

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: June 22, 2009
49th Day: August 10, 2009
180th Day: December 19, 2009
270th Day: March 19, 2010
Staff: Liliana Roman-LB
Staff Report: December 22, 2009
Hearing Date: January 14-15, 2010
Commission Action:

**Item Th26b****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-09-099

APPLICANT: Palm Beach Park Association, Attn: Colin Cline

PROJECT LOCATION: Two lots south of Poche Beach (APN 691-341-02), San Clemente (Orange County)

PROJECT DESCRIPTION: Remove and replace an existing 306.5 feet long and six-foot tall chain link fence and two gates (approx. 219.5 ft. of fence parallel to the ocean and adjacent to OCTA railroad tracks and 87 ft. of fence perpendicular to the ocean) on a private beachfront lot.

LOCAL APPROVALS RECEIVED City of San Clemente Planning Division Approval-in-Concept dated May 11, 2009

SUBSTANTIVE FILE DOCUMENTS: City of San Clemente Certified Land Use Plan (LUP); CDP 5-03-322(City of San Clemente and OCTA)

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project with four (4) special conditions, which require 1) compliance with construction-related best management practices (BMPs), 2) submittal of final revised plans; 3) identification of a staging area for construction; and 4) timing of construction.

The proposed project is the demolition and re-construction of an existing pre-Coastal Act chain link fence on a private, undeveloped beach front parcel. The applicant argues that the fence is needed along the railroad track for obvious safety purposes, and along the proposed perpendicular alignment to prevent trampling of the adjacent dunes. The primary issue associated with this development is coastal visual impacts. There are presently public views across the site to the ocean from N. El Camino Real (i.e. Coast Highway). The pre-existing fence, that was removed without benefit of a coastal development permit, was uncoated gray chain link fence. The applicant is proposing to replace that fence with green plastic coated chain link fence that does not fade into the background like other fence materials, or even to the extent that the pre-existing gray fence did. The best option from the standpoint of coastal view protection and enhancement is to replace the chain link fence with a fence of different material that improves the public coastal views through the fence and across the minimally developed beach front site to the ocean. Therefore, Commission staff's recommendation relative to the protection and improvement of existing public coastal views is replacement of the existing chain link fence in the same location, height and configuration however, utilizing post and cable material instead of the proposed green plastic coated chain link fence. The applicant objects to this requirement because they have already acquired the green plastic coated chain link fence material.

LIST OF EXHIBITS:

1. Location Map
2. Assessors Parcel Map
3. Coastal Access Points Map
4. Project Plans
5. Site Photographs
6. Sample Alternate Fence Material

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-09-099 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

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. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- C. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- D. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.
- E. Concrete trucks and tools used for construction of the approved development shall be rinsed off-site;
- F. Staging and storage of construction machinery and storage of debris shall not take place within the drainage channel and public Coastal Multi-Use Trail.

2. Revised Final Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval, two (2) sets of final plans revised to change the fence material to a post and cable type fence, as depicted in Exhibit #6, that substantially conforms with location and height of the pre-existing chain link fence as depicted on the plans dated May 11, 2009.
- B. The permittee shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Construction Staging Area

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) will avoid impacts to public access to the public beach, to public beach areas or to sensitive habitat areas.
1. The plan shall demonstrate that:
 - (a) Construction equipment or activity shall not occur outside the staging area
 - (b) Public parking areas shall not be used for staging or storage of equipment
 - (c) Public beach areas shall not be used as staging areas
 - (d) The staging area for construction of the project shall not obstruct public vertical or lateral access to the beach.
 2. The plan shall include, at a minimum, the following components:
 - (a) A site plan that depicts:
 - (1) Limits of the staging area(s)
 - (2) Construction site
- B. The permittee 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 to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Timing of Construction

To avoid adverse impacts on to public beach access, construction shall not occur between construction activities authorized pursuant to Coastal Development Permit #5-09-099 shall not occur during the peak beach use season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

Project Description and Location

The proposed project is located between the first public road and the sea on a sandy, largely undeveloped, oceanfront lot located two lots south of Poche Beach in the City of San Clemente, Orange County (Exhibits 1 & 2). The proposed project site is a 0.6 acre private beach parcel owned by the Palm Beach Park Association, a mobile home park located at 101 Palm Drive on the bluff overlooking Poche Beach. The private parcel does not appear to extend into State tidelands as the seaward property line is defined approximately 40 feet from the wet sandy beach. The site is designated as OS 2 (Privately Owned Open Space) in the certified Land Use Plan. Poche Beach is a public beach at the City's northern border with the City of Dana Point. Although approximately a one mile length section of the beach at the northern City border is comprised of privately owned beach parcels (owners include Shorecliffs Homeowners Association, Palm Beach

Park Association, Capistrano Shores Mobile Home Park and several private owners) the parcels do not extend to the mean high tide, therefore large portions of dry sandy beach area are public beach areas seaward of these parcels. Immediately adjacent to the subject site to the north is a private beach parcel owned by the Shorecliffs Homeowner Association developed with a beach club, basketball court, tennis courts and 6-foot tall chain link fencing delineating the parcel. To the south of the subject parcel is second private beach parcel owned by the same Palm Beach Park Association, this parcel is not fenced and contains native dune vegetation. Further to the south is a larger beach parcel owned by the Capistrano Shores Mobile Home Park. Exhibit #5 shows an aerial photograph of the vicinity depicting the adjacent beachfront parcels.

