

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370

## RECORD PACKET COPY

**Fri 7b**

Filed: 10/6/04  
49th Day: Waived  
180th Day: 4/4/05  
Staff: BP-SD  
Staff Report: 1/27/05  
Hearing Date: 2/16-18/05

AMENDMENT REQUEST  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: A-6-OCN-99-133-A1

Applicant: Thomas Ligouri

Agent: Robin Munro

**Original Project**

Description: Substantial demolition and construction of 930 sq.ft. of additional floor area to an existing 2,528 sq. ft. single-family home to total 3,458 sq.ft. on a 4,800-sq. ft. oceanfront lot. The additional area includes conversion of two existing first and second story balconies and a basement level patio to create new indoor living space to 27-foot high. The conversions total 432 sq.ft. (156 sq.ft. for each of the two balconies and 120 sq.ft. for the patio) and would result in a seaward expansion of the living area of the residence approximately 6'7" for each of the three levels; the corners of the top floor would be "tailed-in" at a 45 degree angle to help reduce the bulk of the structure as viewed from the beach. Also proposed is a 498 sq.ft. second story addition over the proposed 463 sq.ft. garage.

**Proposed**

Amendment: Request for after the fact approval of a vinyl fence, two gates and a block wall, all 6-feet high; the portion of the fence that extends to the revetment is proposed to be reduced to 3-feet high.

Site: 1731 South Pacific Street, Oceanside, San Diego County. APN 153-091-31

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STAFF NOTES:

This project was scheduled for the Commission's December, 2004 hearing but was postponed by the applicant to respond to the staff recommendation of denial.

Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the proposal for after the fact approval of several existing improvements to a single family dwelling on an oceanfront lot. According to the applicant, the improvements are necessary to maintain privacy and security and are similar to existing improvements in the area. A fence is proposed seaward of the home

(along the property line) that extends to the revetment to discourage entry onto the subject site from the lot to the immediate north. However, the City's certified LCP does not allow fences to extend beyond the permitted development stringline as they can result in impacts on public views as is the case for the proposed fence. Thus, the proposed fence that extends seaward of the home is inconsistent with the LCP provisions to protect public views. Additionally, the proposed block wall that separates the properties along the northern property line is inconsistent with the height standard in the certified LCP. Therefore, staff recommends the Commission deny the amendment application.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Oceanside Local Coastal Program (LCP), A-6-OCN-99-20/Wilt, Revised Site and Building Plans by Scott Bernet Architects, received August 15, 2004

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:**      *I move that the Commission approve the proposed amendment to Coastal Development Permit No. A-6-OCN-99-133 for the development as proposed by the applicant.*

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a NO vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT:**

The Commission hereby denies the proposed coastal development permit amendment for the proposed development on the ground that the development as amended will not conform to the certified Local Coastal Program. Approval of the permit amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings for Denial.

The Commission finds and declares as follows:

1. Project History/Amendment Description. The project site is located on the west side of Pacific Street, between Buccaneer Beach and Cassidy Street in the City of Oceanside. An existing rock revetment is located on the beach seaward of the existing residence. The western boundary of the property is the mean high tide line.

The initial application for substantial demolition and construction of additional floor area first came before the Commission on appeal from a decision by the City of Oceanside approving the project with special conditions. The Commission voted to deny the proposed development on January 9, 2001. The applicant subsequently challenged the Commission's denial of the project in *Liguori v. California Coastal Commission*, Case No. GIN009431, filed in San Diego County Superior Court. A stipulated settlement agreement was reached. The applicant agreed to submit a modified project description and the Commission agreed to review the project as modified.

In CDP #A-6-OCN-99-133 the Commission approved a first and second story addition to the single-family home. To reduce the bulk of the structure as viewed from the beach, project height was reduced to 27-feet high and the corners of the top floor were "tailed-in" at a 45-degree angle. The Commission found that while the structure was slightly larger and extended slightly further seaward than nearby homes, it was consistent with the certified LCP relative to protection of visual resources and community character and scale and would not set an adverse precedent resulting in the "walling off" of the coastline in this area as viewed from up and down coast public access ways and beaches.

The site is a sloping coastal bluff and has a 20-foot elevation differential from Pacific Street to the existing revetment located near the western property boundary. The lot is 30 feet wide and extends westerly to the mean high tide line. A 14-foot wide at-grade concrete patio and 13-foot wide perched beach are located between the existing residence and the existing revetment. There is approximately 28-feet between the existing buried toe of the revetment and the elevation of the mean high tide line as measured on October 25, 2000 (per the survey by Skelly Engineering). Surrounding development consists of one-and two-story single-family and multi-family residential uses on small lots.

The current amendment requests after the fact approval of the following:

**North Property Line (P/L) Masonry Wall--** 6-foot high masonry wall (stepped with topography at 6-feet maximum height) that extends from the street to near the western edge of the home (about 70-lineal feet) and separates the subject property and the property to the north.

**North Vinyl Fence and Gate --**6-foot high vinyl fence that extends approximately 36 lineal feet near the northwest corner of the home along the property line to the top of the existing revetment. The 12-foot long segment of the fence nearest the home (includes 6-foot high gate) is proposed at the existing 6-feet high; the remaining portion of the fence is proposed at 3 feet high.

**South Gate--**6-foot high gate near the seaward edge of home near the south property line.

Because the proposed development is located between the first public road and the sea, the standard of review is the certified Oceanside Local Coastal Program and the public access and recreation policies of the Coastal Act.

