

CALIFORNIA COASTAL COMMISSION

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

Th 18a

Staff: Meg Vaughn-LB
Staff Report: April 19, 2007
Hearing Date: May 9-11, 2007
Commission Action:

**STAFF REPORT: DISPUTE RESOLUTION ON AMENDMENT REJECTION****DISPUTE RESOLUTION**

NUMBER: 5-07-127-EDD

APPLICANT: Piedmont Cove Homeowners Association

PROJECT LOCATION: Piedmont Circle and Pacific Coast Highway
APNs: 178-451-14 through 178-451-18
And 178-451-21 through 178-451-26
Huntington Beach, Orange County

DESCRIPTION:

Public hearing on an appeal of the Executive Director's determination to reject a request to amend a previously approved coastal development permit (P-79-5948) in a manner that would impact public access to the harbor.

DESCRIPTION OF AMENDMENT REQUEST:

Request to construct gates across the vehicular and pedestrian vertical public accessways from Pacific Coast Highway to the bulkhead at Huntington Harbour, and, construction of spa equipment within the lateral accessway along the bulkhead.

DESCRIPTION OF PREVIOUSLY APPROVED PROJECT:

Subdivision of one lot into five new lots and a common easement, construction of one new single family home on each new lot, construction of a bulkhead, and construction of five boat slips. Approval of the original permit required lateral and vertical access to and along the bulkhead.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending that the Commission uphold the Executive Director's determination that the proposed amendment request would avoid or lessen the intended effect of the previously approved permit because the development proposed in the amendment request would physically obstruct the public accessways required by the previously approved conditional permit. In addition, the proposed development would create the appearance that the accessways are not available to the public at all. Public access at the subject site is particularly important for two reasons: 1) public access opportunities are extremely limited within Huntington Harbour, and 2) the accessway at the subject site links to an

existing open accessway along the bulkhead that extends to the Peter's Landing commercial development that fronts on Huntington Harbour.

Commission staff notified the applicants of the Executive Director's determination rejecting the application based on Section 13166 of the California Code of Regulations on 12/22/06. The applicants responded with an appeal of the Executive Director's determination on 1/8/07.

I. STAFF RECOMMENDATION ON AMENDMENT REJECTION:

Staff recommends that the Commission adopt the following findings and resolution to determine that the proposed amendment would avoid or lessen the intended effect of the originally approved coastal development permit. See California Code Regulations, Title 14, §13166.

MOTION:

"I move that the Commission reject the Executive Director's determination to reject the request to amend coastal development permit P-79-5948 in a manner that would impact public access."

Staff recommends a **NO** vote on the motion. Failure of this motion will result in (1) the Commission upholding the Executive Director's determination that the proposed amendment request would lessen or avoid the intended effect of the conditionally approved permit and therefore must be rejected; and (2) the Commission's adoption of the following resolutions and findings.

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

Resolution:

The Commission hereby: (1) rejects the proposed amendment request; and (2) adopts the findings to support its decision as set forth in the staff report.

EXHIBITS

- A. Vicinity Map
- B. Proposed Amendment Site Plan
- C. Coastal Development Permit No. P-79-5948
- D. Recorded Access Document
- E. Public Access Walkways Along in Project Vicinity
- F. Letter Rejecting Amendment Request
- G. Letter Appealing Amendment Rejection

III. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. DESCRIPTION OF PREVIOUSLY APPROVED DEVELOPMENT

Coastal Development Permit No. P-79-5948 was approved by the Coastal Commission on October 22, 1979, subject to two special conditions which required: 1) vertical access from Pacific Coast Highway to the bulkhead property line, and 2) lateral access over the (5) foot walkway on top of the bulkhead as shown in the plans.

The Coastal Development Permit No. P-79-5948 (see Exhibit C) project description states:

“Subdivision of land creating 5 parcels; 2488 sq. ft., 2610 sq. ft., 2850 sq. ft., 3268 sq. ft., and a common access easement where one 32, 670 sq. ft. parcel now exists, and construct 5 identical 3-story, 3850 sq. ft. SFD’s with 3-bdr, sitting room, family room, and attached 2-car garage, a bulkhead and 5 boat slips are to be constructed as a part of the project. All newly created lots are zoned R-2 and less than 4000 sq. ft. in area; 33’ above AFG.”

Subsequently, the project was modified by Coastal Development Permit Amendment No. A-80-6590, allowing a reduction in the size of the boat slips to 17 feet wide and to increase the number of boat slips to seven. However, that amendment was later superseded by Coastal Development Permit Amendment No. 5-81-401A under which the number of boat slips reverted to five and the final slip configuration was approved. In addition, four permit extensions were granted. None of these actions made any changes to the previously imposed public access requirements.

The subject site is located within the City of Huntington Beach and fronts on the waters of Huntington Harbour. Although the City has a certified Local Coastal Program, the original permit was approved prior to certification of the City’s LCP. The proposed amendment would affect the special conditions of the Commission’s previous action and so the matter comes under the jurisdiction of the Coastal Commission.

B. DESCRIPTION OF PROPOSED AMENDMENT

The applicants are proposing a vehicular gate on the driveway from Pacific Coast Highway to the residential development, and a pedestrian gate attached to the vehicular gate, and placement of spa equipment, including but not limited to an enclosure fence, seaward of the southernmost of the existing homes. The proposed gates are located within the required public vertical accessway to the

bulkhead. The spa equipment is located within the required public lateral access walkway along the bulkhead and waters of Huntington Harbour.

The applicants propose to leave the pedestrian gate “propped open” during daylight hours to prevent the gate from automatically swinging shut and locking. The applicants proposed to attach “a light-sensitive automatic locking mechanism to the gate” so that it can be locked after nightfall.

The proposed spa equipment consists of a spa motor, filtration system, electrical equipment, and an enclosure fence at the southeastern-most corner of the site. The proposed spa equipment would occupy approximately 9 square feet within the five foot wide lateral access walkway. In the area of the spa equipment, the walkway was constructed at a width of only 3 feet. The proposed spa equipment, including the enclosure fence, would completely obstruct the entire walkway in this location.

C. EXECUTIVE DIRECTOR’S DETERMINATION TO REJECT AMENDMENT REQUEST

Section 13166 of the California Code of Regulations requires that an amendment request be rejected if, in the opinion of the Executive Director, the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

The Executive Director has determined that the proposed amendment request would lessen and avoid the intended effect of the conditionally approved coastal development permit, specifically with regard to public access. In approving the permit, the Commission found that the proposed development could be found consistent with the public access policies of the Coastal Act only if the public vertical and lateral accessways were provided. The development proposed under the amendment request would significantly impinge upon the public’s ability to access the walkway along the bulkhead at the subject site, which is adjacent to the waters of Huntington Harbour by placing gates within the vertical accessway and by placing private spa equipment within the lateral accessway. Not only would the development proposed by the amendment create physical impediments to public access, but it would also create the appearance that the accessways are private and not intended for use by the public use.