The nearest public beach access is available approximately 120 yards north of the site at the Poche Beach access point at the Camino Capistrano and N. El Camino Real intersection providing a pedestrian walkway in a culvert under the railroad tracks for safe railroad crossing access to the sandy beach. Exhibit #3 is a public beach access points map for the City of San Clemente.

The proposed project is the removal and replacement of an existing 306.5 feet long and six-foot tall chain link fence and two gates. Approximately 219.5 ft. of fence is parallel to the ocean and adjacent to OCTA railroad tracks and 87 ft. of fence is perpendicular to the ocean (Exhibit #4), running along the downcoast property line. It appears from a review of historic aerial photographs of the site that a chain link fence in this location and in this configuration was erected prior to the passage of the Coastal Act. The private parcel does not appear to extend into State tidelands as the property line is defined approximately 40 feet inland from the wet sandy beach. As such, there is a large portion of dry sandy public beach area between this private parcel and the breaking surf. The chain link fence does not extend beyond the private property onto the public beach area. The chain link fence delineates a private beach parcel owned by Palm Beach Park Association from the OCTA railroad tracks right-of-way and from a second parcel to the south owned by the same Palm Beach Park Association which contains native dune vegetation. An existing chain link fence along the northern property line with the Shorecliffs Homeowner Association is owned by Shorecliffs Homeowner Association and not Palm Beach Park Association. The subject beach parcel is developed with a chain link fence, picnic tables, fire rings, benches, horseshoe pits and beach volleyball net posts. No vegetation (native or otherwise) was identified within this parcel.

B. SCENIC AND VISUAL QUALITIES

Section 30251 of the Coastal Act states, in pertinent part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...."

San Clemente's certified Land Use Plan (LUP) visual resource policies:

Plan policy provides for maintaining the visual character and aesthetic resources of the City through the preservation of: open space areas, coastal bluffs and canyons and public view corridors.

Policy VII.3 of the certified LUP states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed:

- a. *To protect public views to and along the ocean and scenic coastal area.*
- b. *To minimize the alteration of coastal bluffs and canyons.*
- c. *Where feasible, to restore and enhance visual quality in visually degraded areas.*
- d. *Require that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development in accordance with this Element and the Urban Design Element (GP Policy 1.3.6)*

Policy XII.3 of the certified LUP states:

Require the following coastal roadways be maintained and preserved as scenic corridors in accordance with the scenic highways element of the General Plan (GP Policy 5.1.1):

- *Avenida Pico*
- *El Camino Real/Pacific Coast Hwy*
- *Ola Vista*
- *El Camino Real*

The proposed development is located on a private beach parcel adjacent to the Orange County Transit Authority (OCTA) railroad tracks immediately seaward of N. El Camino Real. The site is visible to motorists traveling both northbound and southbound on N. El Camino Real. El Camino Real is designated as a scenic corridor in the City's certified LUP. Prior to the unpermitted removal of the existing fence, ocean views from N. El Camino Real were through the chain link fence proposed for replacement with similar chain link metal fence. However, the proposed new chain link metal fence is to be coated with a highly visible green plastic material to prevent corrosion of the fence which would further diminish the public ocean view. The green coating causes the fencing to become more visually prominent, thus detracting from views through the fence. The chain link fence is also highly visible looking inland to the coastal bluffs from the beach.

Travelling southbound on N. El Camino Real at the City's northern border, the ocean view opens up at Poche Beach from rows of two and three story single family residences on beach front lots in the City of Dana Point. Southbound motorists, cyclists and pedestrian ocean views from N. El Camino Real at Poche Beach currently are diminished by an existing chain link fence and high pitched roof beach club structure at the Shorecliffs Beach Club site and then, prior to its unpermitted removal, by the existing chain link fence at the Palm Beach Park private beach parcel. The ocean view is then completely unobstructed by fencing or structures for approximately 300 yards until it is completely obscured further south (from the road) by mobile homes on the beach at the Capistrano Shores Mobile Home Park.

Demolition and replacement of an existing pre-Coastal Act structure on the sandy beach constitutes new development and must be sited and designed in conformance with Coastal Act policies regarding the protection of visual resources. Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be protected and where feasible to be restored and enhanced. As the applicant proposes the complete demolition and reconstruction of a pre-Coastal fence on the beach, the new development at this location must also be sited and designed to be visually compatible with the relatively undisturbed character beach in this area. It is necessary to ensure that new development be sited and designed to protect views along El Camino Real as there are significant public coastal views across the site and it is considered a scenic corridor in the City's certified LUP. To address the visual impact of a 6-foot tall green coated metal chain link fence, the Commission imposes **Special Condition #3** requiring use of different fence material such as the post and cable fencing that the City of San Clemente constructed along the San

Clemente Coastal Trail (Exhibit #6). This fencing was selected after extensive research and public review and comment as superior in terms of minimizing the obstruction of views through the fence. In 2004, the Commission approved CDP #5-03-322(City of San Clemente and OCTA) for the San Clemente Coastal Trail which included a post and cable fence design along the approximately 2.4 mile long trail as adequately providing visual resource protection inland of the OCTA railroad tracks along similar stretch of ocean front in the City of San Clemente. That fence type was also found to provide safe separation between the railroad tracks and the trail which would have a high level of pedestrian use.