2. Visual Impacts/Compatibility/Stringline. Policy #8 of the "Visual Resources and Special Communities" Section of the certified Oceanside Land Use Plan (LUP) states:

8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

Additionally, two objectives of the same section provide:

The City shall protect, enhance and maximize public enjoyment of Coastal Zone scenic resources.

The City shall, through its land use and public works decisions, seek to protect, enhance and restore visual quality of urban environment

Additionally, Section 1703 of the certified implementing ordinances (zoning code) states:

Section 1703 (e) (Rear Yard Setbacks)

Notwithstanding any other provisions of this section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward than the line established on the "Stringline Setback Map", which is kept on file in the Planning Division. Appurtenances such as open decks, patios and balconies may be allowed to extend seaward of the Stringline Setback line, providing that they do not substantially impair the views from adjoining properties.

The Oceanside LCP requires that new ocean fronting development be in scale and character with existing development and not adversely affect scenic resources. To this end, ocean fronting development is required to be consistent with the certified "Stringline Setback Map" which was developed in 1983 by overlaying an imaginary stringline on an aerial photo of the shoreline in the City of Oceanside. The map shows how far new development may extend towards the ocean. The stringline map was based on existing building patterns, as well as anticipated future developments and remodels/expansions. The goal of limiting new development to extend no further seaward than the stringline is to restrict encroachment onto the shoreline and preserve public views along the shoreline.

In this case, a recently constructed, but unpermitted 6-foot high vinyl fence exists near the northwest corner of the home and extends west towards the ocean approximately 36 lineal feet to the top of the revetment. The stringline coincides with the seaward edge of the home; therefore, the fence extends approximately 36 ft. seaward of the stringline. As noted above, Section 1703 allows structures such as open decks, patios and balconies seaward of the stringline; however, the ordinance does not identify fences as permitted

structures seaward of the stringline. The City has indicated to the Commission that it does not permit fences seaward of the stringline as they would be inconsistent with the above-cited provisions. The Commission agrees, as fences, unlike "open decks, patios and balconies," may "substantially impair the views from adjoining properties." Moreover, fences are likely to impair general public views, as well, which is presumably why they are not listed in Section 1703 as ever being eligible for this exemption, and they remain wholly prohibited. Therefore, while the applicant has proposed to lower the fence's height to 3-feet, the fence is not a permitted use seaward of the stringline and therefore is prohibited in the certified LCP.

Additionally, even if the fence were a permitted use, it has an adverse impact on public views which are protected in the LCP. The Commission has previously found in this area that public views from the beach and vertical access ways are important and must be preserved based on the visual resource policies of the LCP. Down coast public views (to the south) from Whaley Street are adversely affected by the fence because the beach is significantly lower than the fence resulting in the fence being elevated into the public view. The proposed fence would also have an adverse impact on up coast public views (to the north) from the Cassidy Street stairway (south of the site) were it not for the existence of a similar fence which exists on the adjacent lot to the south. This adjacent fence has an adverse visual impact and there is no record that it is permitted. If and when it is removed as a violation of the Coastal Act, the subject fence would have an adverse impact on views northward from Cassidy Street as well.

Regarding the 6-foot high block wall and other fence components, Section 1721 of the certified zoning ordinance states:

Maximum Height of Walls, Fences or Hedges

a. In any "R" zone a wall, fence or hedge forty-two (42) inches in height may be located and maintained on any part of the lot. On an exterior lot a wall, fence or hedge not more than six (6) feet in height may be located any where on the lot to the rear of the rear line of the required front yard, except that on corner lots and reversed corner lots a six (6) foot fence may be located anywhere on the lot to the rear of the rear line of the required front yard, or as provided, in Section 1719, whichever is greater. [...]

The subject lot is an interior lot. Based on staff measurements, the "stepped" block wall is 6 feet high maximum as measured from finish grade. All existing after the fact improvements are proposed at 6 feet high which is inconsistent with the above 42-inch high height standard. The City amended the certified zoning ordinance in 1988 to allow walls and fences to extend to 6-feet high; however, the amendment was not submitted to the Coastal Commission for certification. Therefore, the standard of review is the above currently certified standard with respect to walls and fences and the proposed walls and fences are not consistent with these provisions. While the standard does not specify that 42-inches is a maximum height or that taller walls cannot be maintained, the Commission interprets the standard as a prohibition of such structures greater than 42-inches high.

The LCP requires that new development is compatible in height and scale with the surrounding neighborhood. While the wall and the remaining improvements do not adversely affect public views like the fence to the revetment, because they are higher than the permitted height for such improvements, they have the effect of making the subject site development appear out of scale with similar development on adjacent lots. One of the objectives of the LUP is that the City shall seek to protect, enhance and restore visual quality of the urban environment. While incongruent development on one site does not adversely affect the character of the area, the cumulative effect of non-conforming development can alter the character of a community. Therefore the improvements are inconsistent with the visual resource policies of the certified Oceanside LCP and cannot be approved.

As discussed above, the proposed gates, fence and wall are inconsistent with the height standard in the LCP and the fence beyond the stringline is not permitted by the certified LCP. While the fence is proposed to be lowered to 3-feet high beyond the stringline, the LCP does not allow encroachment of fences seaward of the stringline. The LCP regulates development this way to protect public and private views along the shoreline. Therefore, the Commission finds that the proposed development is inconsistent with the visual resource policies of the certified Oceanside LCP and must be denied.