The imposition of the special conditions requiring the provision of public access to and along the waters of Huntington Harbour were necessary to find the original development consistent with the public access policies of the Coastal Act. The intended effect of imposing the special conditions requiring public access was to assure that development approved under the original permit would not limit access to the waters of Huntington Harbour and to assure that public access to the sea (waters of Huntington Harbour) was maximized. Were it not for imposition of these conditions, the Commission could not have found the development approved by

the coastal development permit to be consistent with the public access policies of the Coastal Act.

No newly discovered material information which could not, with reasonable diligence, have been discovered and produced before the permit was granted, has been provided to support the applicants' amendment request. Therefore, the Commission upholds the Executive Director's rejection of the amendment request on the grounds that it lessens and avoids the intended effect of the Commission's original conditional approval of Coastal Development Permit No. P-79-5948.

D. PROPOSED AMENDMENT'S EFFECT ON INTENT OF PREVIOUSLY APPROVED COASTAL DEVELOPMENT PERMIT: PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act states, in pertinent part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development except where ... [exceptions do not apply].

1. Existing Public Access in Huntington Harbour

Development of Huntington Harbour began in the early 1960s. It was developed primarily as a residential community fronting on a system of navigable channels and waterways. It encompasses 860 acres, of which 225 acres are water. There is some waterfront land available to the public within the harbor, but the vast majority of the waterfront is overwhelmingly inaccessible to the general public. There is a visitor commercial center, known as Peter's Landing, located at Pacific Coast Highway and Anderson Street. Peter's Landing includes a marina with some overnight slips for rent, a marine store, restaurants, and shops. There are no other visitor serving commercial uses on the water in Huntington Harbour within the City. The public accessways at the subject site are especially important because they link up to the existing public walkway that extends along the bulkhead to the Peter's Landing commercial development. Taken together, the accessways provide roughly 1/3 of a mile of continuous public access to the harbour.

There are small pockets of recreational uses that front on the harbor waters. These include four pocket parks/beaches that are approximately equivalent in size to a few single family lots, and one neighborhood size park, Seabridge Park, located at the end of Countess Drive. There is also a public walkway along the

bulkhead on Trinidad Island that extends along about half of the water frontage of the island (approximately one mile). (See Exhibit E).

There is also a public parking lot and small fishing pier just at the eastern end of the harbour, along Warner Avenue, that front on the harbor. Also along Warner Avenue, is a site designated in the certified LUP as Public (Open Space-Commercial Recreational). This site is developed with a fire station, the Huntington Harbour Yacht Club, a public parking lot and boat launch ramp. There are two small boat rentals (kayaks, etc.), and a motel along Pacific Coast Highway that front on the waters of Huntington Harbour within the unincorporated County area of Sunset Beach. Other than the areas described above, the harbor waterfront within the City is entirely residential, with no public access along the water.

With all the inlets, bays, and islands in Huntington Harbour there are literally miles of waterfront land. However, only a small fraction of that waterfront area is available to the general public. The proposed amendment would further limit the public's ability to access the harbor's waterfront. Restricting public access as is proposed by the amendment request is inconsistent with Sections 30210 and 30212 of the Coastal Act which require that public access be maximized. This is described further below.

2. Proposed Amendment's Impacts on Public Access

Coastal Development Permit P-79-5948 was approved by the Coastal Commission on October 22, 1979, with two special conditions. The special conditions (see exhibit C) require that the applicant 1) record a deed restriction granting vertical access to the public from Pacific Coast Highway to the bulkhead property line and extending from the edge of the public right-of-way to the mean high tide line of the Pacific Ocean, and 2) offer to dedicate a lateral access easement to allow the public to pass and repass from **the street to the bulkhead** and pass and repass **over the five (5) foot walkway on top of the bulkhead** as shown on the plans (emphasis added). As is reflected in the special condition, the irrevocable offer to dedicate the access easement applies to both the lateral (along the bulkhead) and to the vertical (from Pacific Coast Highway to the bulkhead) access ways. The special conditions were met via documents recorded in the official records of Orange County on September 26, 1985 (see Exhibit D). In the recorded document, Section X 2. "Declaration of Restrictions" states, in pertinent part: "The Grantor is restricted from interfering with the use by the public of the area subject to the offered easement for public access." Furthermore, as stated in the above referenced document, the Commission found that but for the imposition of the above conditions, the proposed development could not have been found consistent with the public access policies of Sections 30210 and 30212 of the Coastal Act, and without which conditions the Commission could not have granted the permit. The California Coastal Conservancy recently accepted the offered public access easements.

The subject public accessways are especially significant for two reasons: 1) very little public access to and along the waters of Huntington Harbour exists, and 2) the lateral access links to an existing, open bulkhead walkway that extends from the subject site to the Peter's Landing commercial development. Thus it is likely to

be used by patrons of that development. Especially because the likelihood of use is increased by its link to the existing public accessway along the bulkhead, the provision of public access at the subject site is all the more critical.

The gates proposed within the public pedestrian vertical accessway would create a significant impediment to public use. Not only would the gates themselves physically obstruct public access, their mere presence would create the appearance that the public vertical accessway is private and not available for general public use. This is especially true because the pedestrian gate is proposed as an attachment to the vehicular gate, creating a single structure across both the driveway and pedestrian walkway with no distinction between the required public access walkway and the private driveway. Even if the vehicular gate were designed in a manner that distinguished it from the pedestrian access, the gate would create an impression of exclusivity and would serve as a deterrent to public access. This would lessen the effect of the previously approved permit. Due to existing development patterns in Huntington Harbour, public access to the harbour waters is already extremely constrained. The proposed gates across the public vertical accessway would further exacerbate the already limited public access opportunities within the Huntington Harbour area.

Furthermore, with an “automatic locking mechanism” on the gate proposed across the pedestrian vertical accessway, maintaining the gate open becomes even more difficult. The applicant’s proposal is to “prop” the gate open. The gate could inadvertently shut, and would then be locked to all until someone with a key unlocks it. This does not provide any assurance of on-going access availability

The proposed spa equipment would occupy approximately 9 square feet within the lateral access walkway. This represents a substantial encroachment into the limited walkway area. In the area of the spa equipment, the walkway was constructed at a width of only 3 feet. The proposed spa equipment would occupy virtually the entire walkway in this location, making passage practically impossible. Not only does such private development within the public accessway physically obstruct public access, even if the public could get around the equipment, it also creates the impression that the accessway is not open to the public.

Moreover, a public access walkway along the bulkhead is open and functioning on the other side of an unpermitted wall extension that borders the spa equipment¹. This public walkway extends for a distance of 1/3 of a mile along the area of the water side of the “Peter’s Landing” visitor serving commercial development and along the water frontage of a large residential complex, to the subject site. Thus, the accessway at the subject site would connect with an existing walkway system along the bulkhead on Huntington Harbour (see Exhibit E).

Providing public access along the waterfront in Huntington Harbour is especially important because much of the waterfront in the harbor is developed with single family residences that interfere with public access to the waterfront. Thus, maintaining and enhancing public access along the harbor front is critical in

¹ The unpermitted wall extension is located immediately adjacent to, but just off the subject site. The Commission’s Enforcement Division will evaluate further action against the applicant to address this matter.

assuring that maximum access is provided as required by Section 30210 of the Coastal Act.