The applicant has indicated that the main purpose of the proposed fence is for safety considerations as the private beach parcel is adjacent to the highly active OCTA railroad tracks (utilized by Metrolink, Amtrak and commercial/freight trains). The approximately 185.5 feet long chain link fence parallel to the ocean adjacent to the railroad tracks serves to contain the recreational activities of the Palm Beach Park beachgoers by preventing beach balls, volleyballs, frisbies and the like from accidentally entering into the OCTA right-of-way and children from running onto the railroad tracks. The approximately 87 feet long perpendicular portion of chain link fence on the southern property boundary also serves to contain the recreational activities of the Palm Beach Park beachgoers by maintaining active private recreation within the semi-enclosed beach parcel and protecting the adjacent sensitive dune habitat area also owned by the Palm Beach Park Association on the adjacent southern parcel. A six-foot tall post and cable fence would serve the same purpose and provide a less obtrusive public view of the ocean across the oceanfront parcel. As conditioned, the Commission finds the proposed development consistent with Section 30251 of the Coastal Act.

C. 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 part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) Adequate access exists nearby, or,

As shown in Exhibit 3, the proposed chain link fence will be located between the first public road and the sea directly seaward of the OCTA railroad tracks. The fence is entirely within a private property parcel and does not appear to extend into State tidelands as the property line is defined approximately 40 feet inland from the wet sandy beach. As such, there is a large portion of dry sandy public beach area between this private parcel and the breaking surf. The chain link fence does not extend beyond the private property onto the public beach area. The new fence would be in the same footprint and alignment as the pre-existing fence and would not change access conditions in the area.

Construction impacts such as the obstruction of the Poche Beach pedestrian railroad underpass beach accessway can affect the public's ability to access the adjacent beach area. Construction

related impacts can be partially alleviated by limiting construction work to the off-season (fall and winter) when beach use by the public is typically low. The applicant has indicated that lateral public beach access will not be affected during construction, as all work will occur solely within the private property parcel on the beach. Although construction access to the private property parcel will be via the Poche Beach public beach accessway, it will not be closed off to the public during construction.

Therefore, to guarantee that public access is maintained during peak beach use season, the Commission imposes **Special Condition #4** requiring construction to occur prior to the Memorial Day weekend and/or following the Labor Day weekend. Furthermore, **Special Condition #3** requires the submittal of a project construction staging plan to ensure that the staging site does not adversely impact public access to the beach or coastal resources, such as the nearby dunes. As conditioned, the Commission finds the development consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

D. WATER QUALITY AND MARINE ENVIRONMENT

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The protection of water quality is an important aspect of the Coastal Act. Construction will occur on the sandy beach adjacent to the ocean. Due to the proposed project's location near the water, demolition and construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life.

In order to minimize adverse construction-related impacts upon marine resources, staff imposes **Special Condition #1** providing for the safe storage of construction materials, the safe disposal of construction debris and best management practices (BMP). The applicant will be required to implement BMPs designed to minimize erosion and prevent debris from entering coastal waters. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. Therefore, the Commission finds that the

proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

E. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms to Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development, as conditioned, is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the City, this project is categorically exempt from CEQA as a Class 2(c) exemption. As such, the project is exempt for CEQA's requirements regarding consideration of mitigation measures and alternatives. The Commission, however, has conditioned the proposed project in order to ensure its consistency with Coastal Act requirements regarding visual impacts, public access, and water quality. These special conditions require compliance with construction-related best management practices (BMPs), submittal of final revised plans, establishment of a staging area for construction and restrict the timing of construction. As conditioned, the proposed project is consistent with the public access, visual resource, and water quality protection policies of the Coastal Act and there are no feasible alternatives or additional 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 is consistent with the requirements of the Coastal Act and CEQA.

