

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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Long Beach, CA 90802-4302  
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**TH 6a**

Filed: October 9, 2008  
49th Day: November 27, 2008  
180th Day: April 7, 2009  
Staff: Fernie Sy-LB  
Staff Report: November 20, 2008  
Hearing Date: December 10-12, 2008  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NUMBER:** 5-08-190

**APPLICANTS** James & Judy Freimuth

**AGENT** Fabio Rigo de righi

**PROJECT LOCATION:** 208 Ocean Avenue, City of Seal Beach (County of Orange)

**PROJECT DESCRIPTION:** Demolition of existing single family home and construction of a new 7,266 square foot two-story single-family residence over basement and a 756 square foot attached three-car garage on a beach front lot. The resultant structure would be three-stories on the beach side and two-stories on the street side. Grading will consist of 1,650 cubic yards of export to a location outside of the Coastal Zone. Landscaping, hardscape and a pool are also proposed.

**LOCAL APPROVALS RECEIVED:** City of Seal Beach Approval-in-Concept dated May 21, 2008.

**SUMMARY OF STAFF RECOMMENDATION:**

The applicants are proposing 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.

Staff is recommending **APPROVAL** of the proposed project with **SEVEN (7) SPECIAL CONDITIONS** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** evidence of conformance with geotechnical recommendations; **5)** conformance with the submitted Water Quality Management Plan (WQMP); **6)** conformance with landscaping controls; and **7)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

Section 30600(c) 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 City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit No. 5-97-233-[Johnson]; Coastal Development Permit No. 5-97-233-A1-[Johnson]; *Geotechnical Engineering Investigation for Proposed New residence at 208 Ocean Avenue Seal Beach, CA (W.O. 353407-01)*, prepared by *Coast Geotechnical, Inc.* dated February 4, 2008; *Coastal Hazard & Wave Runup Study, 208 Ocean Avenue, Seal Beach, CA* prepared by *Geosoils, Inc.* dated June 2008; Letter from Coast Geotechnical, Inc. dated September 3, 2008; Letter from Commission staff to applicants dated August 5, 2008; *Water Quality Management Plan (WQMP)* prepared by *Toal Engineering, Inc.* dated June 27, 2008; and Letter from applicants to Commission staff dated October 8, 2008.

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### **LIST OF EXHIBITS**

1. Location Map
  2. Assessor's Parcel Map
  3. Site Plan
  4. Floor Plans
  5. Elevation Plans
- 

### **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 other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-08-190 including, but not limited to, the residence, garage, foundations, and pool, and any 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 waives, 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 further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the residence, garage, foundations, and pool, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner 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. 5-08-190. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-08-190. Accordingly, any future improvements to the single-family house 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. 5-08-190 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

### **4. GEOTECHNICAL RECOMMENDATIONS**

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigation and letter: *Geotechnical Engineering Investigation for Proposed New residence at 208 Ocean Avenue Seal Beach, CA (W.O. 353407-01)*, prepared by *Coast Geotechnical, Inc.* dated February 4, 2008; and Letter from *Coast Geotechnical, Inc.* dated September 3, 2008.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C.** The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is required.

### **5. WATER QUALITY MANAGEMENT PLAN (WQMP)**

The applicants shall conform with the *Water Quality Management Plan (WQMP)* prepared by *Toal Engineering, Inc.* dated June 27, 2008 showing roof drainage and runoff from all impervious areas directed to infiltration trenches 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.

**6. LANDSCAPING-DROUGHT TOLERANT, NON-INVASIVE PLANTS**

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

**7. DEED RESTRICTION**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit 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; and (2) imposing the 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 entire parcel or parcels governed by this permit. 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 LOCATION, DESCRIPTION AND PRIOR COMMISSION ACTION AT SUBJECT SITE

###### 1. Project Location and Description

The project site is a beach front lot located at 208 Ocean Avenue in the City of Seal Beach, Orange County (Exhibits #1-2). The lot size is approximately 9,164 square feet and is currently zoned as Residential Low Density in the City of Seal Beach Zoning Code (not certified by the Commission). The proposed project is development within an existing urban residential area, located northwest (upcoast) 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 500 feet wide, between the subject property and the mean high tide line.

