

CALIFORNIA COASTAL COMMISSION

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Filed: July 16, 2012
180th Day: January 12, 2013
Staff: F. Sy-LB
Staff Report: August 23, 2012
Hearing Date: Sept. 12-14, 2012

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-12-099

Applicant: Patricia Smissen

Agent: Tori Jones

Location: 450 Ocean Avenue, City of Seal Beach (County of Orange) (199-114-07)

Project Description: Construction of a new 3,193 square single-family residence with a 668 square foot attached three car garage on a vacant beach front lot. The resultant structure would be three-stories (basement with two floors above) on the beach side and one-story on the street side. Grading will consist of 355 cubic yards of export to a location outside of the Coastal Zone.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing construction of a new beach fronting single-family residence on a vacant lot. The major issue of this staff report concerns beachfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future.

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 drainage and run-off control plan; **6)** 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

5-12-099 (Smissen)

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.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit #1 – Location Map
 Exhibit #2 – Assessor Parcels Map
 Exhibit #3 – Site Plan
 Exhibit #4 – Floor Plans
 Exhibit #5 – Elevation Plans

I. MOTION AND RESOLUTION

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:

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

This permit is granted subject to the following 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 on which the Commission voted on the application. 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 applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, sea level rise or other natural hazard in the future; (ii) to assume the risks to the applicant 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 applicant agrees, on behalf of herself 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. 5-12-099 including, but not limited to, the residence, garage, foundations, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of herself 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 applicant further agrees, on behalf of herself and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the residence, garage, foundations, 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. 5-12-099. 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. 5-12-099. 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. 5-12-099 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Conformance with 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 investigations: *Soils Investigation, Proposed Residential Development, 450 Ocean Avenue Seal Beach, California (Project Number 11915-05)*, prepared by *NorCal Engineering* dated February 16, 2005; *Report of Compaction Tests for Backfill Operations, Located at 450 Ocean Avenue, in the City of Seal Beach, California (Project Number 11915-05)*, prepared by *NorCal Engineering* dated November 30, 2009; and *Updated Soils Investigation, Proposed Residential Development, 450 Ocean Avenue Seal Beach, California (Project Number 16253-12)*, prepared by *NorCal Engineering* dated May 17, 2012.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of all final design and construction plans, including foundation, grading and drainage plans and 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 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 unless the Executive Director determines that no amendment is legally required.

5. Conformance with Drainage and Run-Off Control Plan. The applicant shall conform with the drainage and run-off control plan received on May 29, 2012 showing roof drainage and runoff from all impervious areas directed to permeable areas, dry wells 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 legally 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 applicant 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 vacant lot located at 450 Ocean Avenue in the City of Seal Beach, Orange County (Exhibits #1-2). The site is vacant because the site was cleared pursuant to a previously issued CDP waiver (see below). The lot size is approximately 8,330 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 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 700 feet wide, between the subject property and the mean high tide line.

The applicant is proposing construction a new 3,193 square foot single-family residence with a 668 square foot attached three car garage on a vacant beach front lot (Exhibits #3-5). The resultant structure would be 3 stories consisting of a basement with two floors above (approximately 34-feet high) on the beach side and 1-story (approximately 22-feet high) on

the street side. In addition, exterior decks along the oceanside portion of the residence adjacent to the basement, 1st floor and 2nd floor are being proposed. The foundation for the proposed residence would consist of concrete slab, continuous spread footings and conventional retaining walls. Grading will consist of 355 cubic yards of export to a location outside of the Coastal Zone.

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

Vertical public access to the beach is available adjacent to the site at the 15th Street, street end (Exhibits #1-2).

The applicant is proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to permeable areas, dry wells or vegetated/landscaped areas.

2. Prior Commission Action at the Subject Site

On April 13, 2005, the Commission approved Coastal Development Permit No. 5-04-441-[Smissen]. The proposed project consisted of demolition of an existing single-family residence and construction of a new ocean-fronting 6,249 square foot, 25-foot high, two-story plus basement, single-family residence with an attached 700 square-foot, three (3)-car garage. The permit was approved with **FIVE (5) SPECIAL CONDITIONS** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** conformance with the submitted drainage and run-off control plan; and **5)** a deed restriction against the property, referencing all of the Special Conditions. The Notice of Intent to Issue permit was issued on April 19, 2005. The permit was never issued and subsequently expired.