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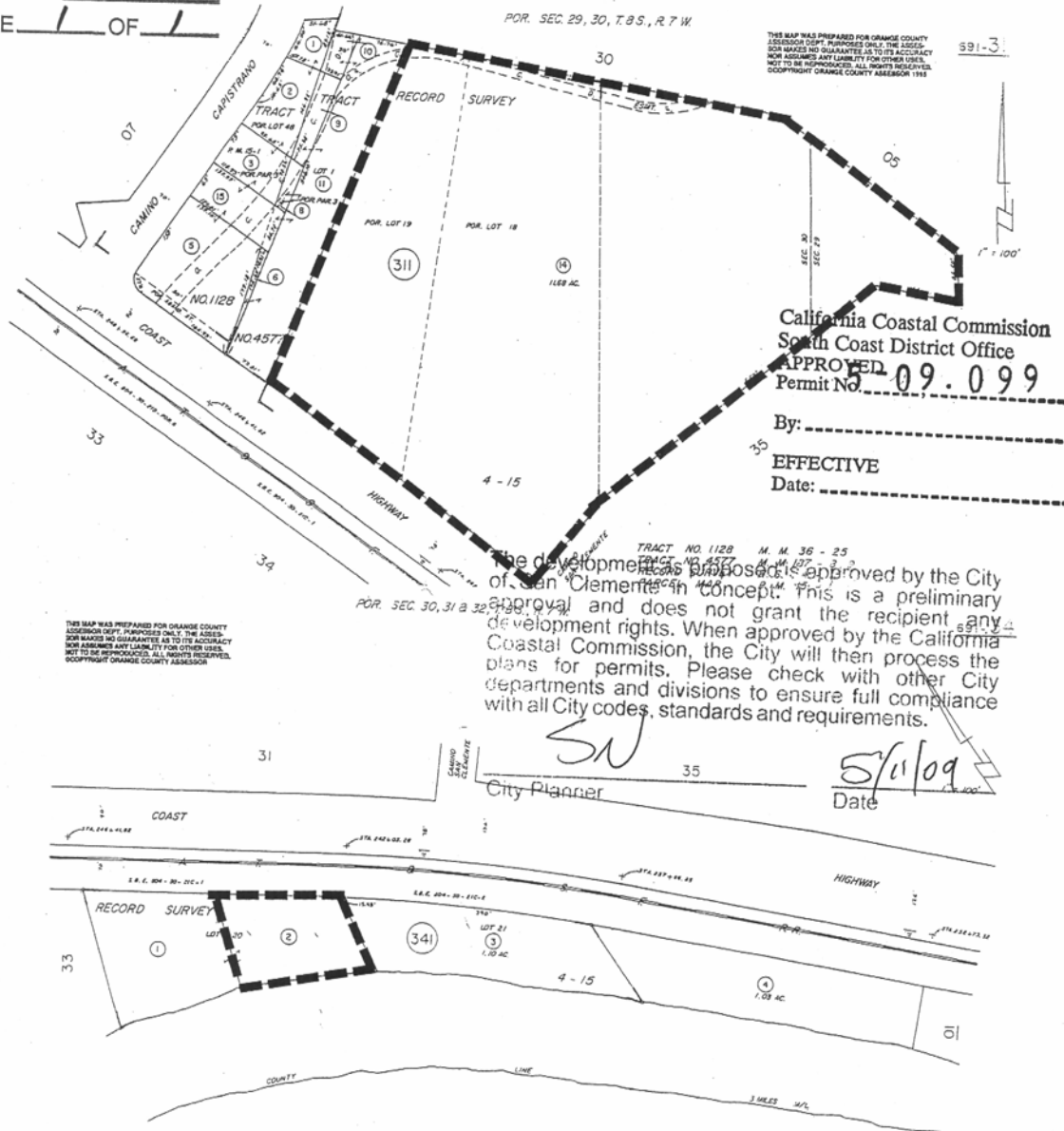
Palm Beach Park, San Clemente, CA

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PLAT MAP

EXHIBIT # 2
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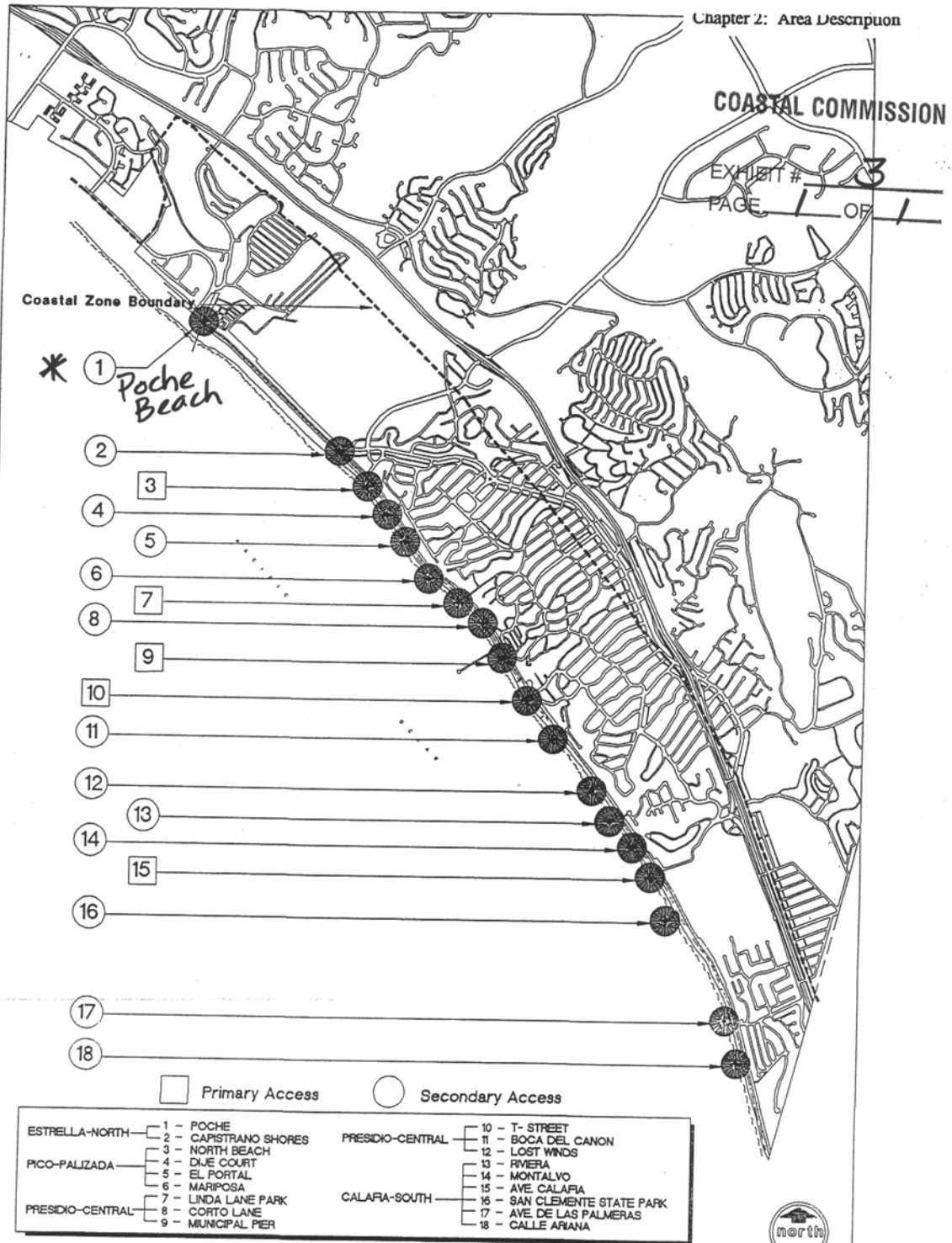
California Coastal Commission
South Coast District Office
APPROVED
Permit No. 5-09.099