3. Public Access. Section 30604(c) of the Act requires that a specific access finding is made for any development located between the sea and the first public roadway:

Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

In this particular location, Pacific Street serves as the first public roadway and the proposed development is located between the street and the ocean. The improvements would not adversely affect either lateral or vertical access as they are located landward of the existing revetment on private property and vertical access is located nearby to the north and south. Therefore, no adverse impacts to public access are anticipated.

4. Unpermitted Development. Unpermitted development has occurred consisting of a fence, gates and a wall without the required coastal development permit. The improvements are inconsistent with the visual resource policies and the height development standards of the certified LCP and would result in adverse visual impacts individually and cumulatively. The Commission's enforcement division will evaluate further actions to address this matter.

Although development has taken place without the benefit of a coastal development permit, consideration of the application by the Commission has been based solely upon the certified LCP and the public access and recreation policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

5. Local Coastal Planning. The subject site is designated as RS (Residential Single Family) with an underlying land use designation of Residential Single Family Detached. The certified Oceanside LCP contains policies which call for new development to be compatible with the scale and character of the surrounding development and design and development standards. In addition, the certified Stringline Setback standard calls for the preservation of visual access to the shoreline. The Commission finds the proposed development will adversely impact public views to and along the coast. Thus, the Commission finds the proposal cannot be found consistent with all applicable policies of the certified LCP.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit or amendment to be supported by a finding showing the permit or permit amendment, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is inconsistent with the visual policies of the certified Oceanside LCP. Feasible alternatives exist which would substantially lessen any significant adverse impact that the activity may have on the environment such as a removing the fence seaward of the stringline, lowering the wall between the homes to 42 inches or less and lowering the other proposed improvements near the house to 42 inches or less. However, even if none of the improvements went forward, the owner would continue to enjoy use of the home. There would be no seaward encroachment of development. The back yard would remain as an developed flat pad and patio and would be consistent with community character. This alternative would result in the least amount of visual effects to the environment and also would not have any adverse effect on the value of the property. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