The applicants are proposing demolition and construction of a new 7,266 square foot two-story single-family residence over a basement and a 756 square foot attached three-car garage (including a vehicle lift) on a beach front lot (Exhibits #3-5). The resultant structure would be 3 stories (37-feet high) on the beach side and 2 stories (25-feet high) on the street side. In addition, exterior decks along the oceanside portion of the residence adjacent to the basement, 1<sup>st</sup> floor and 2<sup>nd</sup> floor are being proposed. Also, the proposed project would consist of the following: hardscape, landscape, pool, pool equipment area, fountain and barbeque. The foundation for the proposed residence will consist of continuous spread footings and mat foundation. Grading will consist of 1,650 cubic yards of export to a location outside of the Coastal Zone.

The proposed residence would conform to the informal stringline established by a 12-foot wide 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 upcoast 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 covered patios or decks. Other low-lying appurtenances such as landscaping, hardscape, pools, and spas, are allowed seaward of the enclosed patio stringline, up to the seaward property line of the site. 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.

Vertical public access to the beach is available approximately 107-feet upcoast of the project site at the 2<sup>nd</sup> Street, street end, and approximately 133-feet downcoast of the project site at the 3<sup>rd</sup> Street, street end (Exhibit #2).

The applicants are proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to infiltration trenches and permeable areas.

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The applicants have stated that landscaping is part of the proposed project. However, no plans have been submitted. In spite of this, the applicants have agreed that the landscaping plans shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. To verify this, the Commission is imposing **SPECIAL CONDITION NO. 6**, which states that vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

## 2. Prior Commission Action at the Subject Site

On September 9, 1997, the Commission approved Coastal Development Permit No. 5-97-233-[Johnson] for development located at 206 and 208 Ocean Avenue in Seal Beach. The proposed project consisted of construction of a pool, spa, concrete patio, planter walls, pool equipment enclosure, barbeque, landscaping, and 358 cubic yards of grading (cut); and removal of an existing 32 square foot section of enclosed living area from the 208 Ocean Avenue Residence. The permit was approved with **TWO (2) Special Conditions** regarding: **1)** geotechnical recommendations; and dewatering. The Notice of Intent to Issue permit was issued on September 17, 1997. This original permit was never issued. An amendment was approved and a permit was issued for this amended project as discussed below.

On April 7, 1998, the Commission approved an amendment to Coastal Development Permit No. 5-97-233-[Johnson] for development located at 206 and 208 Ocean Avenue in Seal Beach. The proposed project was amended to include the following changes: raise the existing block walls on the east side property line (between 206 and 208 Ocean Avenue) and seaward property line to 6-feet high above the level of grade as measured from the exterior side (208 Ocean Avenue); and construct a new 6-foot high block wall on the west side property line (between 204 and 206 Ocean Avenue). No additional Special Conditions were imposed. The Permit was issued on April 16, 1998.

