free of charge, albeit subject to the Museum's permission, and through the main entrance on Prospect Street. In addition, signage will be installed on the site informing the public about free access to enter the sculpture garden through the front entrance of the museum.

Another issue raised by the subject project is with regard to the proposed fence's impact on the visual quality of the area and scenic views from the sculpture garden to the ocean. As the two issues are interrelated, they are being discussed herein, in one finding.

Although it should be noted that there is a designated visual access corridor across the subject property from Prospect Street looking northwest, the subject fence would not result in the obstruction or interference of these views across the site. Commission staff has reviewed the City's certified LCP and there are no policies that specifically require that the existing sculpture garden or views from it be preserved for public use. In a letter contained in the City's file, it was found that there appeared to be no record of Ellen Browning Scripps' intent that her garden be open to the public in perpetuity. While some community members feel strongly that this was indeed her desire, the City found that there was no evidence to document this intent. The garden was not established as a public park by any legal instrument or otherwise, as were other public parks within the community near the shoreline (for example, such as Ellen Scripps park near La Jolla Cove and Shell Beach). The letter further states that the site of the original garden was subdivided by Ms. Scripps' heirs which sold off the parcels to private parties, and is a private parcel, as it exists today.

Furthermore, the project site is not located between the first coastal road and sea, but instead, is situated on the east side of the first coastal road.

The issue of prescriptive rights and public access raised by the appellants is with regard to access to the garden and not the shoreline. As such, the project does not raise as an issue, public access to the shoreline. There are also ample recreational areas immediately across the street and along Coast Boulevard where public views to the ocean and physical access may be gained to the shoreline. Specifically, immediately across the street is Coast Boulevard Park and Wipeout Beach. This area contains foot trails on the bluff and to the shoreline with access steps at various locations. Nearby to the northwest is South Casa Beach with an improved stairway and Children's Pool further north that includes a beach access ramp and seawall that the public walks on to view the ocean, Children's Pool Beach (and the seals that congregate on it) as well as Seal Rock itself, to the north. In addition, there is an improved sidewalk all along the west side of Coast Boulevard that provides continuous visual and physical public access next to, and above, the shoreline.

Another issue raised by the appellants is that the granting of a variance is inconsistent with the certified La Jolla Planned District Ordinance which requires that fences observe a minimum 15-foot front yard setback. The citywide municipal code states that variances from the zoning provisions of the Municipal Code may be granted provided, in part, they are not contrary to the public health, safety and general welfare when, due to special conditions or exceptional characteristics of the property, enforcement of the provisions of the code would result in unusual difficulties or unnecessary hardship. The appellants do not believe that there are any unique or unusual characteristics of the property that would result in a hardship, and that therefore, a variance should not have been permitted. However, the Commission has found that the location of the fence does not result in public view blockage or access conflicts. The appropriate use of the variance procedure is a regulatory matter administered by the City and is not subject to resolution through the appeal process.

While the Commission sympathizes with the members of the public who have had uninterrupted access to the garden for several years, the matter is regarded to be more of a local issue as opposed to a coastal access or public view issue regulated by the Coastal Act. The Commission, therefore finds, that the proposed development does not raise a substantial issue regarding conformity with the certified La Jolla-La Jolla Shores LCP Addendum.

(7086R)