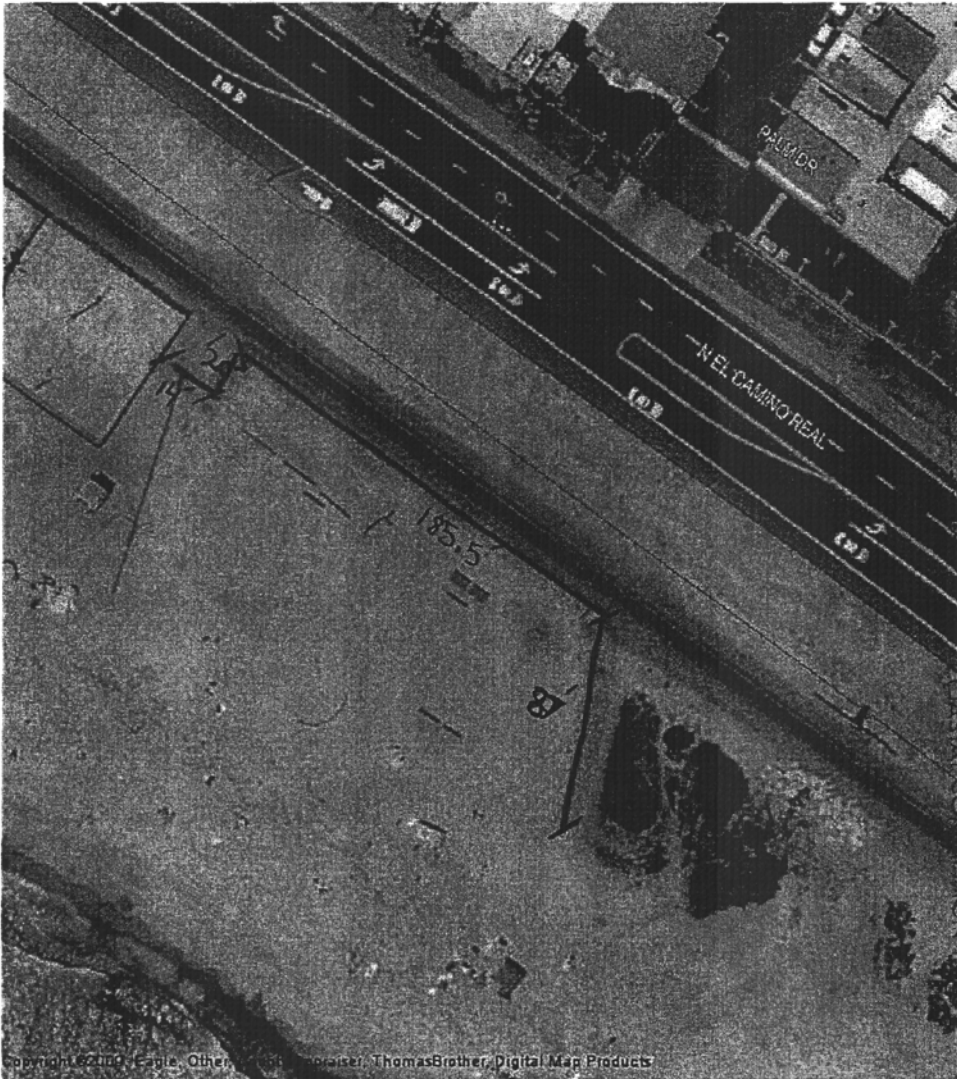
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The development proposed is approved by the City of San Clemente in concept. This is a preliminary approval and does not grant the recipient any development rights. When approved by the California Coastal Commission, the City will then process the plans for permits. Please check with other City departments and divisions to ensure full compliance with all City codes, standards and requirements.