On October 11, 2007, the Commission approved De-Minimus Waiver No. 5-07-256-[Smissen] for the demolition of an existing single-family residence on a single lot. All debris was to be removed from the site and disposed of at a location outside of the coastal zone. Sand bags were to be placed along the edges of the property for erosion control. The project also included the subdivision of the single lot into two parcels (Parcel 1 will be 6,732

square feet and parcel 2 will be 8,330 square feet). No additional development, such as grading was proposed.

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 (LCP)

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 (CEQA)

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.

APPENDIX A

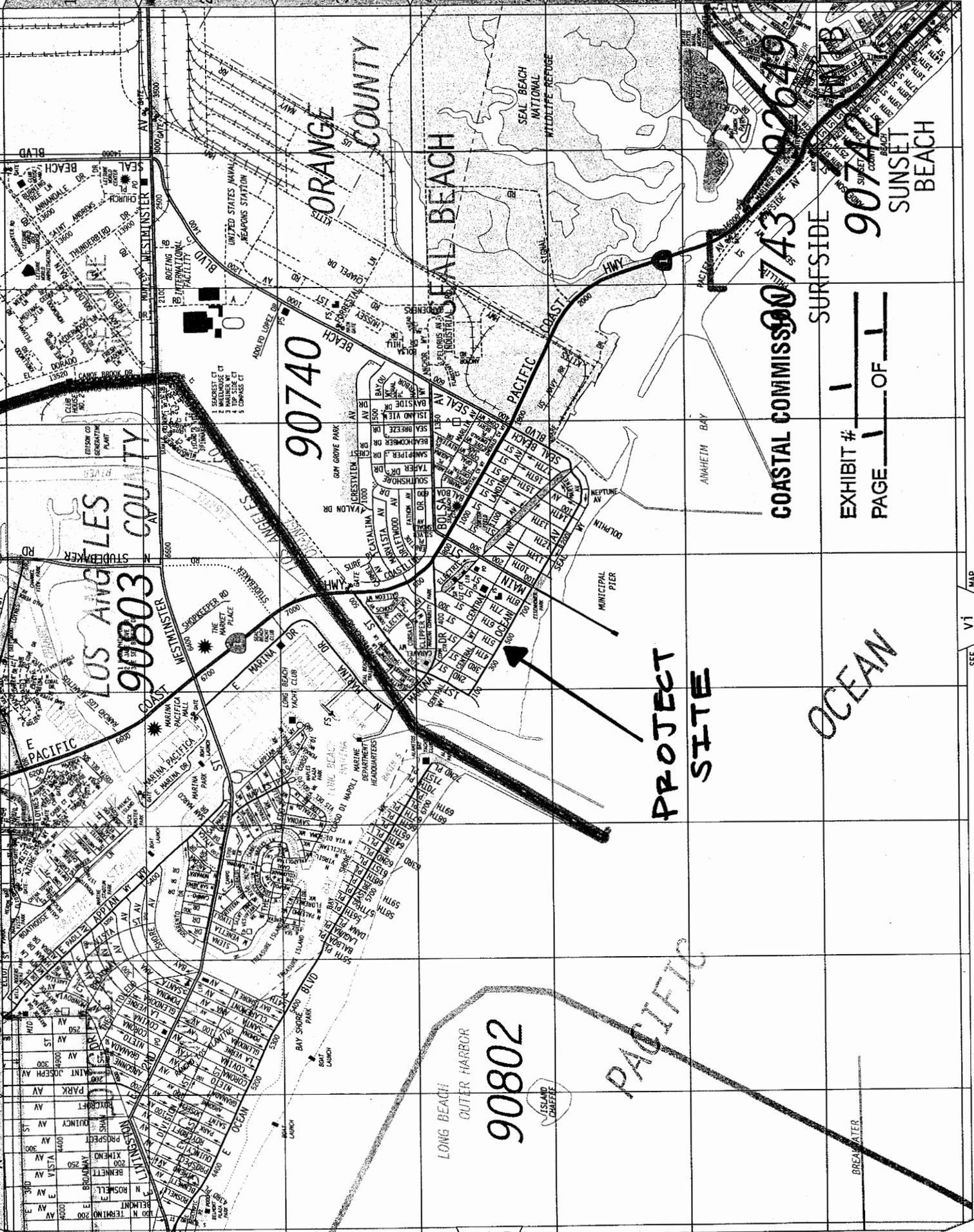
Substantive File Documents: City of Seal Beach Approval-in-Concept dated March 28, 2012; Coastal Development Permit No. 5-04-441-[Smissen]; De Minimis Waiver No. 5-07-256-[Smissen]; *Soils Investigation, Proposed Residential Development, 450 Ocean Avenue Seal Beach, California (Project Number 11915-05)*, prepared by *NorCal Engineering* dated February 16, 2005; Letter from Commission staff to applicant dated April 30, 2012; Letter from applicant to Commission staff received May 29, 2012; *Report of Compaction Tests for Backfill Operations, Located at 450 Ocean Avenue, in the City of Seal Beach, California (Project Number 11915-05)*, prepared by *NorCal Engineering* dated November 30, 2009; *Updated Soils Investigation, Proposed Residential Development, 450 Ocean Avenue Seal Beach, California (Project Number 16253-12)*, prepared by *NorCal Engineering* dated May 17, 2012; Letter from Commission staff to Applicant dated June 28, 2012; and *Wave Runup Study, 450 Ocean Avenue, Seal Beach, CA* prepared by *Geosoils, Inc.* dated July 12, 2012.