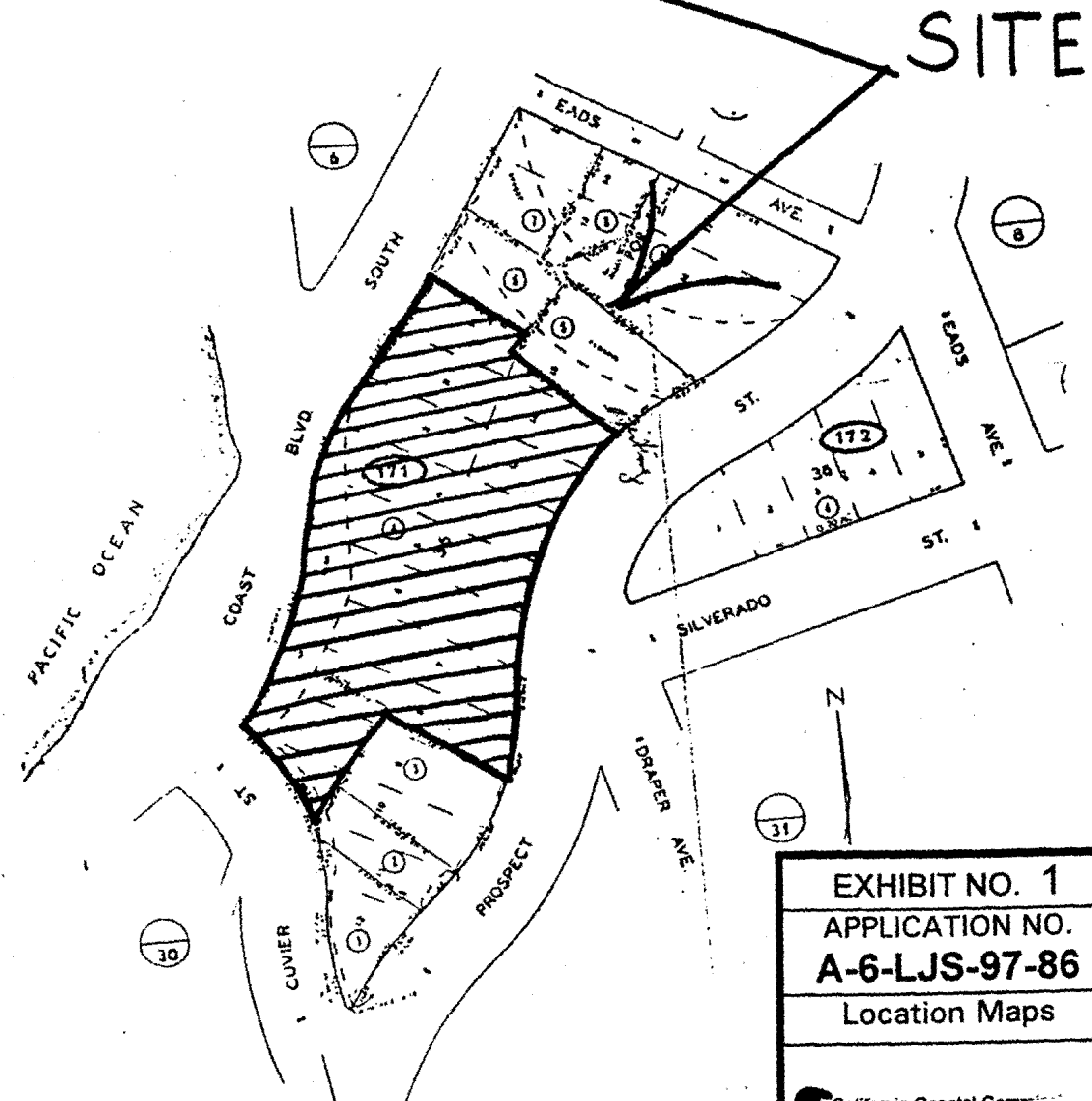