E. CONCLUSION

The proposed amendment would lessen and avoid the intended effect of the Commission's previous action in approving the original permit with special conditions requiring that public access be provided. Placing development within and adjacent to the required public accessways physically obstructs public access as well as creating the impression that the area is private and not available for public use. Therefore, the Commission upholds the determination of the Executive Director to reject the amendment request pursuant to California Code of Regulations Section 13166.

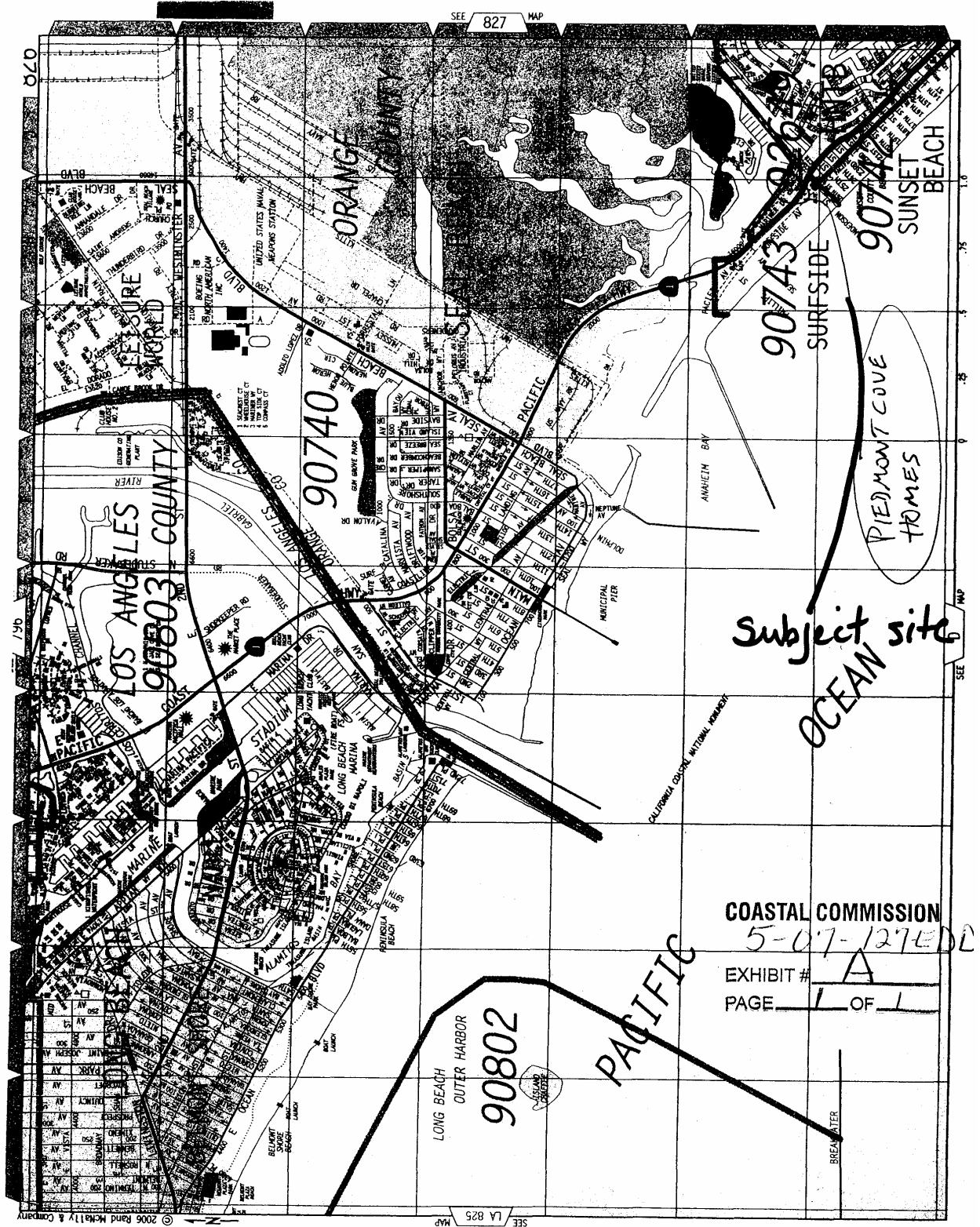
F. Unpermitted Development

Development has occurred on site without the required coastal development permit, including construction of a pedestrian gate and a vehicular gate across the required vertical public access way, and construction of spa equipment within the lateral public accessway (these are the subjects of this permit amendment request).

Additionally, an unpermitted wall extension has been constructed across the lateral accessway, apparently by the applicant. The unpermitted wall extension is located immediately adjacent to, but just off the subject site. However, the wall extension is contiguous with the property line wall approved pursuant to the coastal development permit which authorized subdivision of the property at issue and construction of homes.

This amendment request was submitted by the applicants in response to communication with the Commission's Enforcement Division. The applicants are proposing to amend the original permit to maintain the unpermitted development. In this case, staff rejected the amendment request because it would avoid or lessen the intended effect of the originally approved coastal development permit. Consequently, the Commission's Enforcement Division will evaluate further action to address the unpermitted development that is proposed to be retained. In addition, the unpermitted wall extension is not part of the proposed amendment request, therefore, the Commission's Enforcement Division will evaluate further action to address this matter as well.

Although unpermitted development has occurred onsite, consideration of the amendment request by the Commission is based solely upon Section 13166 of the California Code of Regulations.