## **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**



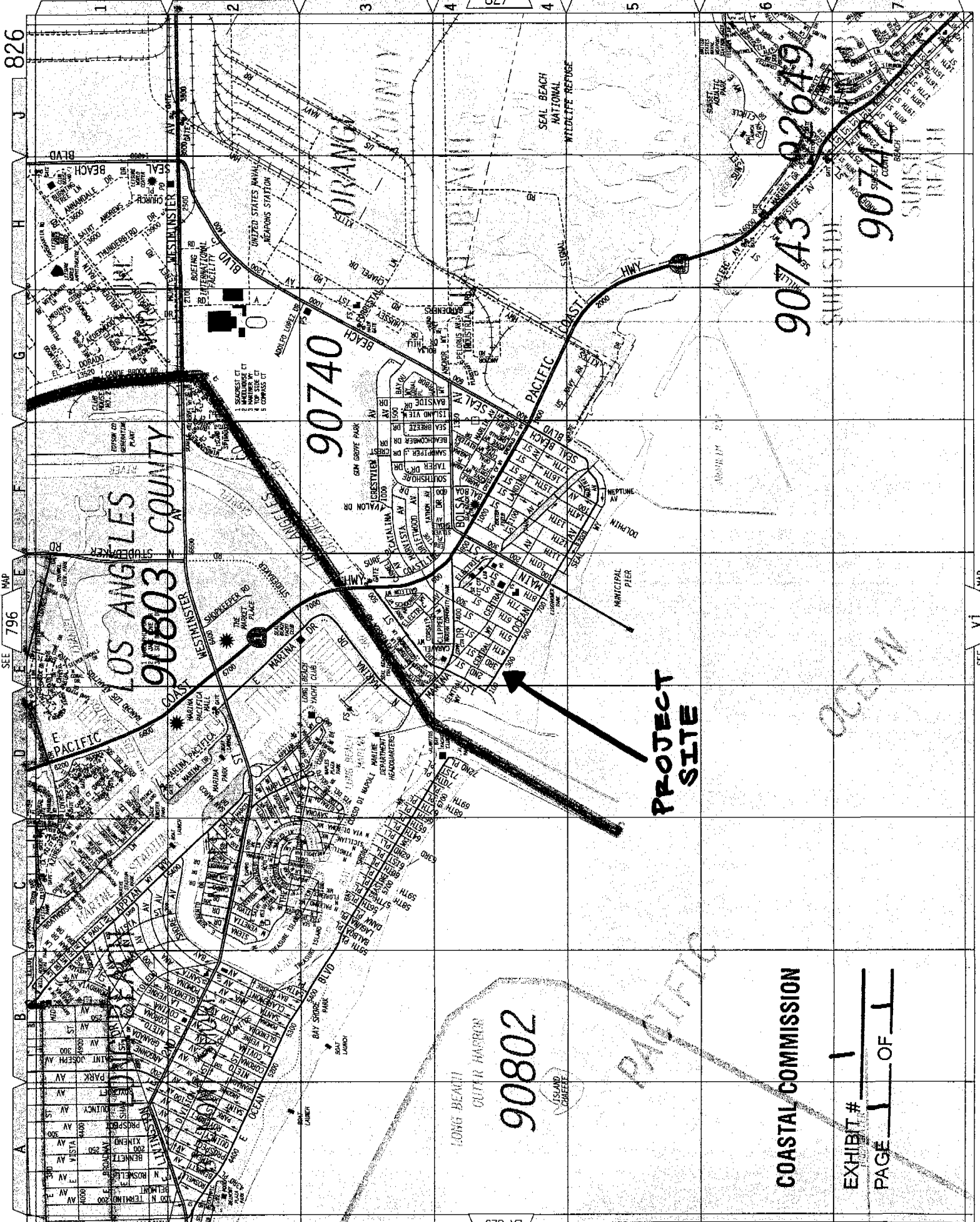
Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development 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 additional feasible mitigation measures available that would substantially lessen any significant adverse effect that 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.



