



LEVITT LAW
A PROFESSIONAL CORPORATION

October 4, 2016

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Attn: Shannon Vaughn
Shannon.vaughn@coastal.ca.gov

SENT VIA ELECTRONIC AND U.S. MAIL

**RE: In Support of Administrative Permit
Application No. 5-16-0725**

Dear Ms. Vaughn:

This office represents Jason Smallwood and Breana Pennington, the applicants. We were retained after a neighbor, Mr. and Mrs. Arthur Gallucci, submitted letters in opposition of the prior pending city application, and to address the current letters to the Coastal Commission. Dispelling the inaccuracies of the letters presented to the Commission is appropriate.

I have reviewed the letters from Gaines & Stacey Law, LLP. All such letters contain information that is presented as fact, but is quite the opposite. The letters are misleading and misrepresent the project itself, the approval process, and the course of events which have transpired.

To start at the beginning, as the Commission's administrative report states, the architectural review committee of Surfside Colony, Ltd., (the "ARC") received the blueprints for the proposed deck at the beginning of the year. The ARC met, reviewed, approved, and stamped the plans as such.

The applicant, upon receiving ARC approval properly filed its application for the MUP. The Planning Commission meeting was properly noticed, and a vote occurred at the subsequent meeting, on June 20, 2016, resulting in a 4-1 approval of the proposed MUP. The Gallucci's filed an appeal.

In the letters to the Commission, counsel for the Gallucci's state the deck would be in possible violation of CEQA, and possibly coastal commission statutes. Thank you for stating in your administrative reprot of September 16, 2016, that such statements are simply false.

Furthermore, statements that the deck is out of step with the community feel is a misrepresentation of the community's character. The community is a private community, with a well regulated and well run owners association, with its own Architectural Review Committee and standards, and the applicant has completed that approval process.

For edification, out of the total 110 beach-front homes located in the community, 33 have ten-foot in depth, second floor roof decks. Continuing, the opposition states that the deck is in

RECEIVED
South Coast Region

OCT 04 2016

**CALIFORNIA
COASTAL COMMISSION**

Click here to go to
original staff report

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violation of the Community's architectural standards, and that "pilings" would be placed on the "public" sand to support the deck. In fact, under Surfside Colony's architectural and development guidelines, "A Row" decks, "10' in depth if unroofed" are permitted as long as the deck below is also unscreened if 10' in depth.

To cite the CC&R's themselves:

A strip of land 10' in depth, the width of the house and extending from the front of the A-Row property line onto the beach, may with Surfside Colony prior approval be used solely for the construction of an unroofed deck to be attached to the Residence.

The applicant is building precisely what is described. In the application before you, the new deck will be 10' in depth, unroofed, and the ground-level, finished floor height deck below will be 10' in depth unscreened (the existing rounded corners will simply be squared, to match the new deck above). Furthermore, the new deck will be supported by two architecturally pleasing posts resting on the deck below, not put into the "public beach" as the opposition would have you believe.

Ironically, the Gallucci's live in a newly remodeled three-story home, casting shadows on the applicant's much smaller two-story residence, and would have you believe that they are the ones who will have inferior ambient lighting and views? As the Commission's administrative permit correctly points out, private view preservation is not under the purview of the Commission.

In summary, the project has been approved at the Community governing level, the project was approved at the Planning Commission level via a 4-1 vote, and the project was approved by a 5-0 vote by the Seal Beach City Council when the Gallucci's attempted to overturn the Planning Commission vote.

More, importantly, as the Coastal Commission has stated, this project because of its limited scope, and size, and existing site conditions in a private community via PRC Section 30624, lend itself to Executive Director approval through the administrative permit process.

Lastly, Gallucci's counsel makes the erroneous statement that somehow his clients' due process rights have been violated because the meeting is taking place at a distance far from his clients' home. The Commission has properly noticed this meeting and hearing as it does for all applications. The meeting date occurs when the meeting is simply located in the Commission's Northern California meeting location. My client is traveling to such location from his home. The Gallucci's could choose to do the same.

Please contact this office with any questions you might have. Thank you.

Sincerely,

Scott L. Levitt

Scott L. Levitt, Esq.

