

**CALIFORNIA COASTAL COMMISSION**

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**W 3c**

Filed: November 15, 2004  
49th Day: January 3, 2005  
180th Day: May 14, 2005  
Staff: RT-LB  
Staff Report: March 24, 2005  
Hearing Date: April 13-15, 2005  
Commission Action:

**RECORD PACKET COPY****STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-04-441**APPLICANT:** Patricia Smissen**AGENT:** Edward Gulian**PROJECT LOCATION:** 450 Ocean Avenue, City of Seal Beach, County of Orange

**PROJECT DESCRIPTION:** Demolition of an existing single-family residence and construction of a new ocean-fronting 6,249 square-foot, 25 foot-high, two-story plus basement, single-family residence with an attached 700 square-foot, three (3)-car garage.

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing demolition and construction of a new beach fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Commission staff is recommending **APPROVAL** of the proposed project with **Five (5) Special Conditions** regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) additional approvals for any future development; 4) conformance with the submitted drainage and run-off control plan; 5) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit 5-04-361 (Watson), Coastal Hazards and Wave Runup Study, 450 Ocean Avenue, Seal Beach, CA prepared by Skelly Engineering dated November, 2004.

**LOCAL APPROVALS RECEIVED:** City of Seal Beach Approval-in-Concept dated November 8, 2004.

**LIST OF EXHIBITS**

1. Location Map
2. Assessor's Parcel Map
3. Site Plan/Drainage Plan
4. Elevations

**STAFF RECOMMENDATION:**

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

**MOTION:**

*I move that the Commission approve the coastal development permit applications included on 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:**

**I. APPROVAL WITH CONDITIONS**

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**

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 this permit is reported to the Commission. 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**

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

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding and wave uprush; (ii) to assume the risks to the applicants 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 Shoreline Protective Device**

- A.** By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-04-441 including, but not limited to, the residence, garage, foundations, and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves 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 applicants agree, on behalf of themselves and all successors and assigns, that the permittees shall remove the development authorized by this permit, including the residence, garage, foundations, 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 any portion of the development is destroyed, the permittees 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.

#### **3. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-04-441. 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. 5-04-441. Accordingly, any future improvements to the structure 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. 5-04-441 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**4. Drainage and Run-Off Control Plan**

The applicants shall conform with the drainage and run-off control plan received on March 1, 2005 showing roof drainage and runoff from all impervious areas directed to catch basins or vegetated/landscaped areas. 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 required.

**5. 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 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 (hereinafter referred to as the 'Standard and Special Conditions'); and (2) imposing all Standard and 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 applicant's entire parcel or parcels. 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**

The Commission hereby finds and declares:

**A. PROJECT DESCRIPTION**

The project site is located at 450 Ocean Avenue in the City of Seal Beach, Orange County (Exhibit #1). The City of Seal Beach Zoning Code designates use of the site for Residential Low Density and the proposed project adheres to this designation. The City of Seal Beach does not have a certified LUP or LCP and the land use designation is not certified by the Commission. The proposed project is development within an existing urban residential area, located northwest of the Seal Beach Municipal Pier. Though the project site is in an urban residential area, it is located just inland of the beach and will be on a site which slopes upward as it goes inland. The project is between the first public road and the sea and there is a wide sandy beach, approximately 400 feet wide, between the subject property and the mean high tide line.

The subject site is comprised of two building sites, one corner site measuring 42 ½ feet wide by 196 feet deep (8,330 square feet), which is where the new single-family residence will be constructed. The other building site, which will remain vacant for future development, measures 32 ½ feet wide by 196 feet deep (6,370 square feet). The existing single-family residence, which will be demolished, currently straddles both building sites. The current local zoning requirements

require that new lots measure 50 feet wide by 100 feet deep and that new corner lots measure 55 feet wide by 100 feet deep. The existing building sites are inconsistent with the current local zoning requirements in the fact that the corner site is only 42.5 feet wide, as opposed to the required 55 feet, and the other building site is only 32.5 feet wide, as opposed to the required 50 feet. However, the building sites are pre-existing lots and the applicant is not proposing a subdivision as part of this project. The City has reviewed the proposed project and found it consistent with local zoning requirements, as evidenced by their Approval-In-Concept, dated November 8, 2004. The proposed single-family residence site and possible future development site are consistent with the pattern of development in this area along Ocean Avenue.