07R

06E

06F

06G



90740

90803

90802

COASTAL COMMISSION 743

SURFSIDE

90742

SUNSET BEACH

PROJECT SITE

OCEAN

EXHIBIT # 1
PAGE 1 OF 1

SEE V1 MAP

M.M. 3-19

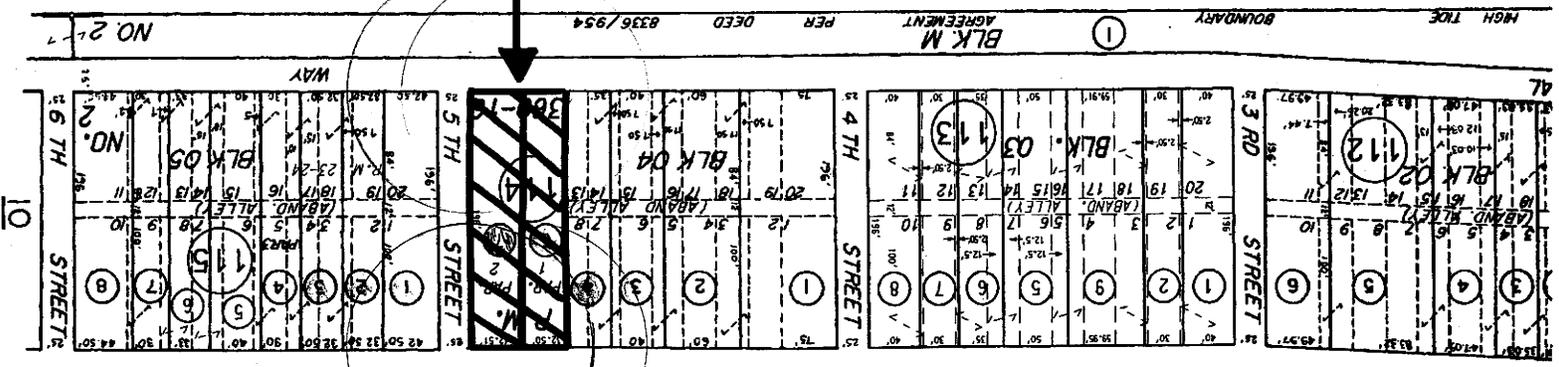
NOTE - ASSESSOR'S BLOCK & ASSESSOR'S MAP