COASTAL COMMISSION
5-07-127-EDD
EXHIBIT # A
PAGE 1 OF 1

Subject site
Piedmont Cove Homes
OCEAN

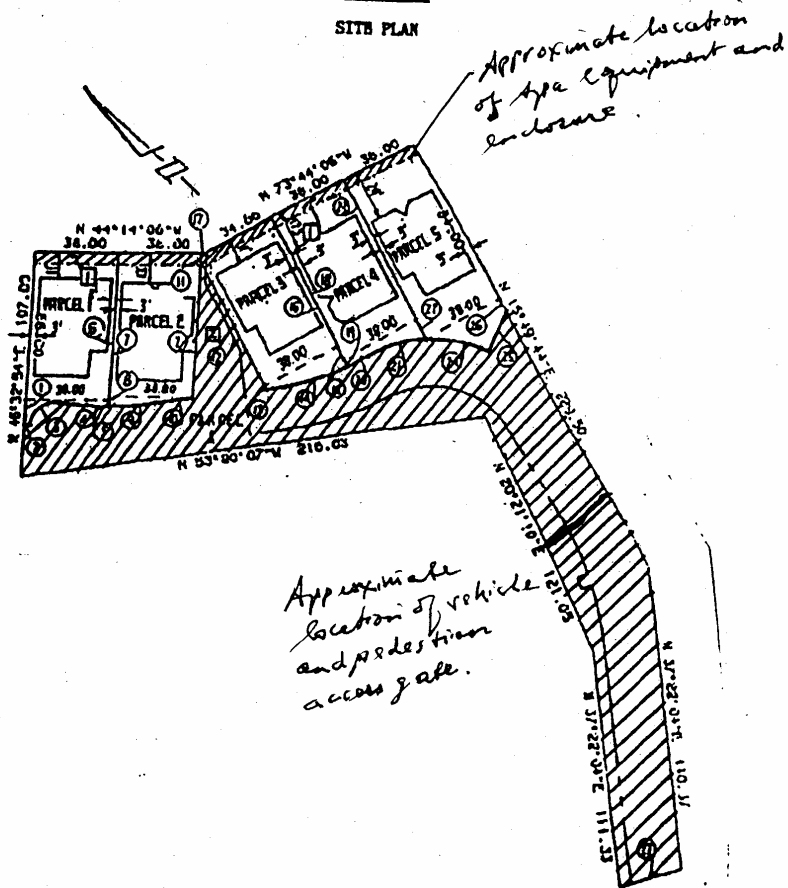
90740

90802

PACIFIC

LONG BEACH OUTER HARBOR

EXHIBIT "B"
SITE PLAN



COASTAL COMMISSION

5-07-127-EDD

EXHIBIT # P

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800885

STATE OF CALIFORNIA

EDMUND G. BROWN, JR., Governor

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450

LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648



COASTAL DEVELOPMENT PERMIT

Application Number: P-79-5948

Name of Applicant: Joseph & Barbara Noble

5400 The Toledo, Long Beach, CA 90803

Permit Type: Emergency
 Standard
 Administrative

Development Location: 16280 & 16288 Pacific Coast Highway

Huntington Beach, CA

Development Description: Subdivision of land creating 5 parcels; 2488 sq. ft., 2610 sq. ft., 2683 sq. ft., 2850 sq. ft., 3268 sq. ft., and a common access easement where one 32,670 sq. ft. parcel now exists, and construct 5 identical 3-story, 3850 sq. ft. SFD's with 3-bdr, sitting room, family room, and attached 2-car garage, a bulkhead and 5 boat slips are to be constructed as a part of the project. All newly created lots are zoned R-2 and less than 4000 sq. ft. in area; 33' above AFG.

I. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

see page 3 of 3

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5-07-127-EDD

EXHIBIT # C

PAGE 1 OF 3

Condition/s Met On _____ By dp

The South Coast Commission finds that:

A. The proposed development, or as conditioned;

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and 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 California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

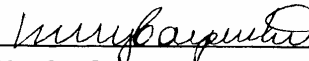
III. Whereas, at a public hearing, held on October 22, 1979 at Huntington Beach by a unanimous ~~no~~ vote permit application number P-79-5948 is approved.

IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

VI. Work authorized by this permit must commence within two years from the date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VII. Issued on behalf of the South Coast Regional Commission on November, 197 9.



M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number P-79-5948 and have accepted its contents.

(date)

EX. C2

(signature)

Conditions: Prior to issuance of permit, applicant shall submit:

1. a deed restriction for recording granting vertical access to give the public the privilege and right to pass and repass over a strip of dedicatory's said real property five feet in width measured from Pacific Coast Highway to the bulkhead property line and extending from the edge of the public right-of-way to the mean high tide line to the Pacific Ocean; and
2. execute an irrevocable offer to dedicate a lateral access easement to a public agency or private nonprofit association approved by the Executive Director to allow the public to pass and repass over the Street from Pacific Coast Highway to the five (5) foot sidewalk, fence to the bulkhead, and pass and repass over the five (5) foot walkway on top of the bulkhead as shown on the plans.

* * * * *

Ex-C₃

CONFORMED COPY
Not Compared with Original

Recording Requested by and
When Recorded, Mail to:

CALIFORNIA COASTAL COMMISSION
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-10 45 AM SEP 26 '85

\$48.00
C8

Lee A Branch COUNTY
RECORDER

IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS

EASEMENT AND DECLARATION OF RESTRICTIONS

THIS IRREVOCABLE OFFER AND DEDICATION OF PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS (hereinafter "Offer") is made this 3rd day of January, 1985, by JOSEPH W. NOBLE and BARBARA NOBLE, owners (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of the fee interest in certain real properties located in the County of Orange, State of California, and described in the attached Exhibit A (hereinafter referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the Coastal Zone as defined in Section 30103 of the California Public Resources Code (which Code is hereinafter referred to as the "Public Resources Code"); and

COASTAL COMMISSION

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EXHIBIT # D

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III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to as the "Act") creates the California Coastal Commission (hereinafter referred to as the "Commission"), and requires that any development approved by the Commission must be consistent with the policies of the Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, pursuant to the Act, Grantor's predecessors in interest, the applicants, Joseph W. Noble and Barbara Noble, applied to the Commission for a permit to undertake development as defined in the Act within the Coastal Zone of Orange County (hereinafter the "Permit"); and

V. WHEREAS, a coastal development permit (Permit No. 79-5948, amended by Permit No. 5-81-401EA and Permit No. T5-81-901-EAE3 and extended under Permit No. 5-81-401-EA, Permit No. 5-81-401-EA2, Permit No. 5-81-401EA3 and Permit No. 5-81-401-AE4) granted in November, 1979, by the Commission in accordance with the provisions of the Staff Recommendation and Findings, Exhibit B, attached hereto and hereby incorporated by reference, subject to the following condition:

That, prior to issuance of a permit, applicant shall execute an irrevocable offer to dedicate a lateral access easement to a public agency or private nonprofit association approved by the Executive Director to allow the public

public pass and repass over the Street from Pacific Coast Highway to the five (5) foot sidewalk, fence to the Bulkhead, and pass and repass over the five (5) foot walkway on top of the bulkhead.

VI. WHEREAS, the subject property is a parcel located between the first public road and the shoreline; and

VII. WHEREAS, under the policies of Sections 30210 through 30212 of the California Coastal Act of 1976, public access to the shoreline and along the coast is to be maximized, and in all new development projects located between the first public road and the shoreline shall be provided; and

VIII. WHEREAS, the Commission found that but for the imposition of the above condition, the proposed development could not be found consistent with the public access policies of Sections 30210 through 30212 of the California Coastal Act of 1976 and therefore in the absence of such a condition, a permit could not have been granted; and

IX. WHEREAS, the vertical access is being created by deed restriction in a document recorded concurrently herewith; and

X. WHEREAS, it is intended that this Offer is irrevocable and shall constitute enforceable restrictions within the meaning of Article XIII, Section 8 of the California Constitution and that said Offer, when accepted, shall thereby qualify as an enforceable restriction under the provisions of the California Revenue and Taxation Code Section 402.1;

NOW, THEREFORE, in consideration of the granting of Permit No. P-79-5948 (as amended by Permit No. 5-81-401-EA and Permit No. T5-81-401-EAE3 and extended under Permit No. 5-81-401-EA, Permit No. 5-81-401-EA2, Permit No. 5-81-401-EA3 and Permit No. 5-81-401-AE4)) to the owner's predecessors in interest, by The Commission, the owner hereby offers to dedicate to a public agency or private association acceptable to the Executive Director of the Commission an easement in perpetuity for the purposes of allowing the public to pass and repass over that five (5) foot walkway on top of the bulkhead located along the bulkhead-line, which is the northerly line of the Property at 16280 and 16288 Pacific Coast Highway, Huntington Beach, California as specifically described by the attached Exhibit C hereby incorporated by reference.