City Planner

Date





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Site Plan Showing Area of Replacement Fence

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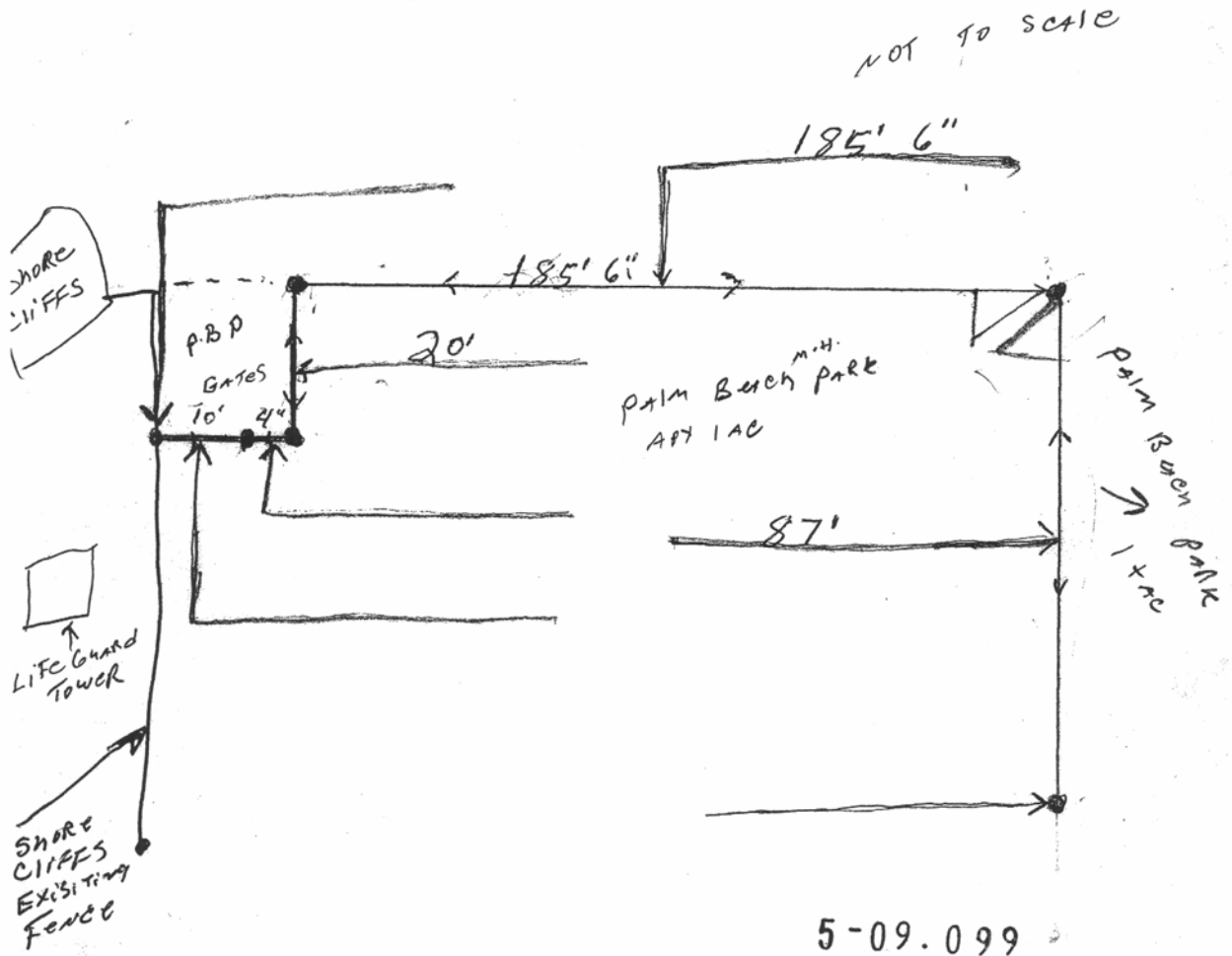
Bradd Hawk House & Ground

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EXHIBIT # 4
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The development as proposed is approved by the City of San Clemente in concept. This is a preliminary approval and does not grant the recipient any development rights. When approved by the California Coastal Commission, the City will then process the plans for permits. Please check with other City departments and divisions to ensure full compliance with all City codes, standards and requirements.