The applicant is proposing to demolish the existing single-family residence and construct a new ocean-fronting, 6,249 square-foot, two-story plus basement single-family residence, with an attached 700 square-foot three (3)-car garage (Exhibit #3). The resultant structure would be 3 stories (33 1/2 -feet high) on the beach side and 2 stories (25-feet high) on the street side. No new landscaping will take place and no grading is proposed.

The proposed residence would conform to the informal stringline established by an abandoned right-of-way (alley). The abandoned alley runs between, and parallel to, Ocean Avenue and the beach. The abandoned alley extends across the middle of the lots located both north of the Seal Beach municipal pier and seaward of Ocean Avenue. The City has established the landward boundary of the abandoned alley as the limit, or stringline, for seaward encroachment of enclosed living space and the City has established the seaward boundary of the abandoned alley as the limit, or stringline, for seaward encroachment of new patios or decks. The enclosed living area of the proposed home would not encroach past the inland boundary of the abandoned street right-of-way that the City uses as the stringline for beachfront development of residential structures. In addition, the proposed decks would not encroach past the seaward boundary of the abandoned street right-of-way that the City uses as the stringline for beachfront development of new patios and decks. Through its various permit actions, the Commission has found that these living space and patio/deck stringlines establish appropriate limits of development along this stretch of Ocean Avenue located upcoast of the Seal Beach pier.

The applicant is proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to permeable areas and catch basins (Exhibit #3).

#### **B. HAZARDS**

Development adjacent to the ocean 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, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and 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. 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 be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

**D. 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 the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

**E. 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 design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-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 with 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.

**F. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

**G. LOCAL COASTAL PROGRAM**

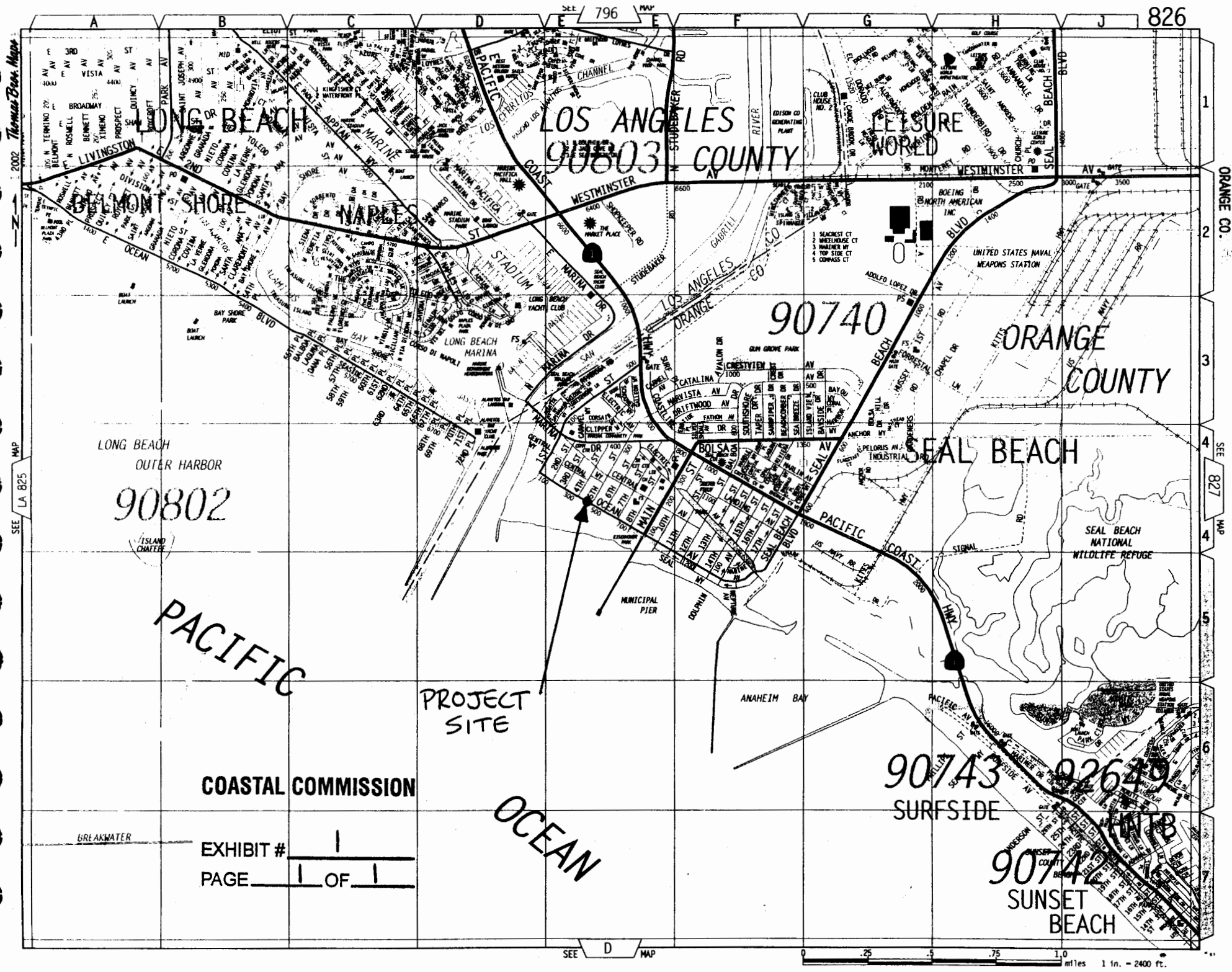
Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