1. BENEFIT AND BURDEN. This Offer shall run with and burden the Property and all obligations, terms, con-

ditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

2. DECLARATION OF RESTRICTIONS. The Grantor is restricted from interfering with the use by the public of the area subject to the offered easement for public access. This restriction shall be effective from the time of recordation of this Offer and Declaration of Restrictions.

3. ADDITIONAL TERMS, CONDITIONS, AND LIMITATIONS. Prior to the opening of the accessway, the Grantee, in consultation with the Grantor, may record additional reasonable terms, conditions, and limitations on the use of the subject property in order to assure that this Offer for public access is effectuated.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason become unenforceable, no other provision shall be thereby affected or impaired.

D5

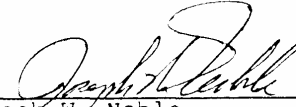
5. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions, obligations, and reservations contained in this Offer shall be binding upon and inure to the benefit of the successors and assigns of both the Grantor and the Grantee, whether voluntary or involuntary.

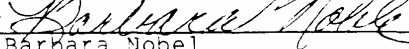
6. TERM. This Irrevocable Offer of Dedication shall be binding for a period of 21 years from the date of recordation of this Irrevocable Offer of Dedication.

Acceptance of the Offer is subject to a covenant which runs with the land, providing that the first offeree to accept the easement may not abandon it but must instead offer the easement to other public agencies or private associations acceptable to the Executive Director of the Commission for the duration of the term of the original Offer to Dedicate.

Executed this 19 day of March, 1985, at
Long Beach, California.

JOSEPH W. NOBLE and BARBARA NOBLE,
Owners, as individuals:

By 
Joseph W. Noble

By 
Barbara Nobel

EASEMENT FOR LATERAL ACCESS

An easement for the public to pass and repass over that five (5) foot walkway on top of the bulkhead, which walkway is located within the City of Huntington Beach and the County of Orange, State of California, over the following described property:

Beginning at the most northerly corner of parcel 2 of Parcel Map No. 7204, as per map recorded in book 44, page 24 of parcel maps, in the office of the County Recorder of Orange County, State of California, a strip of land five feet in width measured at right angles southerly from that certain line described as follows:

Beginning at the most northerly corner of said parcel 2 of Parcel Map No. 7204, thence southerly, S. 44°14'06" E. 77.49' to an angle point in said northerly line, thence S. 73°44'06" E. 110.84' to the most easterly corner of parcel 2 of said Parcel Map No. 7204 as shown on map recorded in book 44, page 24 of Parcel Maps, records of Orange County.

EXHIBIT C to
Irrevocable Offer to Dedicate

D.7

Said strip of land shall extend to and be bounded at its
northwesterly and southeasterly ends by the northwesterly
and southeasterly boundaries of said parcel 2.

D8

CONFORMED COPY
Not Compared with Original

\$25.00
C8

RECORDING REQUESTED BY
AND MAIL TO:

California Coastal Commission
Legal Department
631 Howard St., 4th floor
San Francisco, Ca. 94105

RECORDED IN OFFICIAL RECORDS
OF ORANGE COUNTY, CALIFORNIA

-10 45 AM SEP 26 '85

Lee A Branch COUNTY
RECORDER

CALIFORNIA COASTAL COMMISSION

DEED RESTRICTION

This instrument, made this 3rd day of January, 1985,
by JOSEPH W. NOBLE and BARBARA NOBLE, hereinafter referred
to as "The Permittee:"

WHEREAS, pursuant to the California Coastal Act of
1976, Sections 30000 through 30900 of the California Public
Resources Code, the Permittee has made Application No. P-79-
5948 to the California Coastal Commission, South Coast Dis-
trict, for the issuance of a permit for the subdivision of
land creating five (5) parcels (2488 square feet, 2610 square
feet, 2683 square feet, 2850 square feet, 3268 square feet)
and a common access easement where one 32,670 square foot
parcel now exists and construction of five (5) single family
dwellings and five (5) boat slips on certain real property
owned in fee and leased by the Permittee and more particularly
described below; and

Lg

WHEREAS, said Commission has determined to grant said application and issue a permit for the construction of the above described project on said real property, subject to the following conditions, imposed for the benefit of the Public, and without agreement to which by Permittee, said Commission could not grant the Permit:

A deed restriction for recording granting vertical access to give the public the privilege to pass and repass over a strip of dedicator's said real property five (5) feet in width measured from Pacific Coast Highway to the bulkhead property line and extending from the edge of the public right-of-way to the mean high tide line to the Pacific Ocean; and

NOW, THEREFORE, in consideration of the issuance of said development permit, and of the benefit conferred thereby on the subject property, Permittee agrees that there shall be, and hereby is, created the following restriction on the use and enjoyment of said property, to be attached to and become a part of the deed to the property: an easement for vertical access by which the public shall have the right and privilege to pass and repass over a strip of the real property described below, which easement shall be five (5) feet in width, extending from Pacific

Coast Highway to the bulkhead property line and extending from the edge of the public right-of-way to the mean high tide line and is more fully described as:

That certain property in the County of Orange, State of California, described as follows:

Beginning at the most southerly corner of parcel 2 of Parcel Map No. 7204 as per map recorded in book 44, page 24 of parcel maps, records of Orange County, said corner being on the northerly line of Pacific Coast Highway, which line at said corner is a curve concaved northerly and having a radius of 950.00 feet, and said corner being the point of beginning, thence along said curve, northwesterly through a central angle of $1^{\circ}29'38''$, an arc length of 24.77' to the true point of beginning of the following described easement:

Said easement is a strip of land, 5 feet in width, extending from the most southerly boundary of parcel 2 at the Pacific Coast Highway to the Northeasterly boundary of parcel 2 at the bulkhead line, the centerline of which is the following line:

Beginning at the said True Point of Beginning, then northerly, N. $37^{\circ}22'04''$ E. 112.86'