**PROJECT SITE**

OCEAN

**COASTAL COMMISSION**

EXHIBIT # 1  
PAGE 1 OF 1

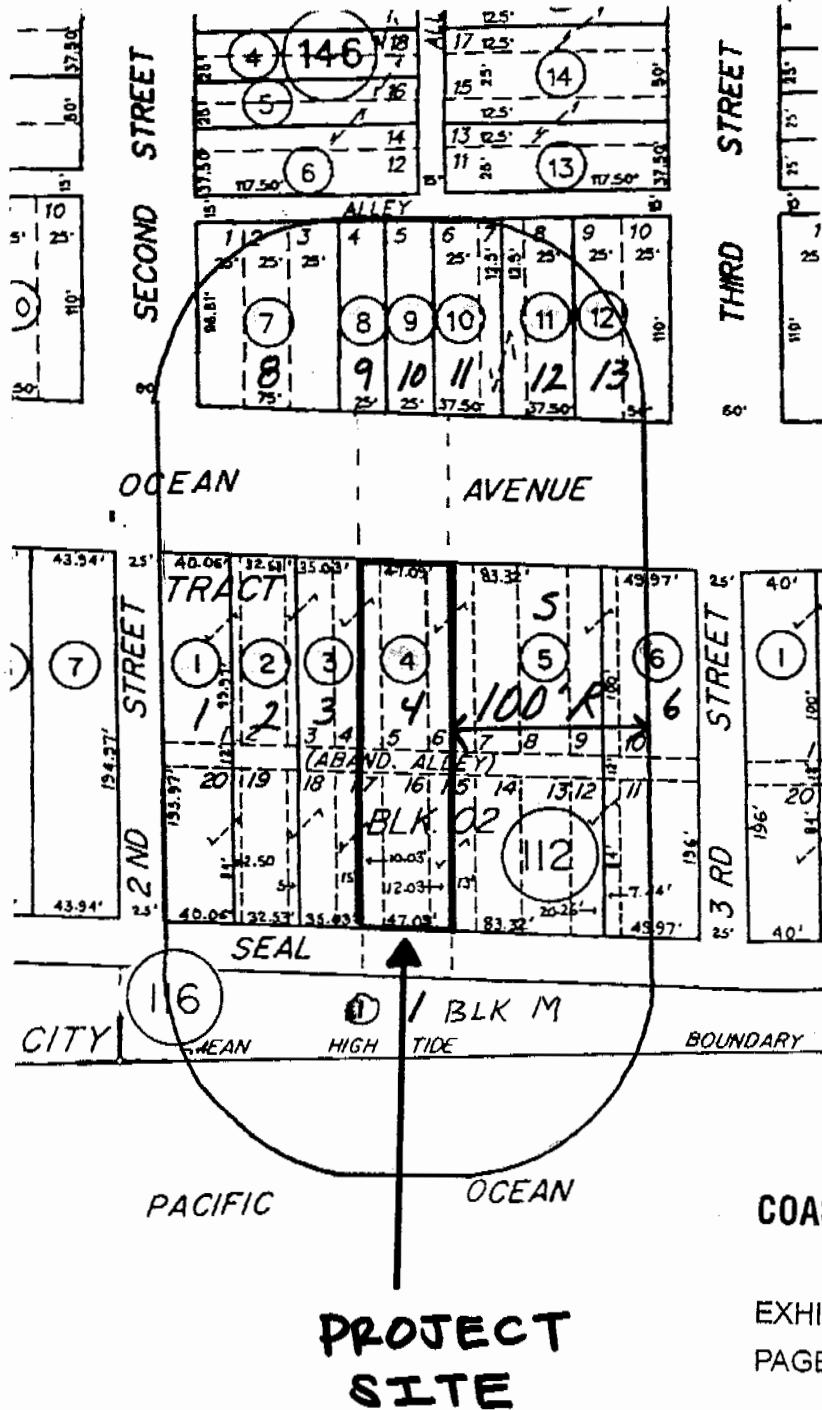
SEE 796 MAP

SEE V1 MAP

100' OWNERSHIP MAP

208 OCEAN AVENUE  
SEAL BEACH, CA 90740

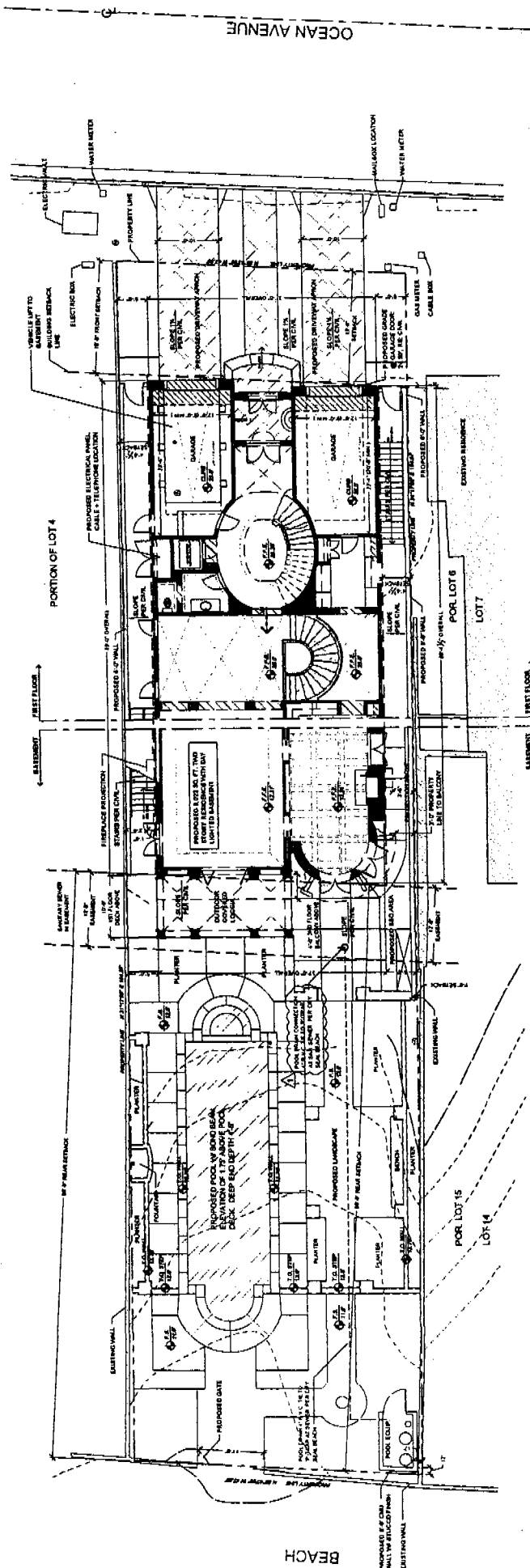
1" = 100'



COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 1

- SITE PLAN**
1. GENERAL NOTES
  2. GEODESIC
  3. ALL FLOORING
  4. COUNTY OF TARRANT
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  33. COUNTY OF TARRANT



**1 SITE PLAN - BASEMENT + FIRST FLOOR**  
1/8" = 1'-0"

**GROSS PROJECT AREAS**

CONDITIONED SPACE	148 SQ. FT.
BASEMENT	2,314 SQ. FT.
FIRST FLOOR	2,500 SQ. FT.
SECOND FLOOR	7,290 SQ. FT.
TOTAL	12,252 SQ. FT.

UNCONDITIONED SPACE	148 SQ. FT.
BASEMENT P.H.C. GARAGE / SHOP	415 SQ. FT.
BASEMENT (EXCLUDED)	750 SQ. FT.
TOTAL	1,313 SQ. FT.