**H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



SEE 796 MAP  
SEE LA 825 MAP  
SEE D MAP

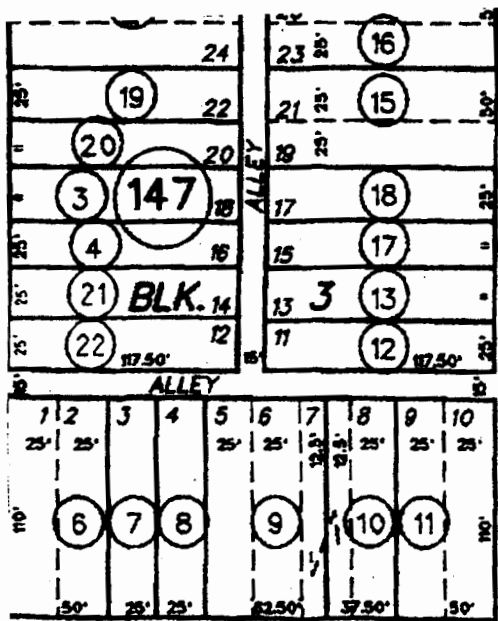
ORANGE CO.

SEE 827 MAP

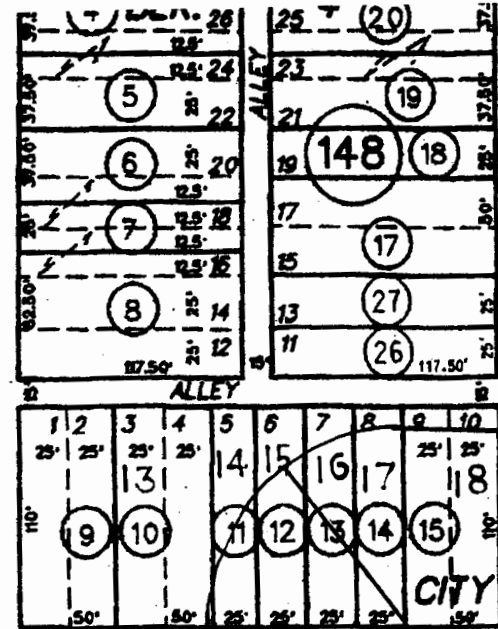
COASTAL COMMISSION

EXHIBIT # 1  
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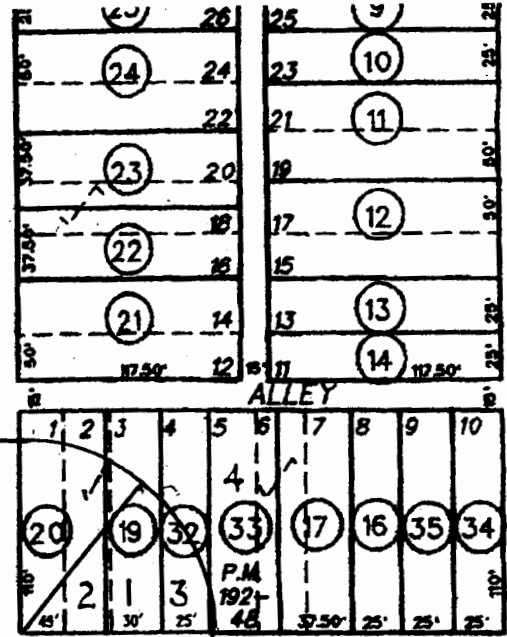