LINE 3 MILES NW

OCEAN

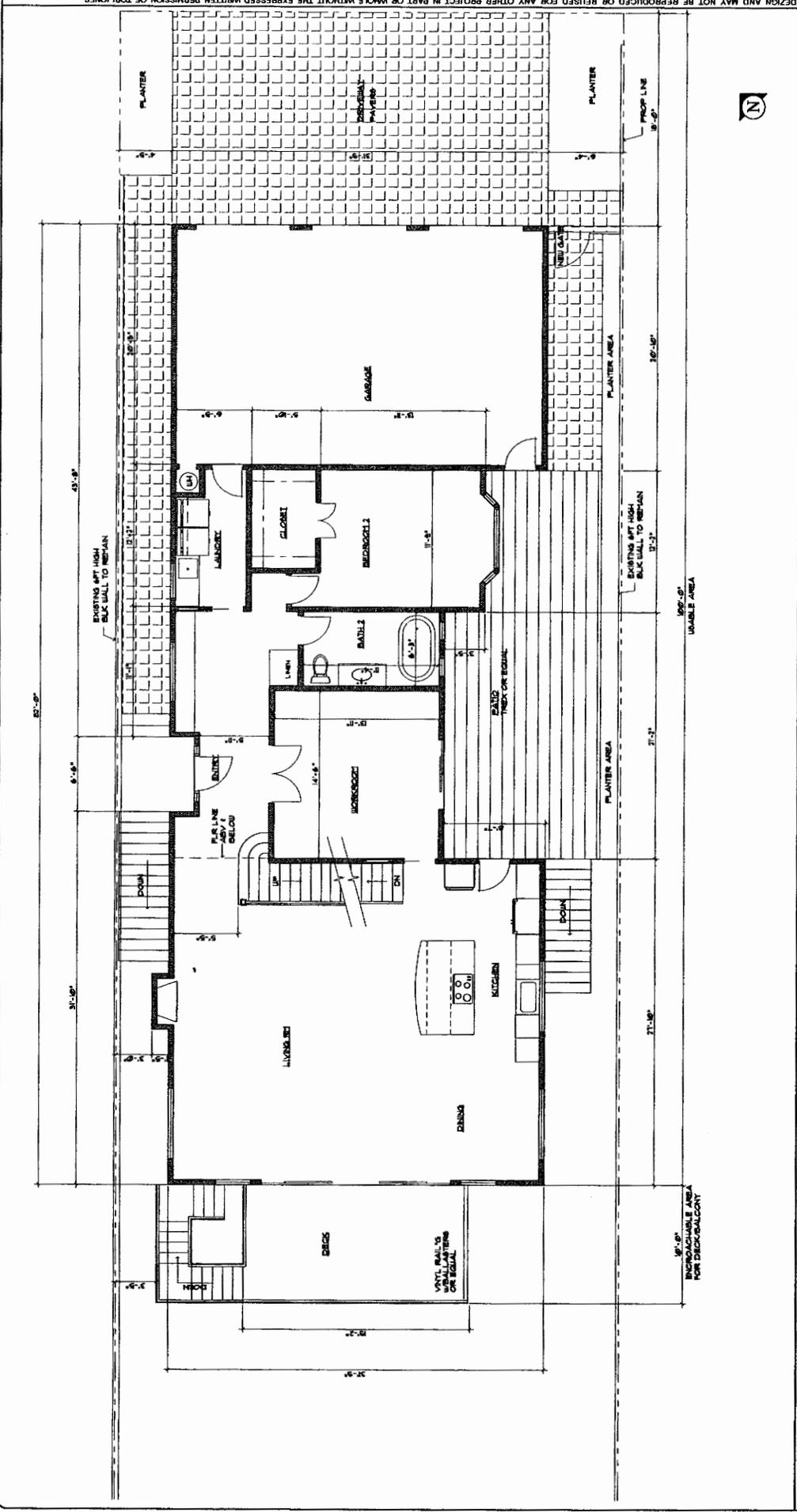
PROJECT SITE

THIS MAP WAS PREPARED FOR ORANGE COUNTY
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AVENUE





SCALE: 1/4" = 1'-0"
 LEGEND
 ===== NEW 2x4 WALLS (room)
 () NEW
 COASTAL COMMISSION
 EXHIBIT # 4
 PAGE 2 OF 3
 MAIN FLOOR PLAN (STREET LEVEL)