Project Area Description

Section 2

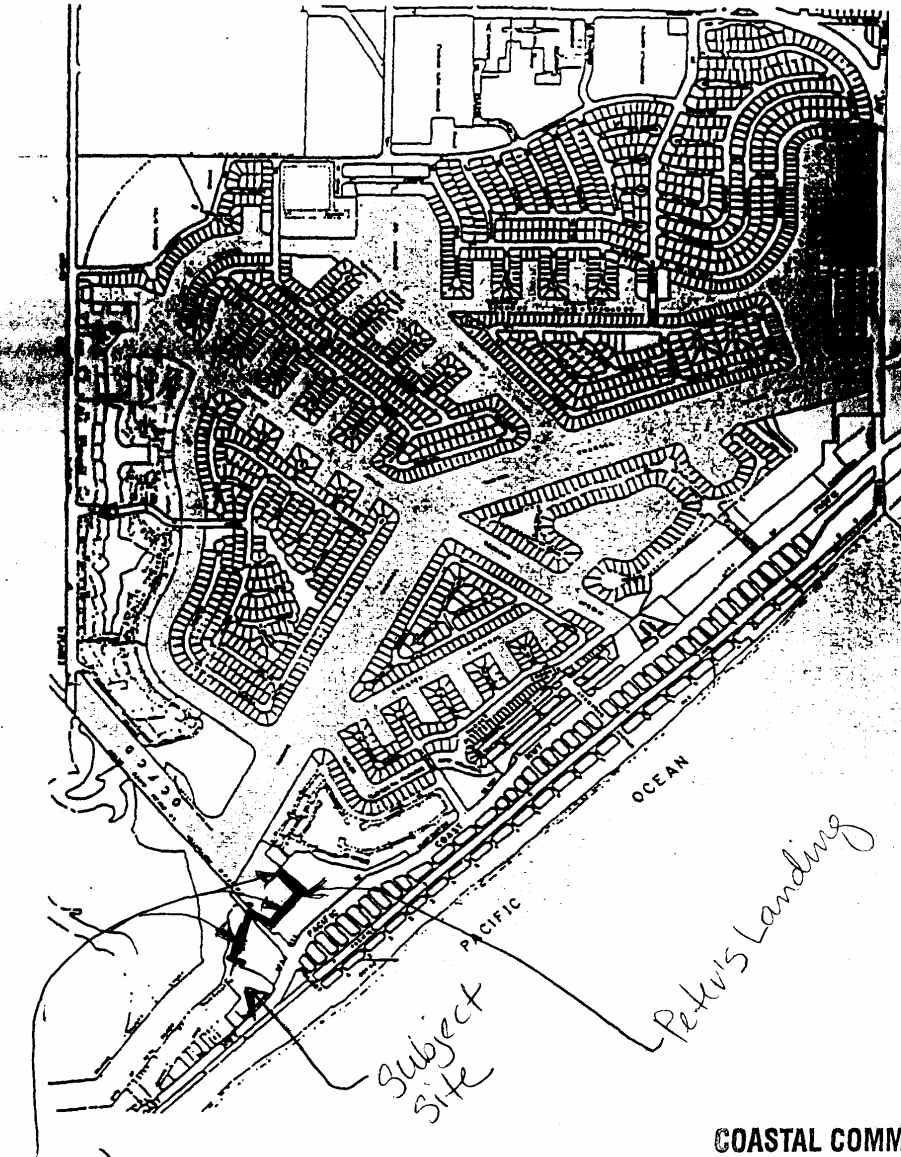


Exhibit 2.1 Map of Huntington Harbour

Existing open access-way

Subject site

Petty's Landing

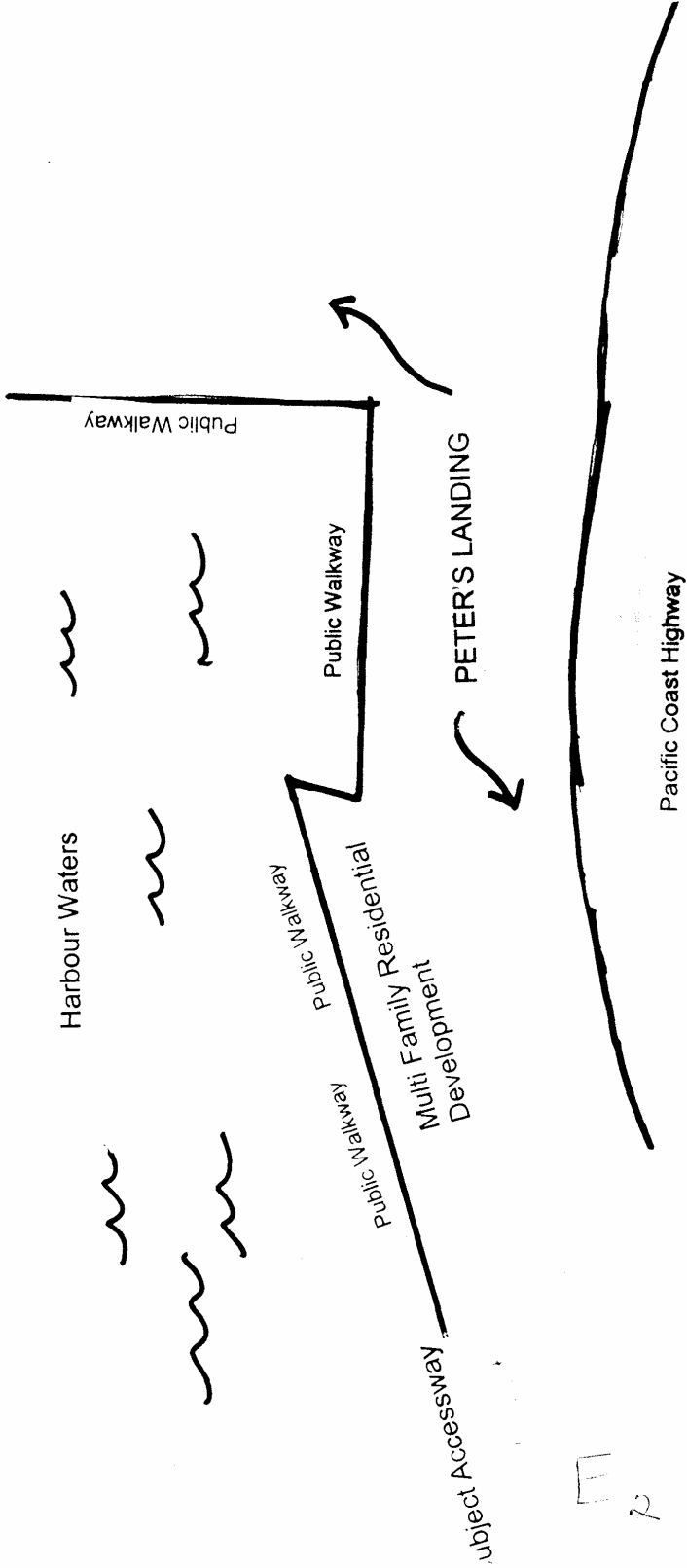
COASTAL COMMISSION

5-07-127-EDD

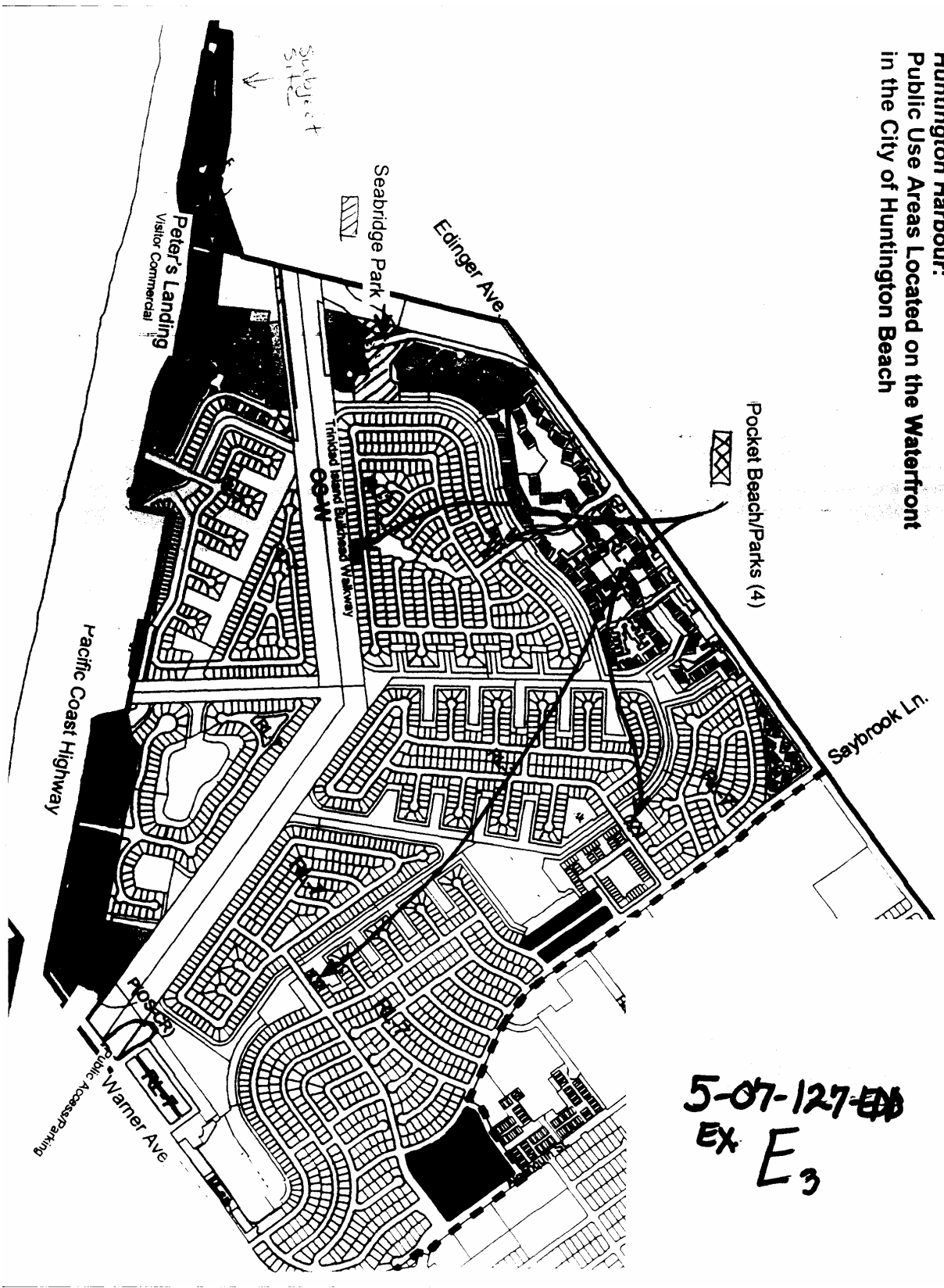
EXHIBIT # E

PAGE 1 OF 3

HUNTINGTON HARBOUR BAY CLUB



**Huntington Harbour:
Public Use Areas Located on the Waterfront
in the City of Huntington Beach**



5-07-127-EDD
EX E₃

CALIFORNIA COASTAL COMMISSION

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



December 22, 2006

Deborah M. Rosenthal
Cox, Castle & Nicholson LLP
19800 MacArthur Blvd., Suite 500
Irvine, CA 92612

Subject: **REJECTION OF AMENDMENT APPLICATION**
Coastal Development Permit Application 5-06-453 (formerly P-79-5948)
Piedmont Circle & Pacific Coast Highway
City of Huntington Beach, Orange County

Dear Ms. Rosenthal:

On November 28, 2006, you submitted an application for an amendment to the subject coastal development permit (originally numbered P-79-5948, with subsequent related actions numbered A-80-6590, 5-81-401). This amendment request sought after the fact approval of pedestrian and vehicular gates, and private spa equipment within the deed restricted vertical access way and dedicated lateral public access way, respectively. We have determined that your proposed development would lessen the intent of the special conditions of the subject permit. Therefore, pursuant to Section 13166 of Title 14 of the California Code of Regulations, we are rejecting your application for amendment and returning your application.

The subject permit P-79-5948 was approved by the Coastal Commission on October 22, 1979, with two special conditions. The special conditions (see enclosed coastal development permit) require that the applicant 1) record a deed restriction granting vertical access to the public from Pacific Coast Highway to the bulkhead property line and extending from the edge of the public right-of-way to the mean high tide line to the Pacific Ocean, and 2) offer to dedicate a lateral access easement to allow the public to pass and repass from the street to the bulkhead and pass and repass over the five (5) foot walkway on top of the bulkhead as shown on the plans. The special conditions were met via documents recorded in the official records of Orange County on September 26, 1985. In the recorded offer to