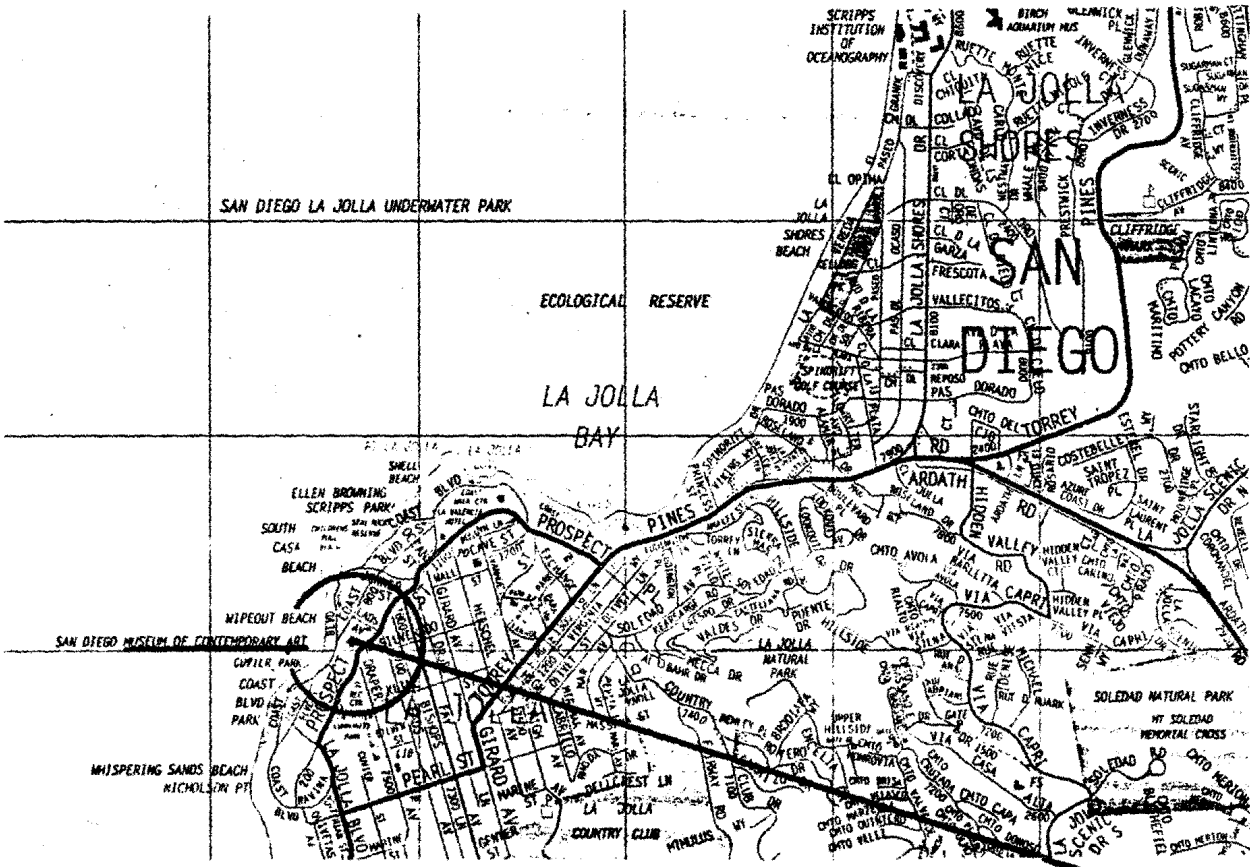