REVISION	DATE

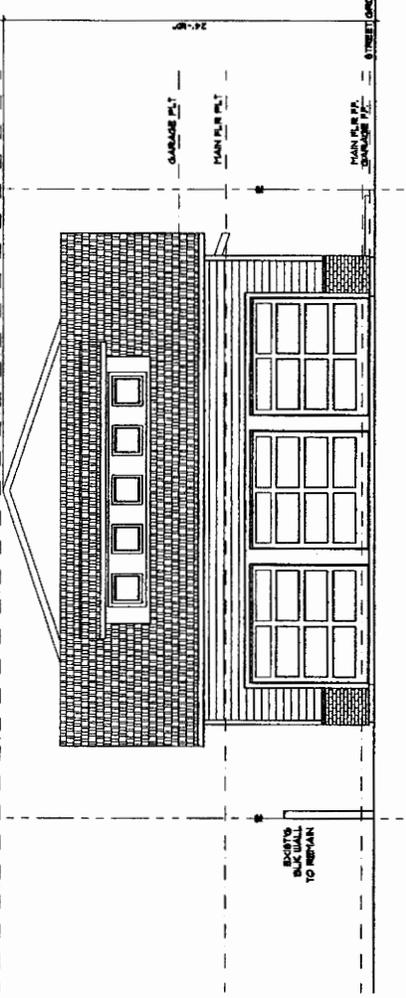
DESIGN & DRAWING BY:
 TORI JONES DESIGN
 271 OAK KNOLL DR
 LOS ANGELES, CA 90120
 tdesign@gmail.com
 562 533 5918

NEW CUSTOM HOME FOR:
 SMISSEN RESIDENCE
 450 OCEAN AVE
 SEAL BEACH, CA 90740

EXTERIOR ELEVATIONS

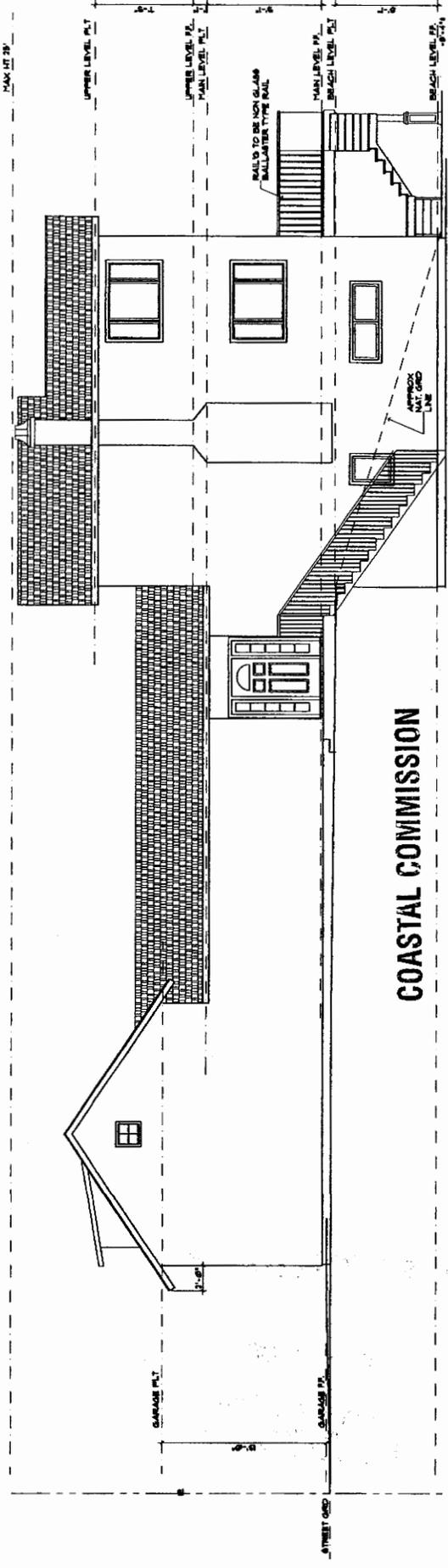
PROJECT NAME	SMISSEN RESIDENCE
SCALE	1/4" = 1'-0"
DATE	08/20/18
DESIGNER	TORI JONES