dedicate, Section X 2. "Declaration of Restrictions" states, in pertinent part: "The Grantor is restricted from interfering with the use by the public of the area subject to the offered easement for public access." Furthermore, as stated in the above referenced document, the Commission found that but for the imposition of the above conditions, the proposed development could not have been found consistent with the public access policies of Sections 30210 and 30212 of the Coastal Act, and without which conditions the Commission could not have granted the permit.

The proposed amendment request would allow development within the public access areas as specified in and required by the original permit. Such development would interfere with the public's use of the public access areas, inconsistent with the intent of the original permit and the recorded offer to dedicate and deed restriction.

5-07-127-EDD

Exhibit F

Executive Director Dispute Resolution 5-07-127-EDD
Piedmont Cove Homeowners Association
Page 29

Rejection of Application
CDP Amendment Application 5-06-453
Page 2 of 2

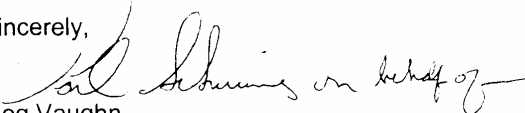
Section 13166 of Title 14 of the California Code of Regulations states:

(1) The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

The original development, as conditioned, was found to be in conformance with the public access policies of the Coastal Act solely due to the imposition of special conditions requiring the deed restriction and offer to dedicate. Provision of public access to and along the harbor front was an issue when the permit was approved in 1979 and still is an issue today. As per Section 13166, we have not been provided any newly discovered material information on how the requested development, with the inherent interference to the required public access, could be consistent with the intent of the original permit or otherwise explaining why such development should now be allowable. The development you are requesting would lessen or avoid the intended effect of a conditionally approved permit. Therefore, in keeping with our administrative regulations, we are rejecting your request to amend coastal development permit P-79-5948 (now numbered 5-06-453) and are returning your application.

For the reasons stated above we cannot accept the amendment request, and it is hereby rejected. If you have any questions, please call our offices at (562) 590-5071.