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October 3, 2016

ORIGINAL SENT BY U.S. MAIL

VIA EMAIL Shannon.Vaughn@coastal.ca.gov

Steve Kinsey, Chair
California Coastal Commission
c/o South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Th8c

Re: Application No. 5-16-0725
Hearing Date: October 6, 2016
Item No.: Th8c
25 A Surfside Avenue, Surfside Colony, Seal Beach
Objection to Administrative Permit

Dear Ms. Vaughn:

This office represents Mr. and Mrs. Arthur Gallucci, the owners of the property located at 24 A Surfside Avenue, with regard to their opposition to a request to allow the extension of an existing deck and the construction of a second floor balcony on a single family residence located at 25 A Surfside Avenue (the "Project"). **On behalf of our client, we respectfully request that the Commission follow the Coastal Act and its own regulations, invalidate the administrative permit for the Project, and direct that the application be processed as a standard Coastal Development Permit.**

The Coastal Act requires a coastal development permit for any "development" within "the coastal zone," which includes all "land and water area of the State of California ... extending seaward to the state's outer limit of jurisdiction ... and extending inland generally 1,000 yards from the mean high tide line of the sea." Pub. Res. Code §§ 30103, 30600(a). The Act defines "development" to include, among other things, "the placement or erection of any solid material or structure" and the "construction, reconstruction, demolition, or alteration of the size of any structure." Pub. Res. Code, § 30106.

Shannon Vaughn
October 3, 2016
Page 2

Although 14 Cal. Code Regs. § 13250(a) exempts “[s]tructures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds,” subdivision (b) clarifies that a CDP is required for any improvement “to a single-family structure if the structure or improvement is located [] on a beach...”

Here, the deck extension and second floor balcony are located on the sandy beach located between Anaheim Bay and Sunset Beach. The existing structure is already legal non-conforming as to required parking and setbacks. Further expansion of this legal non-conforming use should not be allowed. The Project is visually intrusive and would adversely affect coastal resources for properties in the immediate surrounding neighborhood. The administrative approval of the Project is clearly inconsistent with the policies and intent of the Coastal Act.

Finally, we object to the Commission holding this hearing in Ukiah, which is over 500 miles away from their home in Seal Beach. Our clients’ due process rights to participate in the public hearing on this matter are clearly compromised by the distance, time and expense required for them to attend a simple permit hearing. Our request to staff to have the hearing held in Southern California has been ignored. We ask that, at the very least, you postpone your consideration of this item until your next Southern California meeting.

Based upon the foregoing, the Commission must void the administrative permit for the project and direct that the application be processed as a standard Coastal Development Permit.

Thank you for your attention to this matter. As always, please do not hesitate to contact me at any time with any comments or questions that you may have.

Sincerely,

GAINES & STACEY LLP

By


FRED GAINES

cc: Jack Ainsworth, Acting Executive Direct (Via Email)
Teresa Henry, District Director (Via Email)

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

Th8c



Staff: S Vaughn – LB
Date: September 16, 2016

ADMINISTRATIVE PERMIT

Application No.: 5-16-0725

Applicant: Breana Pennington

Agent: Jason Smallwood

Project Description: Addition of an approx. 191 sq. ft. second story balcony with two support columns, replacement of a 360 sq. ft. first floor concrete deck with an approx. 374 sq. ft. concrete deck, addition of a new outdoor shower and drain connected to the existing sewer line, and installation of four new French drains.

Project Location: 25-A Surfside Ave., Seal Beach (Orange County)
(APN: 178-491-28)

EXECUTIVE DIRECTOR'S DETERMINATION

The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

October 6, 2016, 9:00 a.m.
Ukiah Valley Conference Center
200 South School Street
Ukiah, CA 95482

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

JOHN AINSWORTH
Acting Executive Director

By: Shannon Vaughn
Title: Coastal Program Analyst

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 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 term or 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.