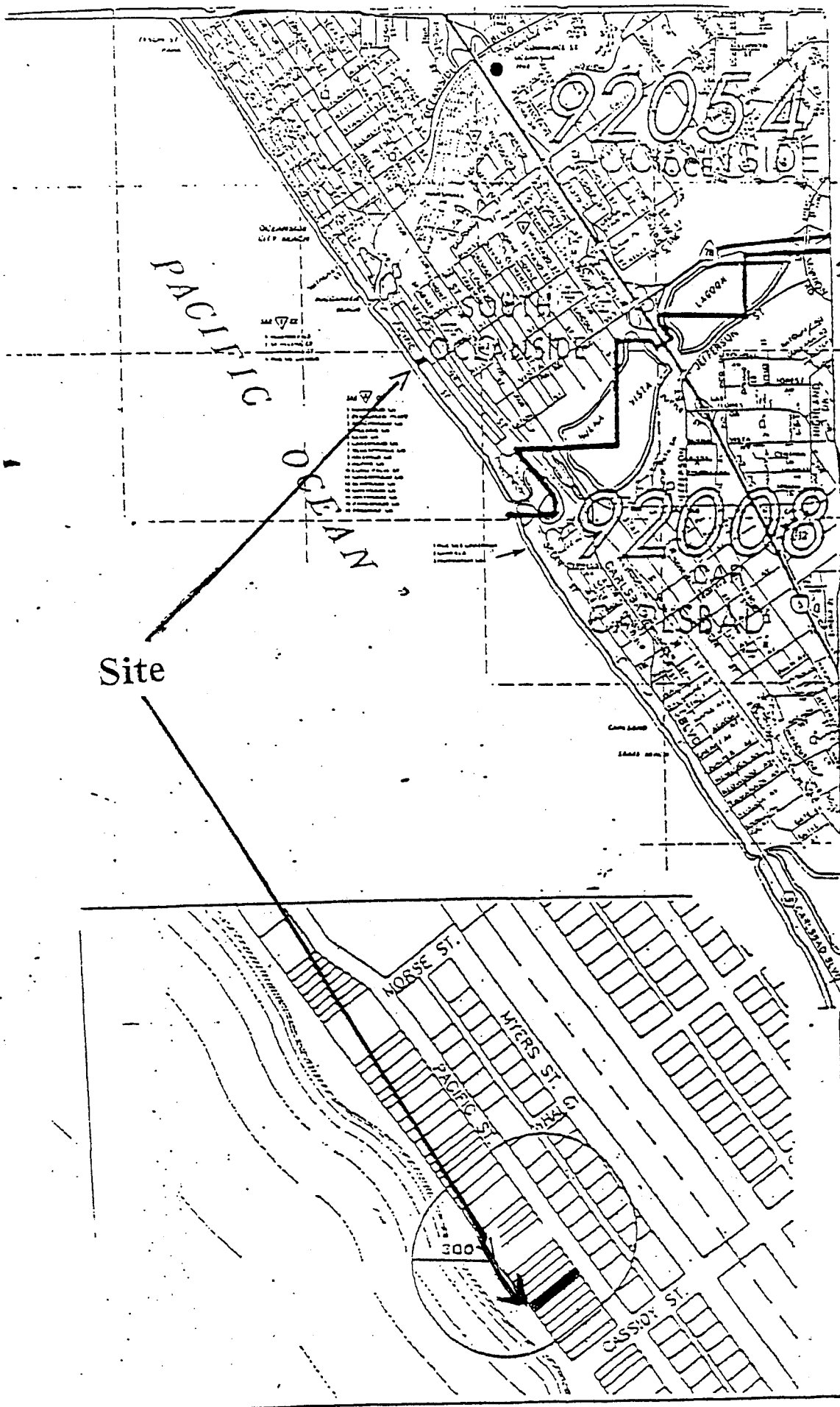



EXHIBIT NO. 1
APPLICATION NO.
A-6-OCN-99-133-A1
Location Map

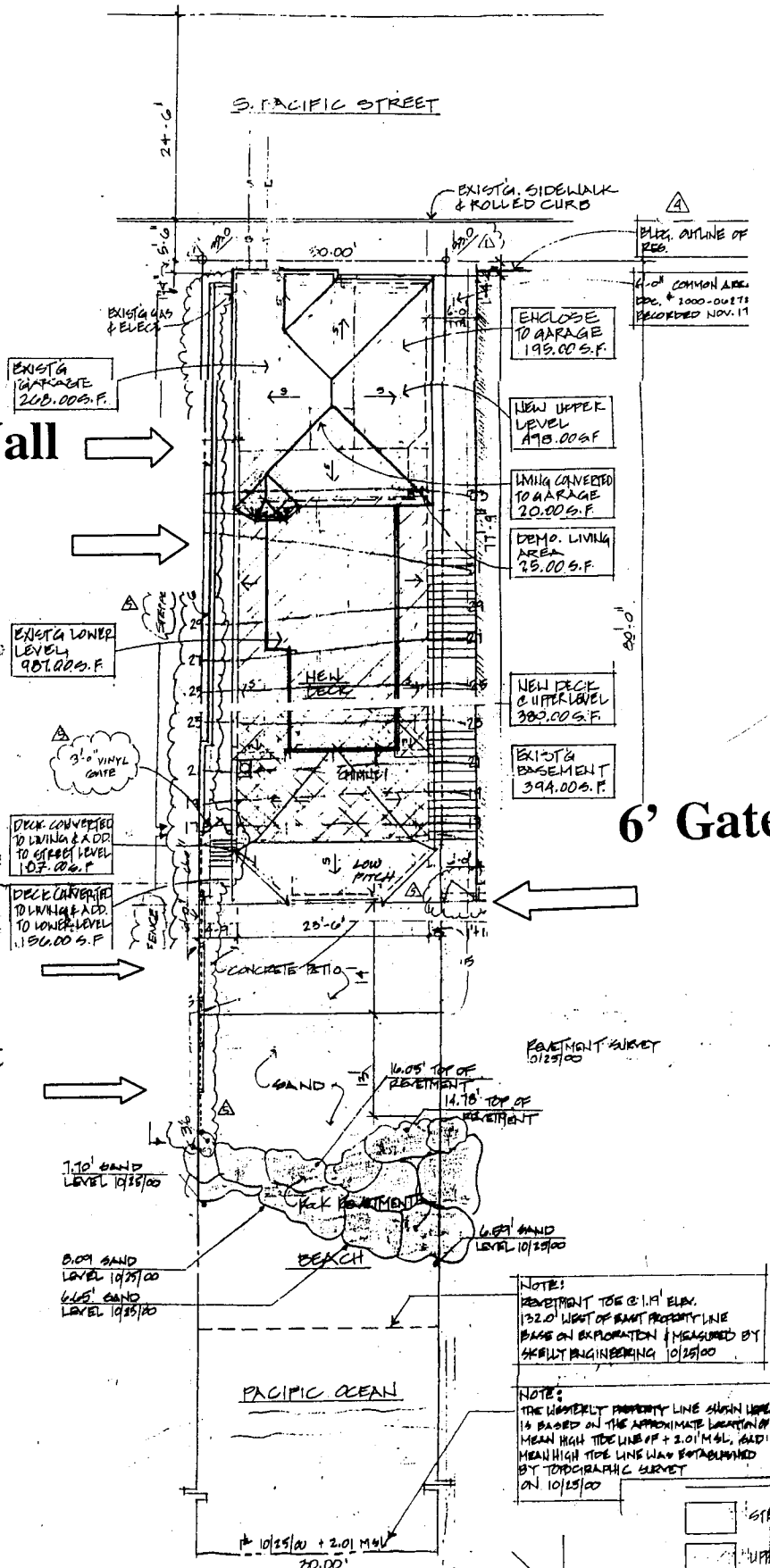
 California Coastal Commission