**POOL EQUIPMENT NOTES**

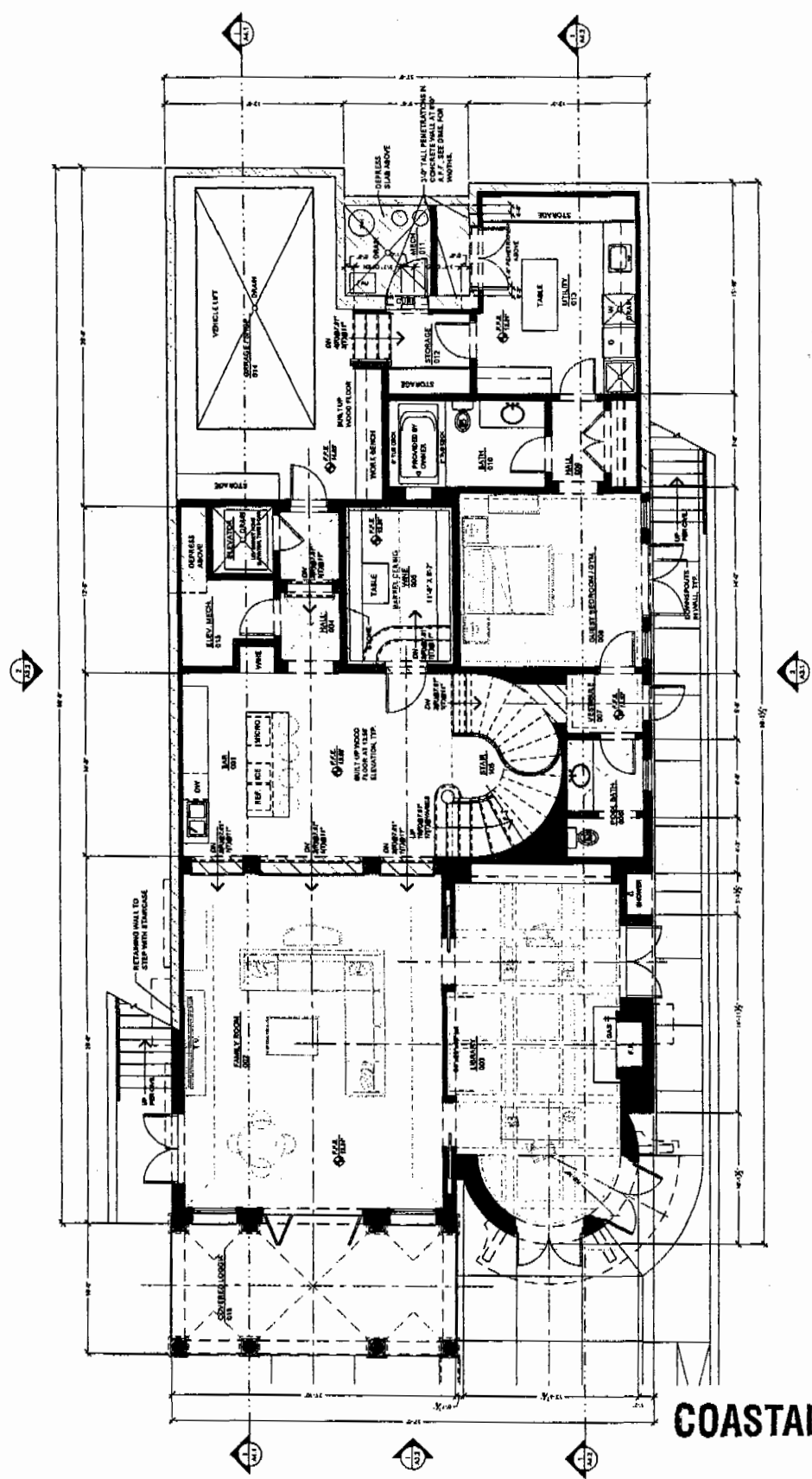
1. THE SETBACK FROM PROPERTY LINE AND SETBACK FROM NEIGHBORING PROPERTIES WITH REGARD TO THE PROPOSED POOL SHALL BE APPROVED BY CITY STAFF.
2. WATER VAPOR NOT TO EXCEED MORE THAN 8" ABOVE THE HIGHEST WALL OR FENCE.

**SPECIAL CONDITION**

THE PROPOSED POOL SHALL BE SUBJECT TO ALL APPLICABLE REGULATIONS AND ORDINANCES OF THE CITY OF FORT WORTH, TEXAS, AND THE STATE OF TEXAS. THE CITY ENGINEER SHALL HAVE THE FINAL AUTHORITY TO APPROVE OR DENY THE POOL PERMITS. AT THE TIME THAT UNDERGROUND POOL PERMITS ARE BEING FILED, THE POOL SHALL BE SUBJECT TO ALL APPLICABLE REGULATIONS AND ORDINANCES OF THE CITY OF FORT WORTH, TEXAS, AND THE STATE OF TEXAS.