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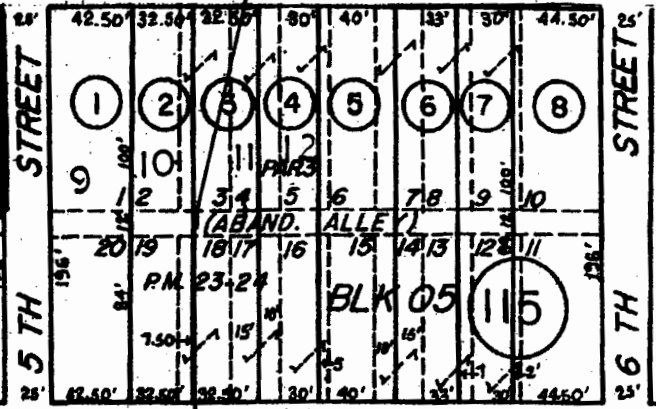
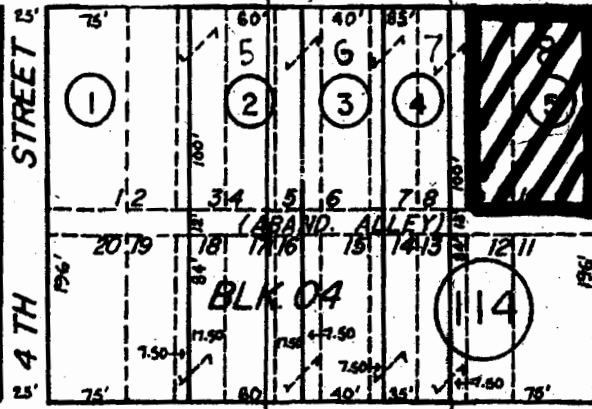
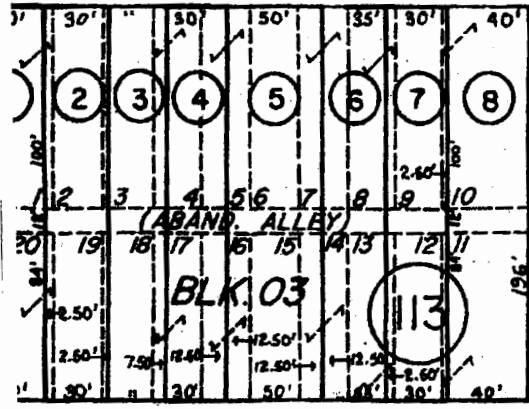
FOURTH



FIFTH



SIXTH



PROJECT SITE  
 AVENUE OCEAN

100' COASTAL ZONING  
 450 OCEAN AVE.  
 SEASIDE BEACH

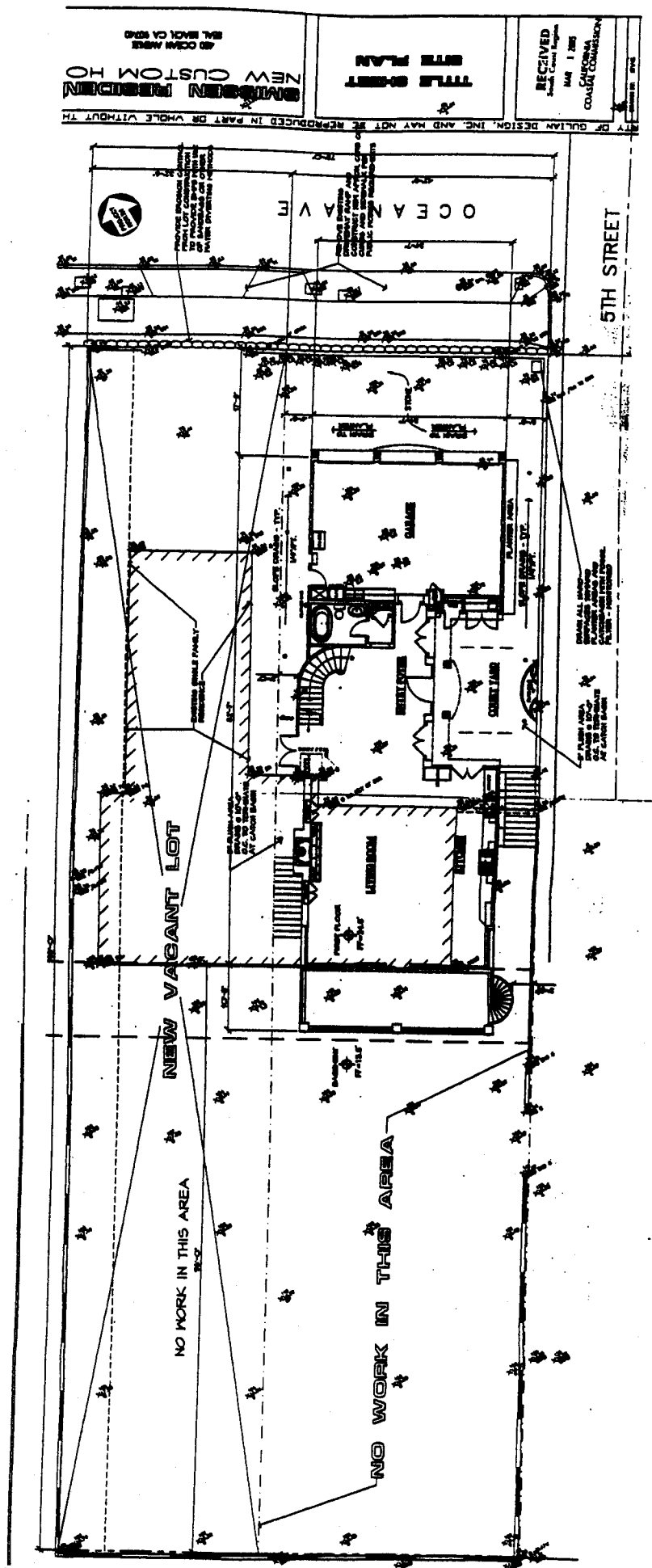
① BLK. M AGREEMENT PER DEED 8336/954 NO. 2