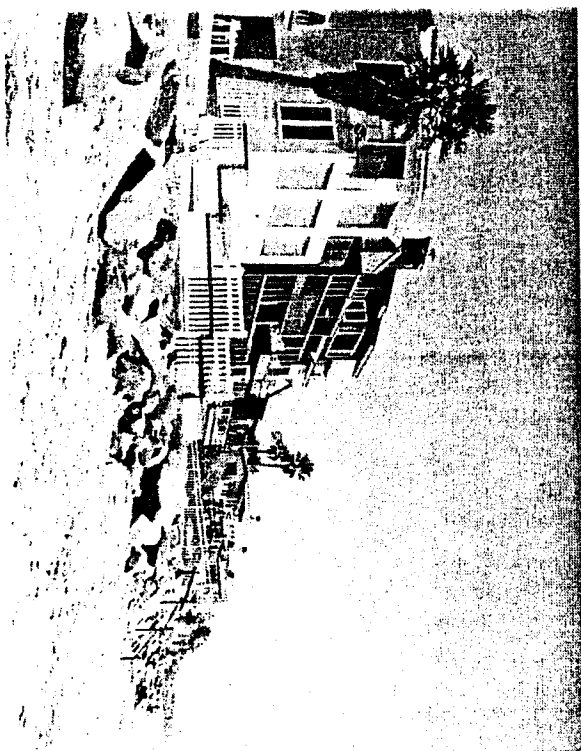
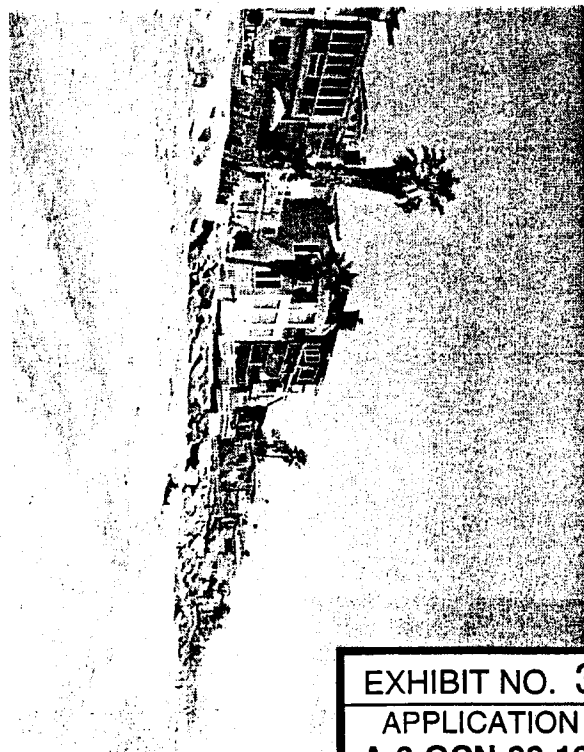
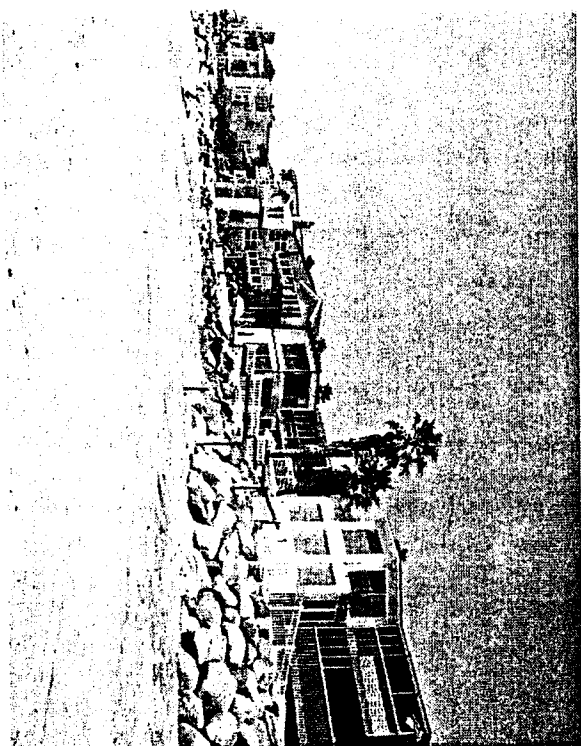
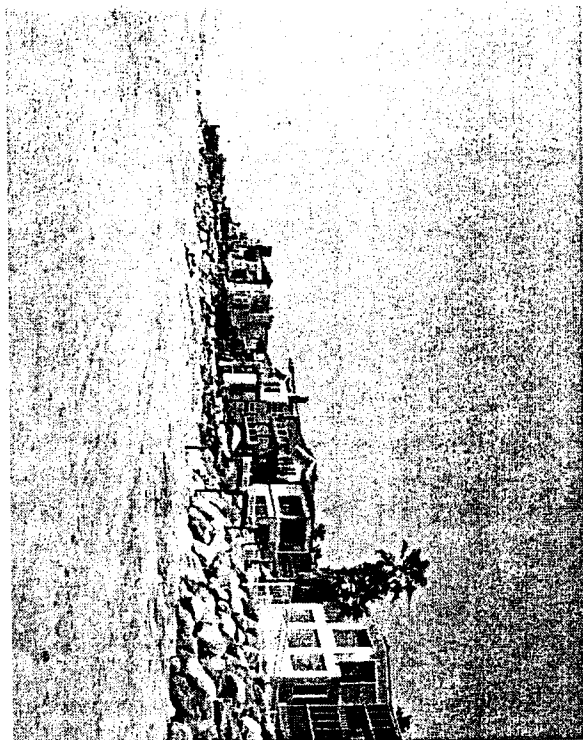