EXHIBIT NO. 1
APPLICATION NO.
A-6-LJS-97-86
Location Maps

GENERAL NOTES

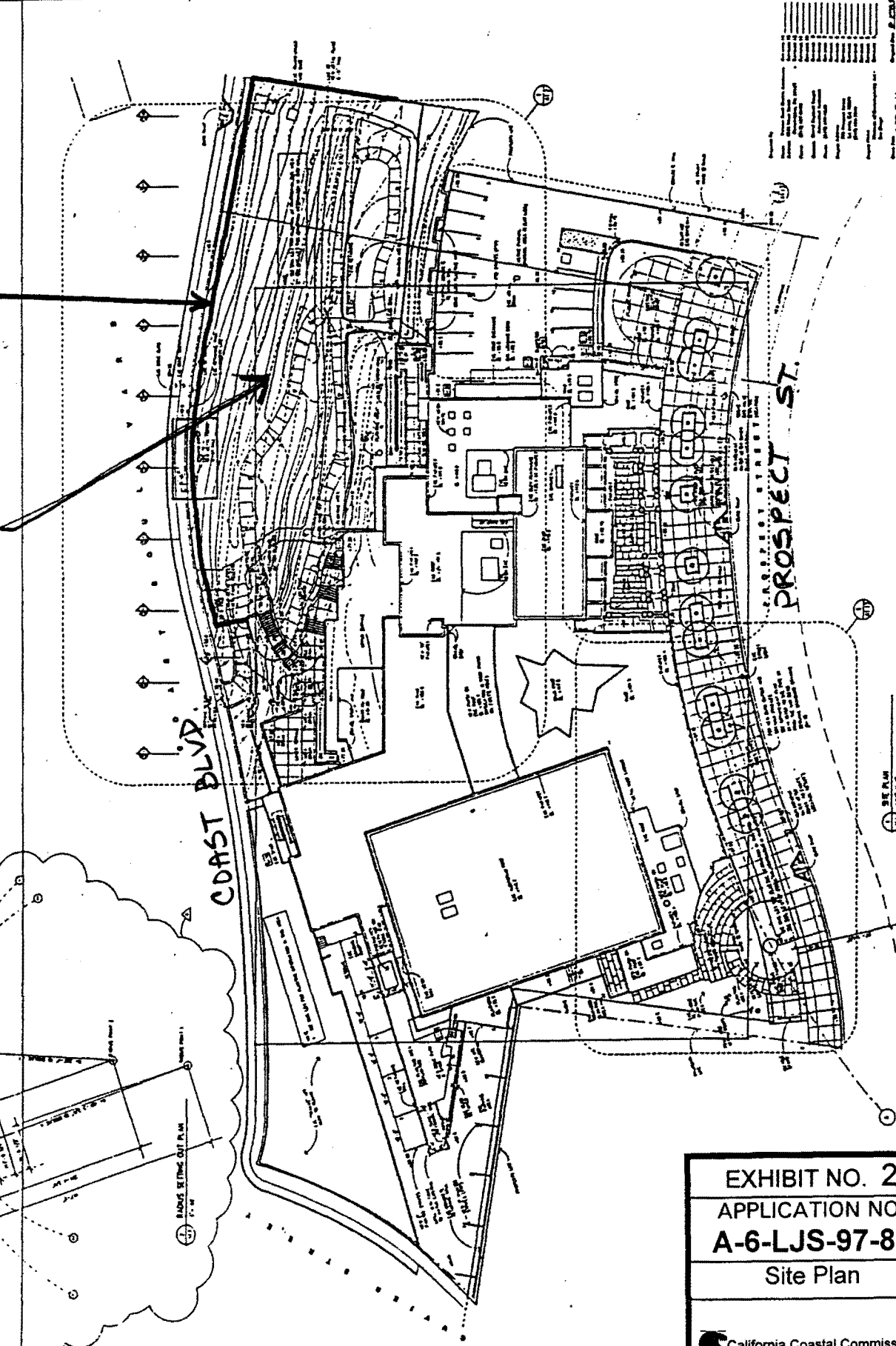
1. All construction shall conform to the City of San Diego Building Code, 1994 Edition, with all amendments through 1997.

PROPOSED FENCING OBSERVING A 3'-6" SETBACK

SCULPTURE GARDEN

COAST BLVD.

PROSPECT ST.



NO.	DESCRIPTION	DATE
1	PRELIMINARY	10/1/97
2	REVISED	10/15/97
3	REVISED	11/1/97
4	REVISED	11/15/97
5	REVISED	12/1/97
6	REVISED	12/15/97
7	REVISED	1/1/98
8	REVISED	1/15/98
9	REVISED	2/1/98
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23	REVISED	9/1/98
24	REVISED	9/15/98
25	REVISED	10/1/98
26	REVISED	10/15/98
27	REVISED	11/1/98
28	REVISED	11/15/98
29	REVISED	12/1/98
30	REVISED	12/15/98

CONSTRUCTION DOCUMENTS
 REMODEL AND ADDITIONS
 TO THE
**MUSEUM OF CONTEMPORARY ART,
 SAN DIEGO**
 1000 LA JOLLA VILLAGE DRIVE, SAN DIEGO, CALIFORNIA 92161
 ARCHITECT: JAMES H. HARRIS ARCHITECTS, INC.
 1000 LA JOLLA VILLAGE DRIVE, SAN DIEGO, CALIFORNIA 92161
 PHONE: (619) 594-1111
 FAX: (619) 594-1112
 ENGINEER: JAMES H. HARRIS ARCHITECTS, INC.
 1000 LA JOLLA VILLAGE DRIVE, SAN DIEGO, CALIFORNIA 92161
 PHONE: (619) 594-1111
 FAX: (619) 594-1112
 CONTRACT NO. 97-0001
 SHEET NO. 1001

DATE: 10/1/97
 SCALE: AS SHOWN
 DRAWN BY: J.H.H.
 CHECKED BY: J.H.H.
 APPROVED BY: J.H.H.
 TITLE: SITE PLAN

EXHIBIT NO. 2
 APPLICATION NO.
A-6-LJS-97-86
 Site Plan

California Coastal Commission