A-6
 6 OF 8



FRONT (NORTHWEST) ELEVATION

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



RIGHT (WEST) ELEVATION

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

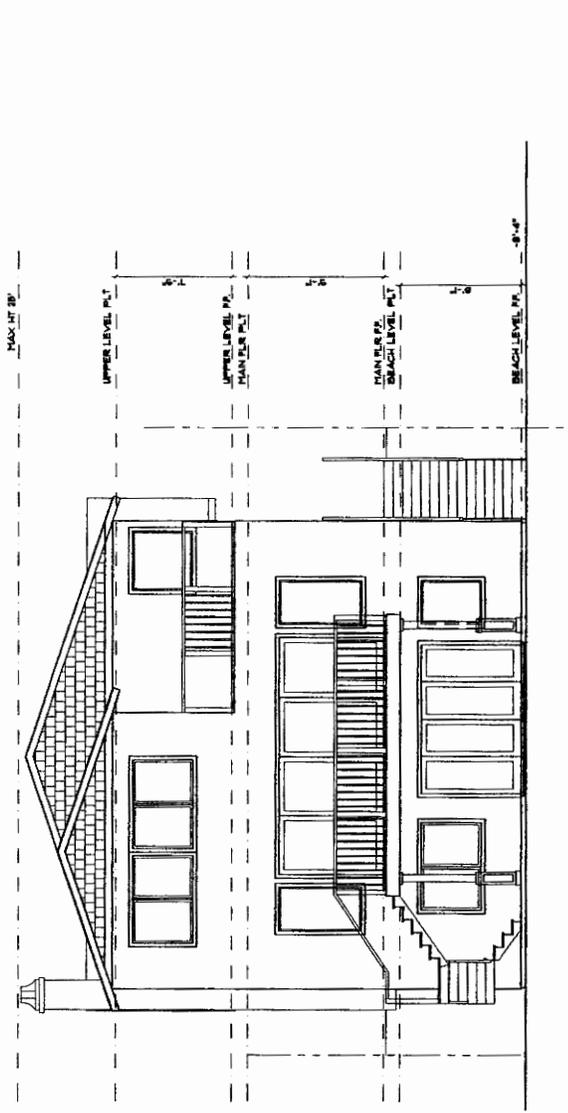
EXHIBIT # 5
 PAGE 1 OF 2

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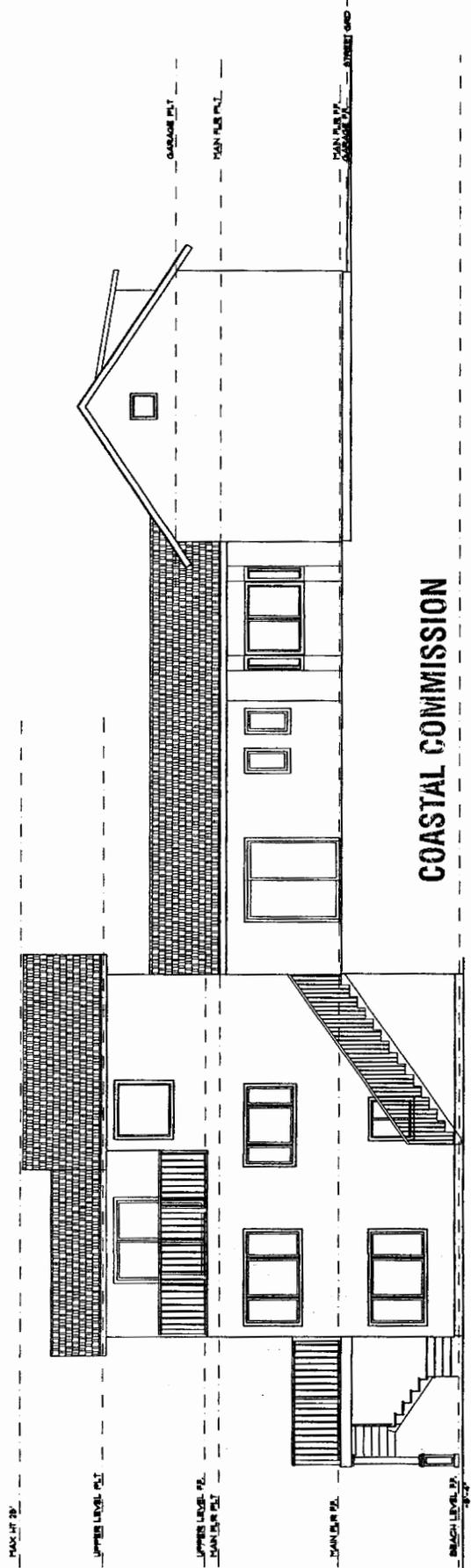
NEW CUSTOM HOME FOR:
 SMITHEN RESIDENCE
 450 OCEAN AVE
 SEAL BEACH, CA 90740

EXTERIOR ELEVATIONS

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BEACH FRONT (SOUTHEAST) ELEVATION



LEFT (EAST) ELEVATION

COASTAL COMMISSION

EXHIBIT # 5

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