6' Block Wall →

6' Fence to  
Revetment  
(Proposed at  
3' high) →

6' Gate ←

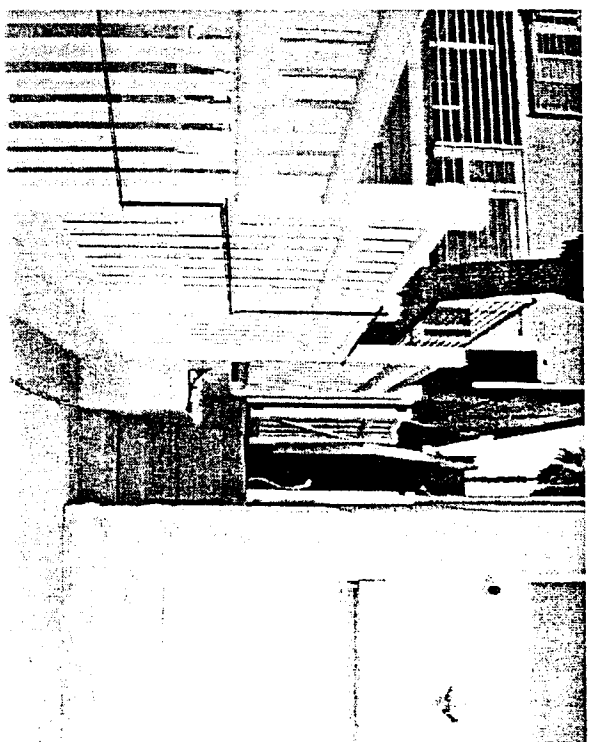
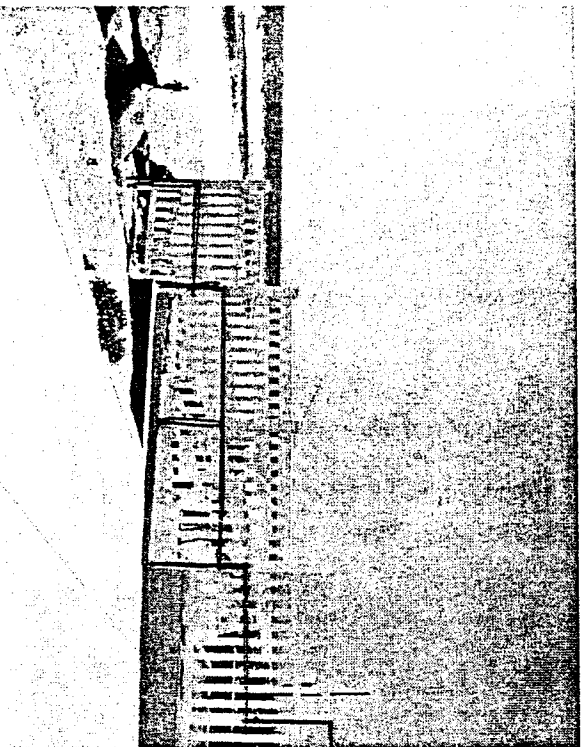
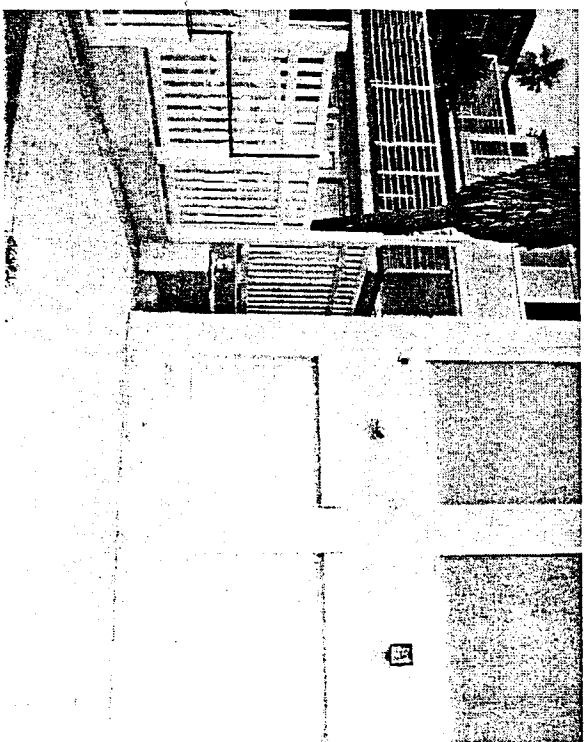
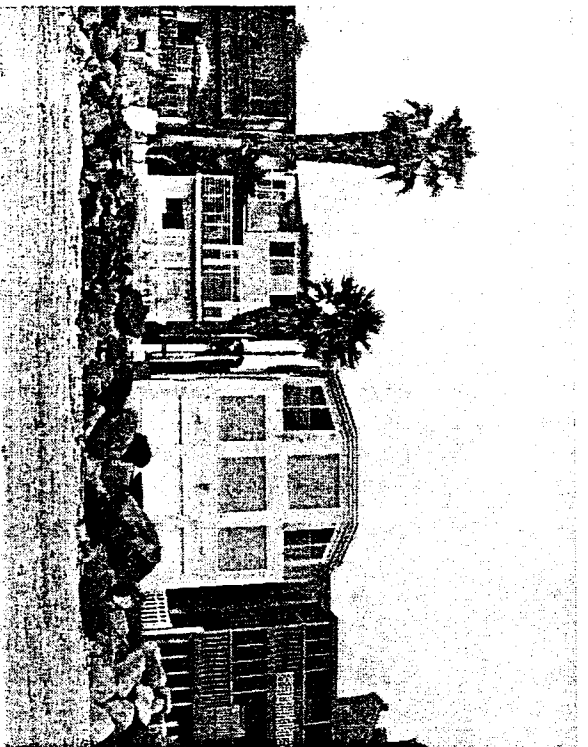