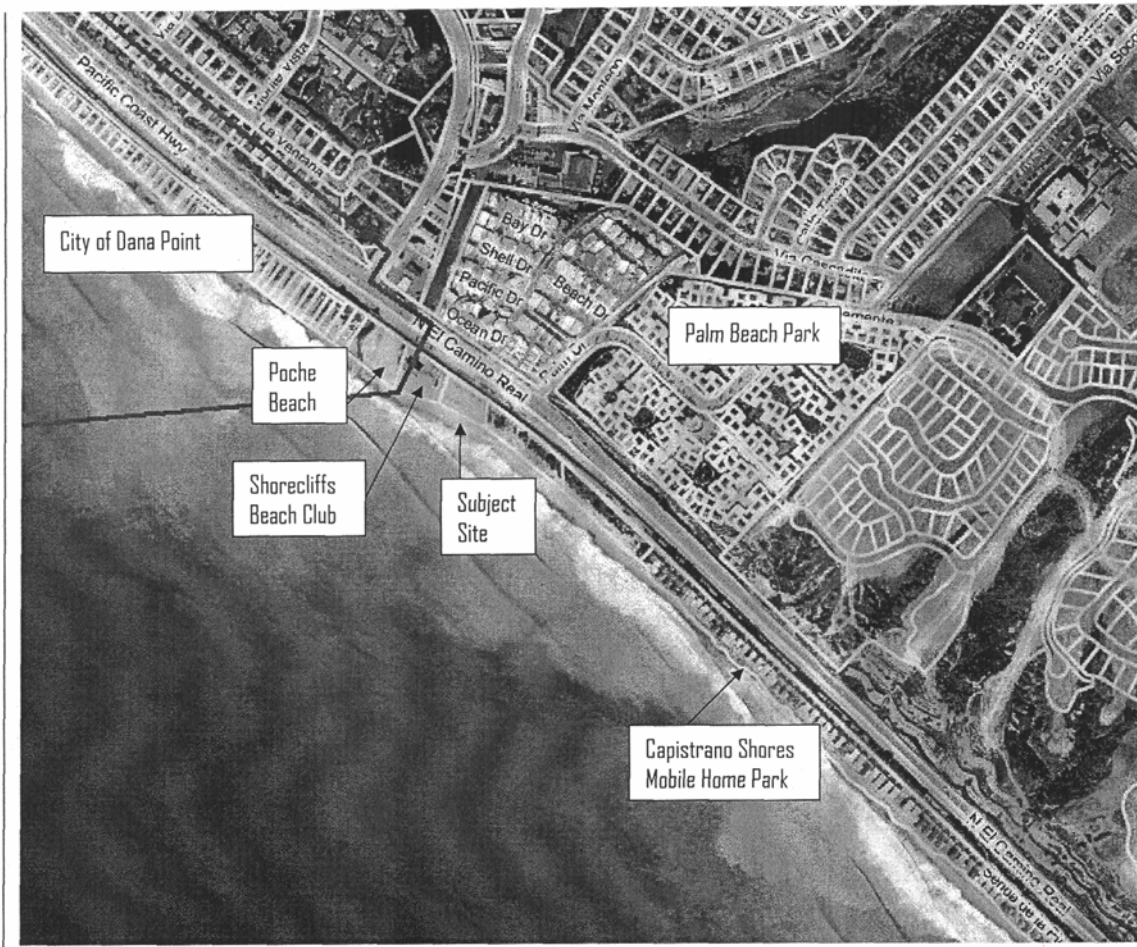
Planner Ben Wilcox Date 5/11/09
Replace Existing Fence Like for Like,
Fence will not exceed 6' in height and will be chain
http://maps.digitalmapcentral.com/TEMP MSU2A/pluto 07 06 FNEI 88673668 12420... 5/11/2009



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EXHIBIT # 4
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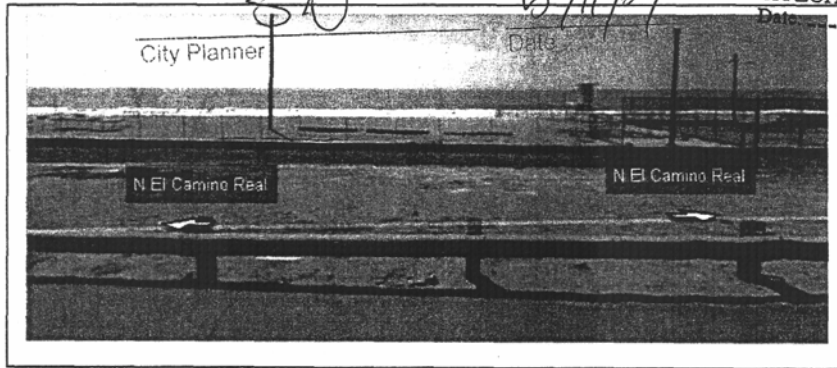
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Attachment