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EXHIBIT # 2  
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EXHIBIT # 3

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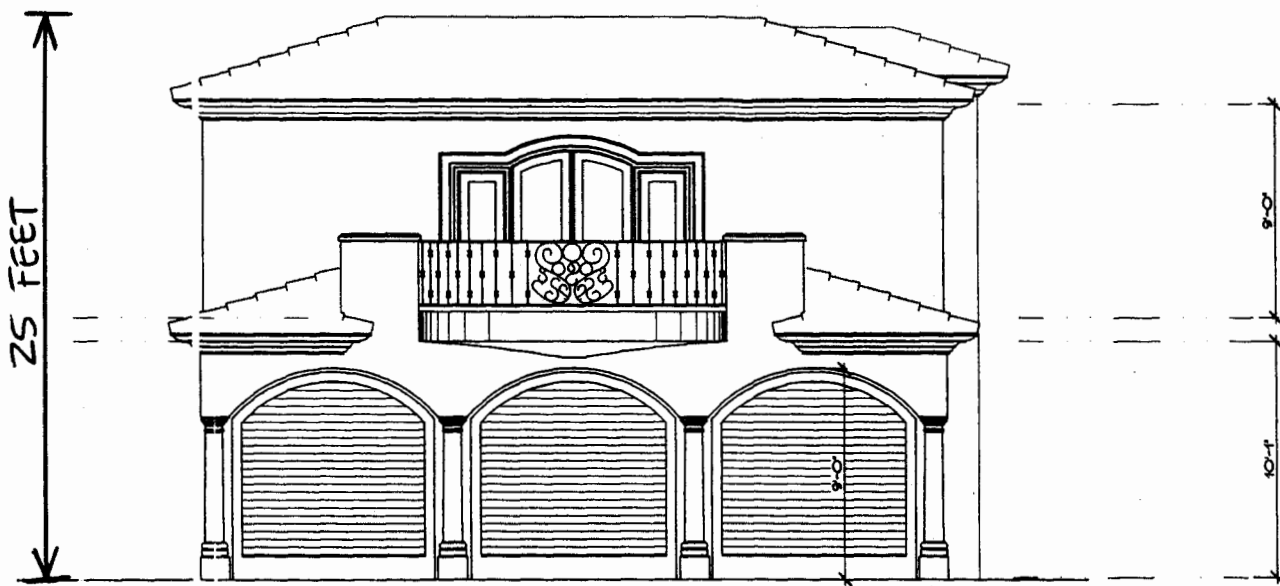




SOUTH ELEVATION  
SCALE: 1/4"=1'-0"

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EXHIBIT # 4  
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NORTH ELEVATION (OCEAN AVE)  
SCALE: 1/4"=1'-0"

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EXHIBIT # 4  
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