BEACH VIEW OF 1731 S. PACIFIC

2000000 1731 S. PACIFIC

EXHIBIT NO. 3a-c  
APPLICATION NO.  
A-6-OCN-99-133-A1  
Fence to Revetment

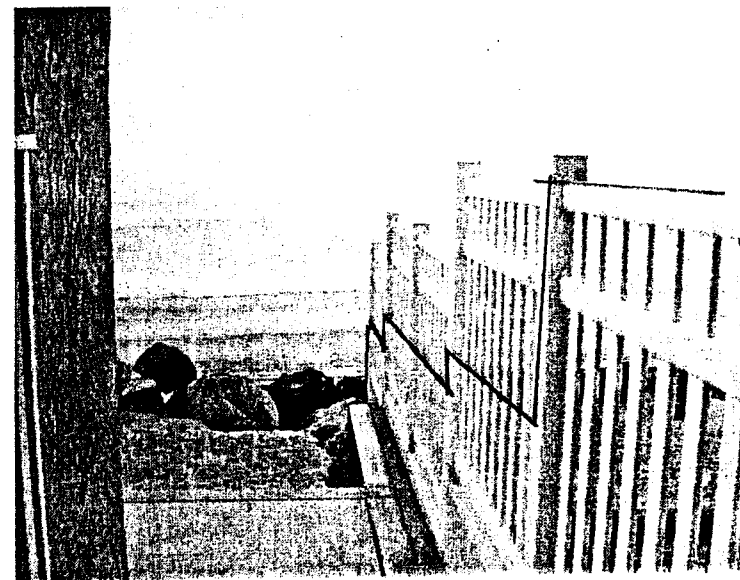
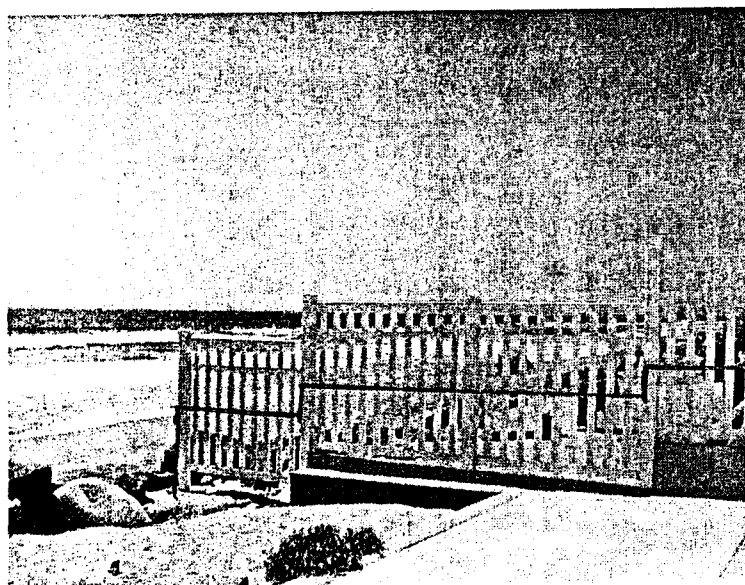