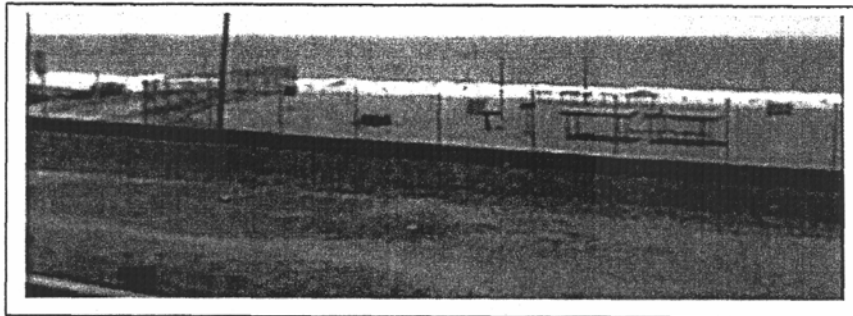
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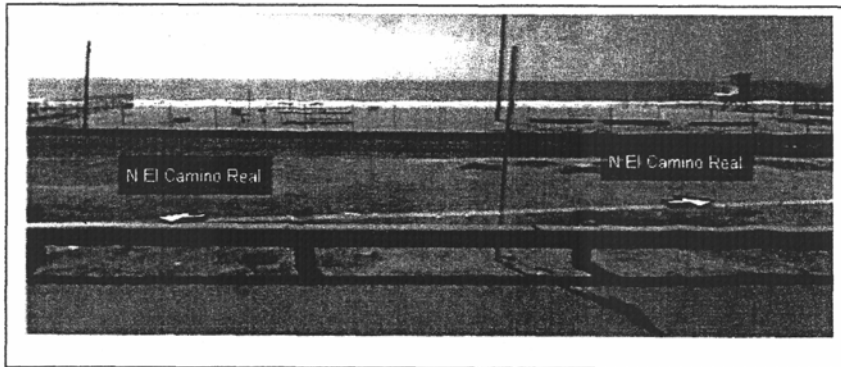
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View from North El Camino Real
Old Fence



View from North El Camino Real
Old Fence



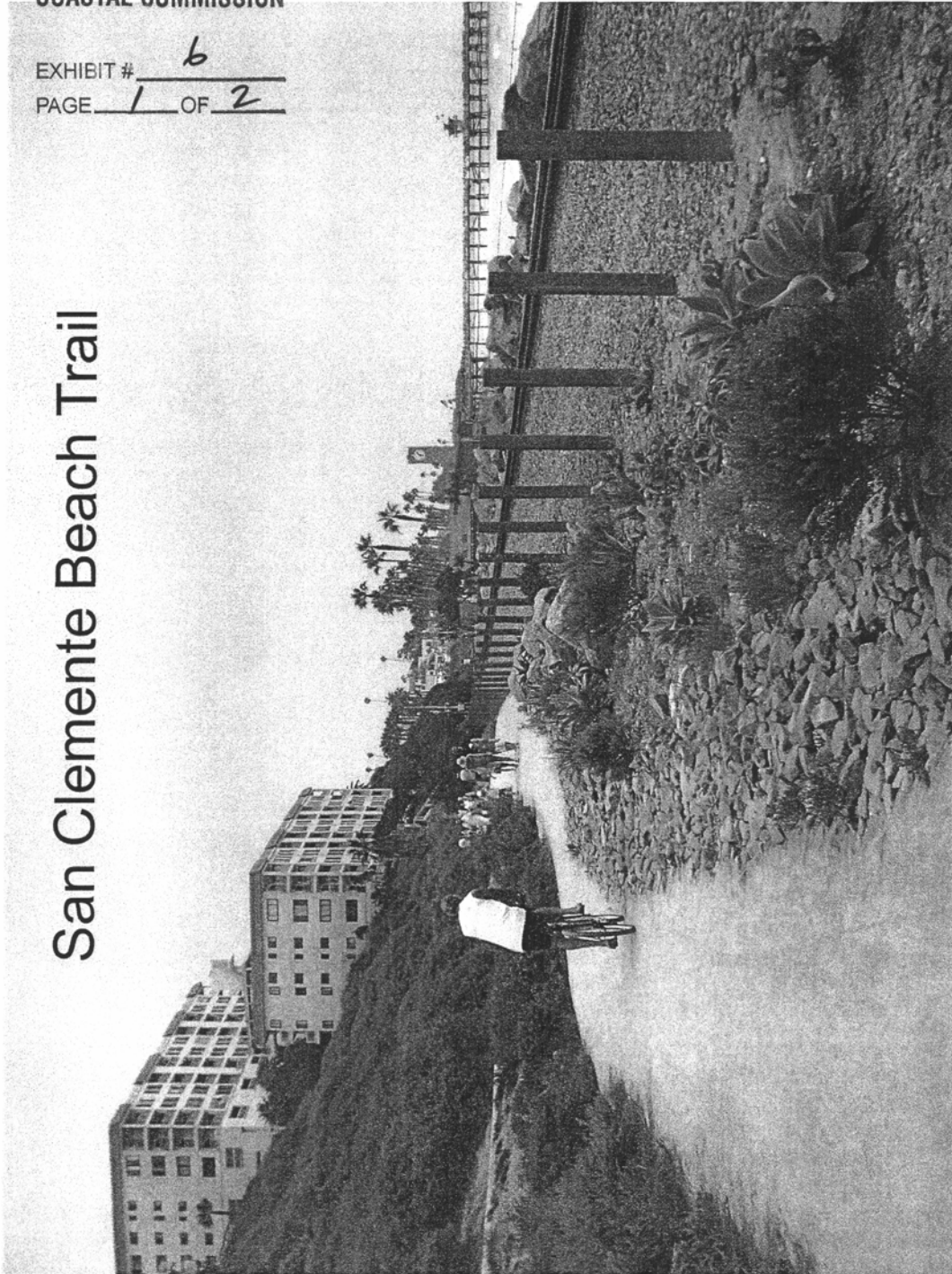
View from North El Camino Real
Old Fence

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EXHIBIT # 6
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San Clemente Beach Trail



#6



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