SPECIAL CONDITIONS: See pages five through seven.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

A. PROJECT DESCRIPTION

The applicant proposes to replace an existing 360 square-foot first-floor concrete deck with an approximately 374 square-foot concrete deck and to construct a new approximately 191 square-foot second-floor balcony with two new support columns and 42-inch high glass guard railing (**Exhibit 2**). The support columns will be approximately 14 square-inches and have support footings approximately 36 inches into the ground. They will house downspouts that will direct runoff to on-site drainage. The second-story balcony glass guardrail will be made of bird-safe glass (**Exhibit 2**). The applicant also proposes to install a new outdoor shower with a drain that connects to the existing sewer line and four new French drains at each corner of the lot to enhance water quality on the site (**Exhibit 2**). The project site is partially located on a 1,532 square-foot beach-front lot at 25 A Surfside Avenue (16257 Surfside Avenue 25A) in the City of Seal Beach, Orange County (**Exhibit 1**), and extends approximately 10 feet seaward of the lot encroaching onto the sand (**Exhibit 2**), which is consistent with the pattern of development in the area. The beach seaward of the applicant's property is a private beach owned by Surfside Colony, LTD for approximately 80 feet seaward of the applicant's beach-facing property line, beyond which the public beach begins. The applicant has secured a lease from Surfside Colony, LTD allowing exclusive legal use of the sand directly seaward of the beach-facing property line (**Exhibit 3**), over which the proposed deck and balcony will extend. Public pedestrian access through the gated community is located approximately 0.3 miles northwest of the site at a gated vehicle and pedestrian entrance on Pacific Coast Highway.

On July 20, 2016, the City of Seal Beach Planning Commission approved Minor Use Permit 16-4, Resolution 16-10, for the proposed project. The local approval was subsequently appealed to the City Council by Mr. and Mrs. Arthur Gallucci, the neighbors directly down coast of the subject site. The appeal was filed on the grounds that the proposed project was inconsistent with the City's Municipal Code, stating that it will adversely affect the surrounding properties because the proposed columns and second-story balcony "will adversely impact the Appellant's views toward the west-setting sun, adversely affecting the value of his property and his use of his own home deck." The neighbor also stated that the City's CEQA determination was improper because the proposed project "presents unusual circumstances" because "the proposed balcony is twice as large as the majority of the second floor balconies in the area" and "will have a significant impact on coastal views and sun exposure by adjacent homeowners." The neighbor further argued that the proposed project would violate the Rules and Regulations of Surfside Colony, LTD, which state that "decks shall not obstruct the view of adjoining neighbors" and that the proposed project violates the Lease, which only allows decks and balconies to extend five feet beyond the property line (**Exhibit 4**). The City Council denied the appeal and approved the proposed project on July 25, 2016. The applicant applied for a coastal development permit from the Coastal Commission on August 12, 2016. Commission staff received several letters of objection to the proposed project from the representative of Mr. and Mrs. Arthur Gallucci, who are opposed to the project on the same grounds as stated above and because the new deck will disrupt the private view from their own private deck (**Exhibit 4**).

While public views are protected under Section 30251 of the Coastal Act, private views are not. As previously stated, public pedestrian access does exist through the gated community, however there are no public views that will be disrupted as a result of the proposed development. The only views that will

the potentially be disrupted from the proposed development are those of the neighbors' private views directly on either side of the site, including Mr. and Mrs. Arthur Gallucci (**Exhibit 4**). In the event that the entirety of the subject beach becomes public, no coastal views from public vantage points will be disrupted by the proposed development. Furthermore, private view issues are generally addressed by local governments and/or homeowner associations. The applicant has received a conditional approval from Surfside Colony, LTD for the proposed project dated February 18, 2016 (**Exhibit 3**) indicating that the project is in compliance with the requirements of the homeowners association. The lease agreement between the applicant and Surfside Colony, LTD, states that Surfside Colony, LTD maintains "absolute discretion" when permitting decks associated with residential developments on the beach seaward of the residences. Furthermore, the applicant has received an approval-in-concept from the City of Seal Beach dated June 23, 2016 as shown on the submitted plans (**Exhibit 2**). The City's approval-in-concept includes a CEQA determination of Class 1, Categorically Exempt for existing facilities.

Special Condition 1 maintains any public rights that exist or may exist at the site in the future. **Special Condition 2** requires the applicant to observe best management practices during construction of the proposed project. As proposed by the applicant and approved by the City and Surfside Colony, LTD, and as conditioned by this coastal development permit, the project is consistent with the Chapter 3 policies of the Coastal Act.

B. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. RECREATION

The proposed development, as submitted, does not interfere with public recreational use of coastal resources and conforms with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

D. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes **Special Condition 2** requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

E. 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 3 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.

F. 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.

SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions:

1. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.
2. **Water Quality**
Construction Responsibilities and Debris Removal
 - (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
 - (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
 - (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
 - (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone;
 - (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity;

- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day;
- (7) Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss;
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

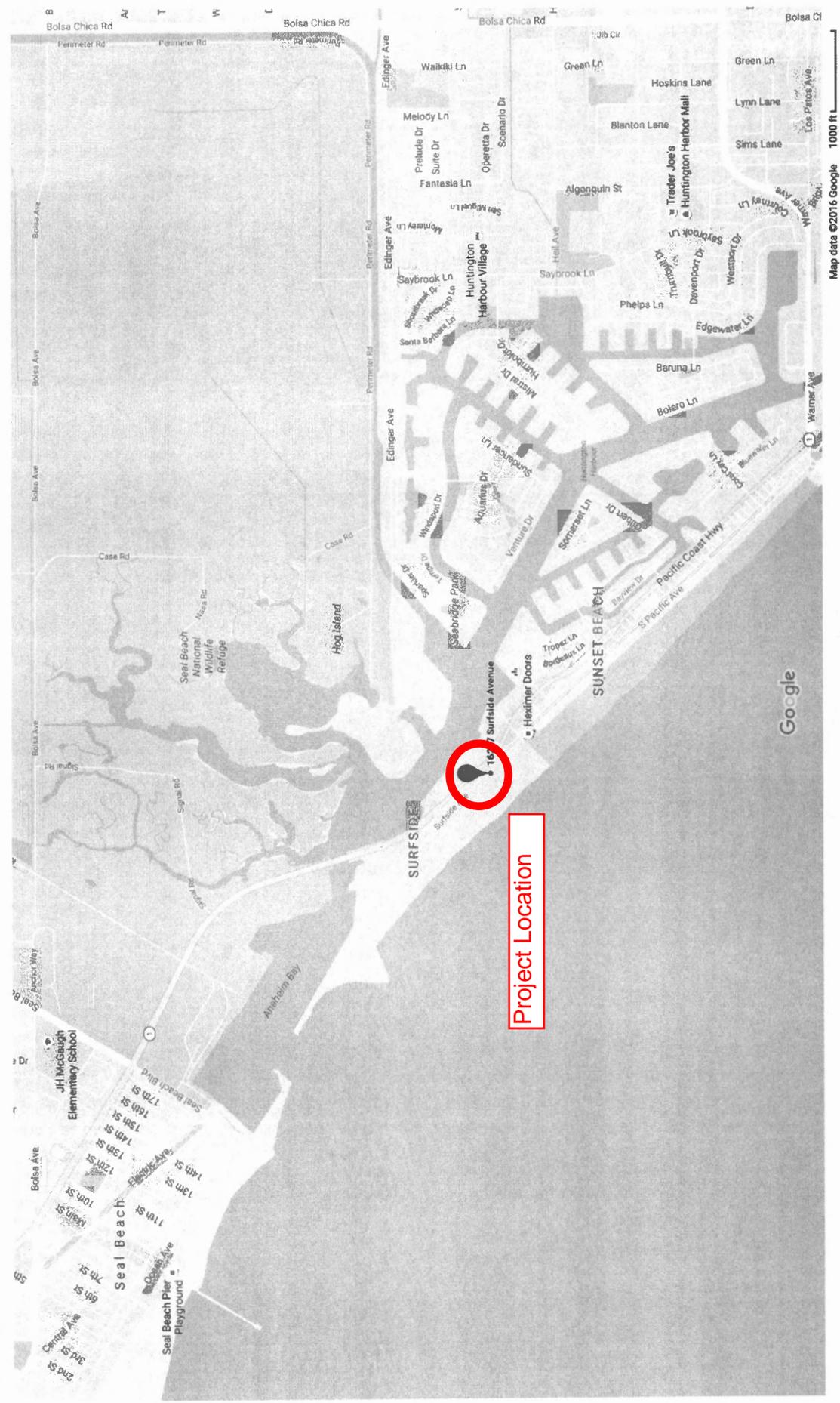
ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