**COASTAL COMMISSION**

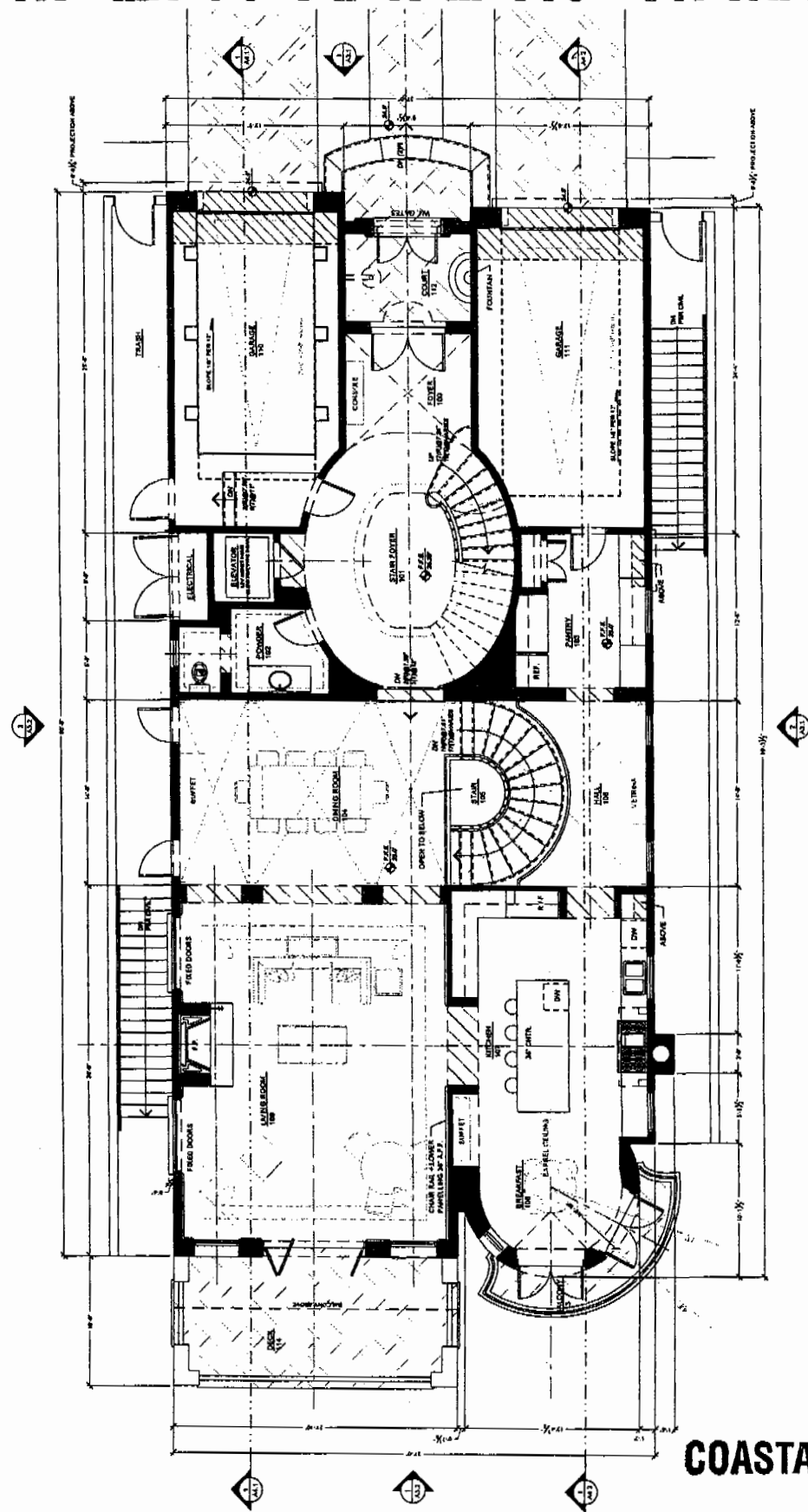
EXHIBIT # 3  
PAGE 1 OF 1



1 BASEMENT PLAN (BEACH LEVEL)  
 1/4" = 1'-0"

**COASTAL COMMISSION**

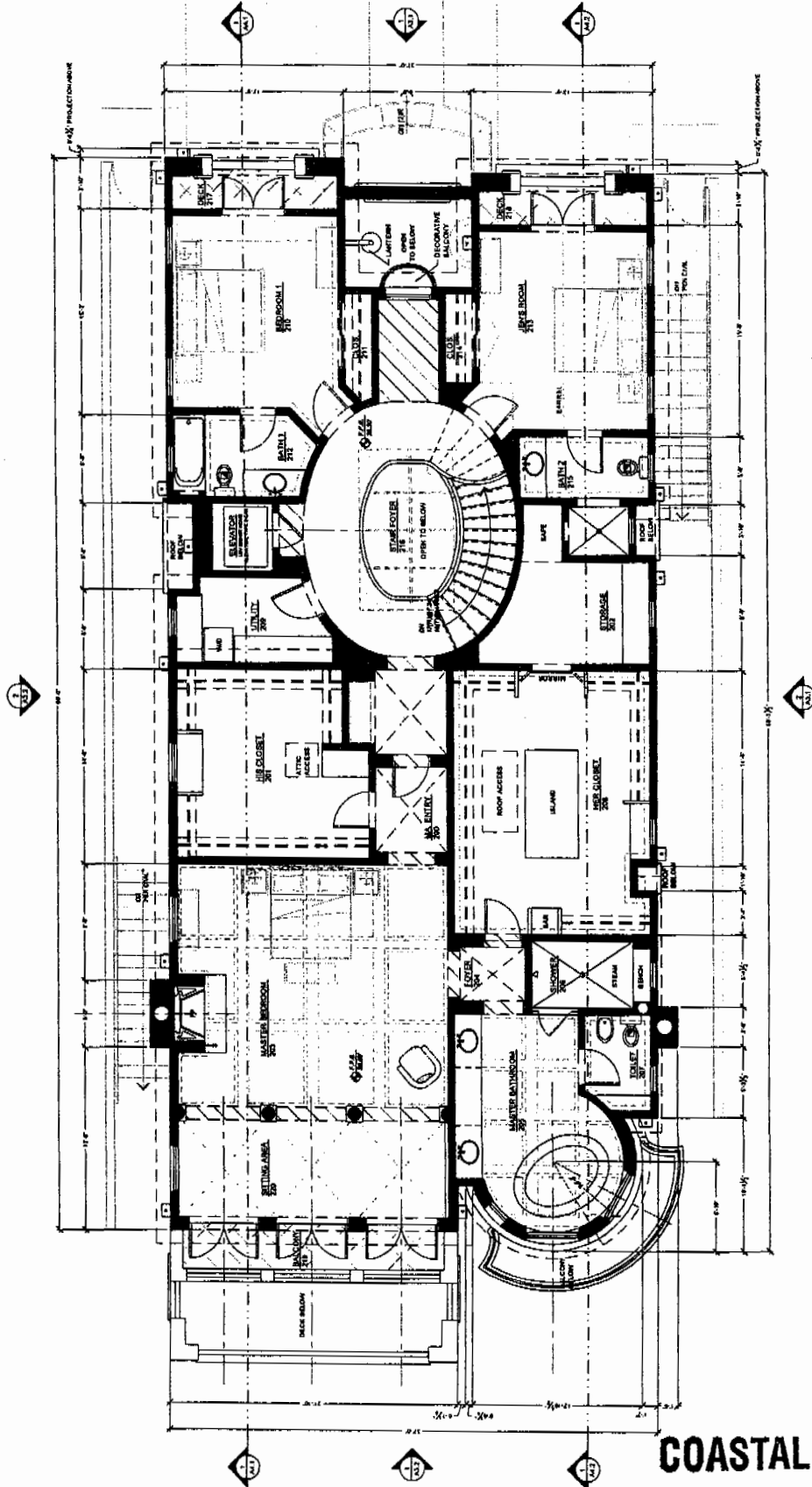
EXHIBIT # 4  
 PAGE 1 OF 3



1 FIRST FLOOR PLAN (STREET LEVEL)  
1/4" = 1'-0"

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 2 OF 3



1 SECOND FLOOR PLAN  
1/4" = 1'-0"

**COASTAL COMMISSION**