NORTH SIDNEYARD FENCE 1731 S. PACIFIC

PROPOSED CHANGE



NO PROPOSED CHANGE TO EXIST. MASONRY WALL



NORTH SIDEYARD FENCE 1731 S. PACIFIC

PROPOSED CHANGE

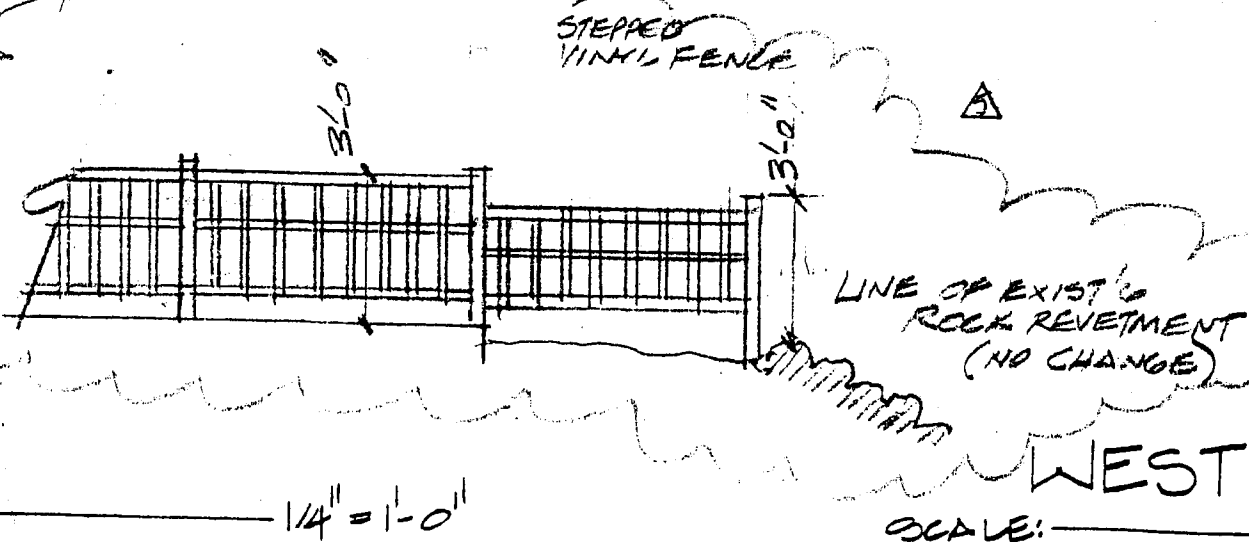
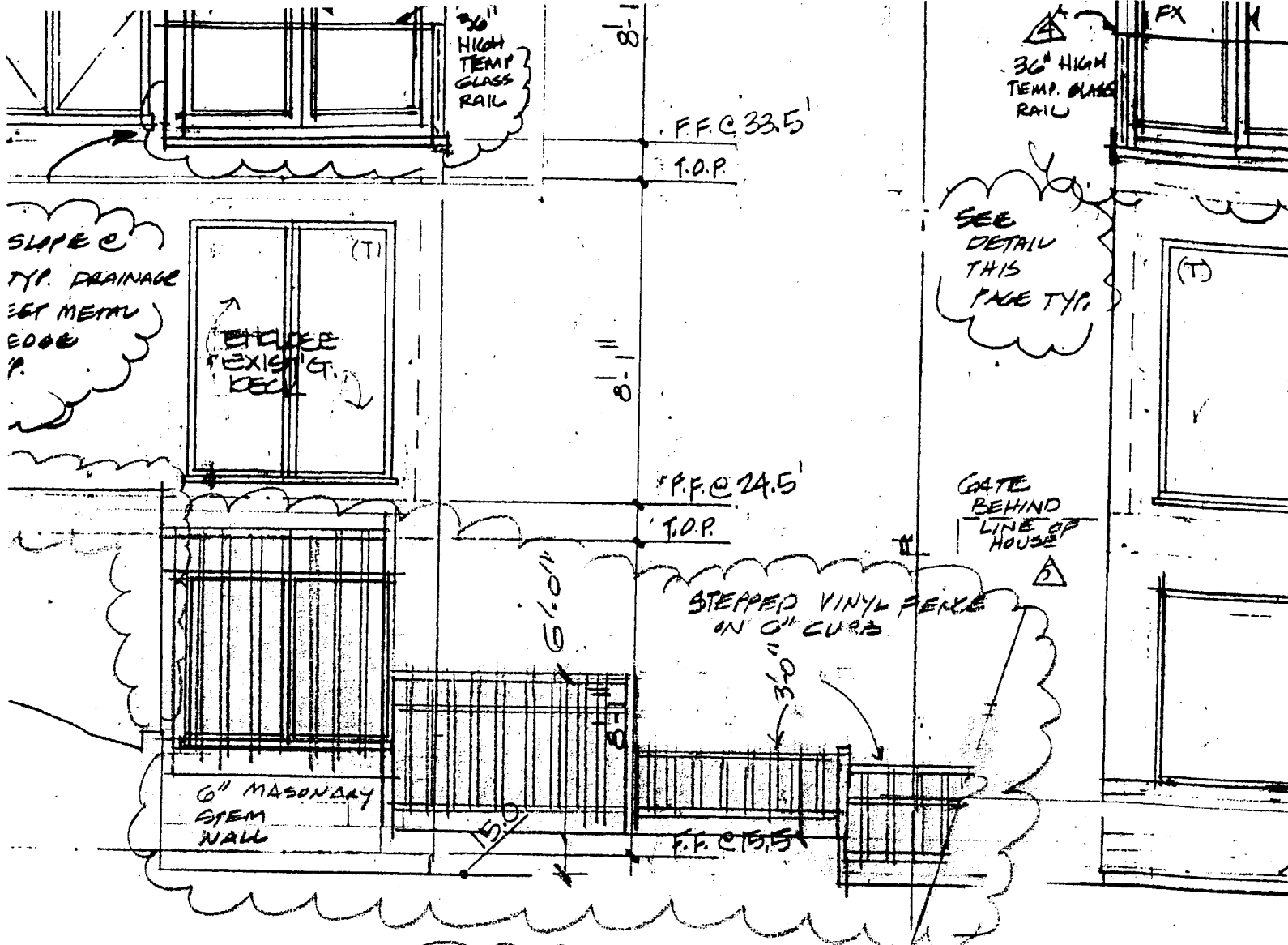


EXHIBIT NO. 4
APPLICATION NO.
A-6-OCN-99-133-A
Fence to Revetmen

California Coastal Commission

January 27, 2005

**RECEIVED**

JAN 27 2005

Committee Members of the Coastal Commission

Re: A-6-OCN-99-133

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Chairperson Caldwell and Coastal Commissioners:

This is the second time this applicant has disregarded the permitting process required for building on beachfront property. One might argue that the first time was in ignorance; however, it is impossible to accept this logic a second time.

The structure built and for which the applicant is asking for leniency clearly violates the LCP, Coastal Act, LUP and the CEQA and must be **DENIED** based on the following violations:

**HEIGHT** - The wall **violates LCP section 1050 U** which limits height to 42 inches. The applicant's wall measures more than 7 feet 4 inches tall in some places.

**STRINGLINE** - The wall **violates LCP section 1050 R** which limits walls/fences to within the stringline. The applicant's wall/fence extends almost 36 feet beyond the stringline.

**PUBLIC VIEW** - The wall **violates Coastal Act Policy Chapter 3 Article 6 and policy 8 of the LUP** which protects the public view. Not only does the wall/fence impact the public view from the beach, it impacts the view from the public walkway on the east side of South Pacific Street.


**California Environmental Quality Act** - We agree with the Commission "that the proposed project can not be found consistent with the requirements of the coastal Act to conform with CEQA Section 21080.5(d)(2)(A)."

As citizens concerned with our region's coastal resources and with a desire to protect them we oppose this development and urge the Coastal Commission to uphold the staff recommendation for a **NO** vote and denial of the permit.

Sincerely,

*Mr. & Mrs. Allen Evans*

Mr. and Mrs. Allen Evans

EXHIBIT NO. 5
APPLICATION NO.
<b>A-6-OCN-99-133-A1</b>
Letter in Support of Staff Recommendation
 California Coastal Commission