Sincerely,


Meg Vaughn
Coastal Program Analyst

Attachments: Coastal Development Permit P-79-5948

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Cox, Castle & Nicholson LLP
19800 MacArthur Blvd., Suite 500
Irvine, California 92612-2435
P 949.476.2111 F 949.476.0256

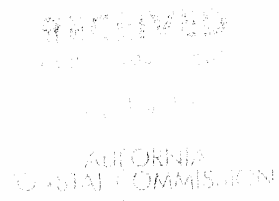
Deborah M. Rosenthal
949.260.4646
drosenthal@coxcastle.com

File No. 53019

January 8, 2007

VIA OVERNIGHT COURIER

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-1202



Re: Appeal of Rejection of Amendment Application for Coastal Development Permit Application 5-06-453 (formerly P-79-5948)/Piedmont Circle & Pacific Coast Highway/City of Huntington Beach, Orange County

Dear Members of the Coastal Commission:

Pursuant to Coastal Commission Regulation 13166(a)(1), this letter appeals the Executive Director's rejection of a Amendment Application 5-06-453 (formerly P-79-5948). This application for an after-the-fact permit amendment covering existing facilities was rejected by Commission Staff on December 22, 2006 on the grounds that it "would lessen the intent of the special conditions of the subject permit." This appeal is submitted within ten working days of the Staff decision.

The grounds for approval of the after-the-fact amendment are set forth in the application and cover letter, dated November 27, 2006. A copy of the application is attached as Exhibit A to this appeal, and incorporated herein. As explained in the application, members of the Piedmont Cove Homeowners Association ("HOA") all purchased their homes with the existing pedestrian and vehicular gates in place. They requested permission to maintain the pre-existing vehicular gate to control illegal parking and the pre-existing pedestrian gate to control night-time access to an unlighted vertical easement that has not been opened to the public. The Moshers requested permission to maintain spa equipment adjacent to a wall located on neighboring property, at least until the lateral easement across the back of the HOA property is opened to the public.

Staff's rejection of the amendment does not address any of the site-specific issues raised in the application. Instead, it relies on the statement that the project was originally approved in 1979 "solely due to the imposition of special conditions requiring the deed restriction and offer to dedicate." It finds that the existing facilities "inherently interfere" with the required public access and thus "less the intent" of the original permit. This boilerplate language ignores the special circumstances applicable to this property and the applicant's willingness to maintain safe and consistent public access in accordance with the original permit.

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Exhibit G

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Page 2

The Staff rejection also fails to address its unchallenged 1993 finding that "adequate public access exists nearby" the Piedmont Cove development. A copy of this finding is attached as Exhibit B to this appeal.

1. *The pedestrian gate does not interfere with safe public use of the vertical access easement.* The original permit required dedication of a vertical access easement. This easement was offered to the public in 1985 and accepted by the California Coastal Conservancy in September of 2006. The Conservancy has no plans to open the easement to the public. The easement hugs the property line along the private driveway, crosses the driveway, follows a sidewalk between two of the homes and ends at an unlit dock. There is nothing inconsistent between the requirement for a public access easement and the HOA's desire to ensure that it is used in a safe manner during daylight hours. Nothing in the record suggests that the Commission in any way based its decision to permit development on after-dark access to an unlit driveway and boat dock; there is equal support for the conclusion that the Commission expected the accessway to be accepted and managed in a manner that protected the safety of the public.

The HOA has agreed to install signage on the pedestrian gate indicating that the vertical easement is open to the public during daylight hours. The HOA would also accept a condition stating that pedestrian gate is subject to future action of the Coastal Conservancy formally opening the easement to the public, including the installation of protective devices. The Staff rejection did not address the facts that the Conservancy has no plans to open the vertical easement to the public, that the physical configuration of the easement requires pedestrians to cross an unlit driveway and that the HOA has offered to confirm the public's right to use the vertical easement through signage.

2. *The vehicular gate does not affect an easement and is required for fire safety reasons.* The original coastal development permit did not require public access to the private driveway giving entry into the development. In fact, the local approvals and development plans required a prohibition on public parking along the driveway for safety reasons. The driveway is too narrow to permit fire department access if cars are parked along the sides of the road. Parked cars would also increase the danger of the vertical pedestrian easement by making it more difficult for the residents to enter and leave their garages. Without the vehicular gate, there is no way to control unsafe, illegal and unauthorized parking, especially with open pedestrian access.

The Staff rejection did not address the facts that the vehicular gate does not cross an easement, was not mentioned in any of the special conditions in the original permit and is required to avoid a fire hazard.

3. *The Mosher's spa equipment does not prevent usable public access.* The spa equipment was inadvertently installed at the terminus of the lateral easement with the permission of the City of Huntington Beach, after certification of its local coastal plan. It is located adjacent to a wall crossing the lateral easement on the neighboring property. The spa equipment does not interfere with access from the vertical easement to the lateral easement on

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the HOA property, in accordance with the intent of the original permit. As is apparent from aerial photographs and the attached waiver of permit requirements, adequate public coastal access exists nearby. There is no reason to deny an after-the-fact permit application under these circumstances.

The HOA would also accept a condition stating that the spa equipment is subject to future action of the Coastal Conservancy formally opening the lateral easement to the public, including the installation of protective devices. The Staff rejection did not address the facts that the spa equipment does not prevent lateral or vertical access, that the accessway has not been opened to the public and that adequate alternate public access has already been found to be available nearby.

Conclusion

As demonstrated above and in the attached application, the requested amendment is consistent with the original permit, the Coastal Act and the Coastal Element of the City of Huntington Beach. The pre-existing gates do not limit coastal access, rather they ensure that it can be enjoyed in a manner that is safe for the public and the residents of Piedmont Cove in accordance with the original design of the development. The applicants remain willing to work with the Commission to draft reasonable conditions of approval that protect the interests of the residents and the public, as encouraged by the Coastal Act. For all of these reasons, therefore, the appeal should be granted and the after-the-fact permit applications submitted by the Piedmont Cove HOA and the Moshers should be approved.

Coastal Commission Regulation 13166(a) provides for scheduling this appeal at the next commission hearing or as soon thereafter as practicable, with notice to all persons who may be interested in the application.¹ The applicants request that the appeal be scheduled at the next available hearing in Los Angeles or Orange Counties.

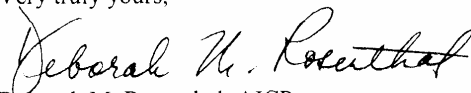
¹ In accordance with Section IV.4 of the application, the applicants prepared stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. Staff rejected the application before these envelopes were submitted. If the Executive Director has reason to know that any of these individual may be interested in the application, the envelopes are available for his use in accordance with Coastal Commission Regulation 13166(a)(1).

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Page 4

We are available to answer any questions the Commission or Staff may have about the applications. Thank you for your consideration.

Very truly yours,


Deborah M. Rosenthal, AICP

DMR/mlp
Enclosures
53019301680v1

cc: Mr. Kenneth Wolder, President
Piedmont Cove Homeowners Association

David and Shela Mosher, Homeowners

Ms. Meg Vaughn, Coastal Program Analyst

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bcc: Mr. D.B. Neish

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