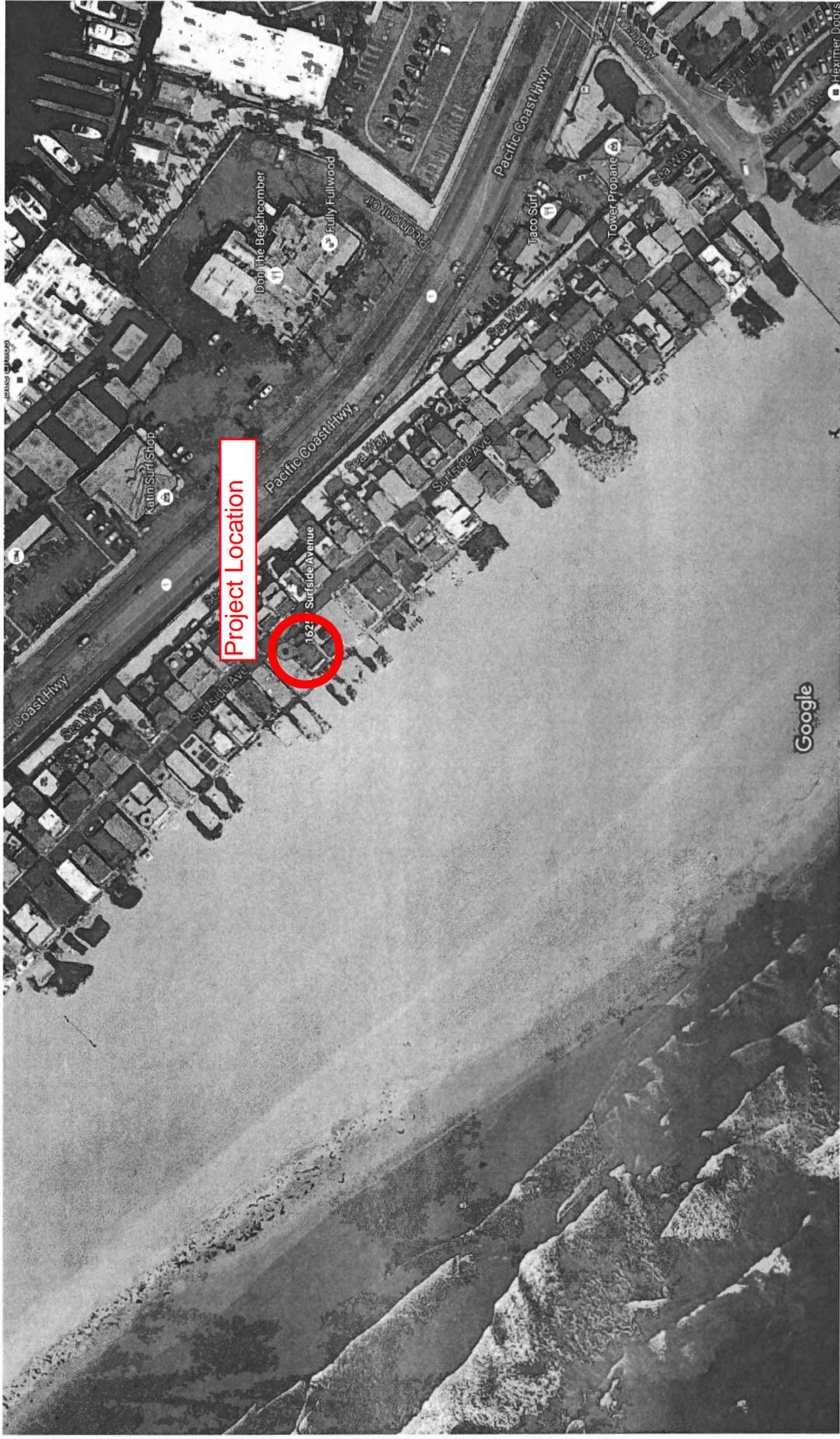
Date of Signing

Google Maps 16257 Surfside Ave



Coastal Commission
 5-16-0725
 Exhibit 1
 1 of 3

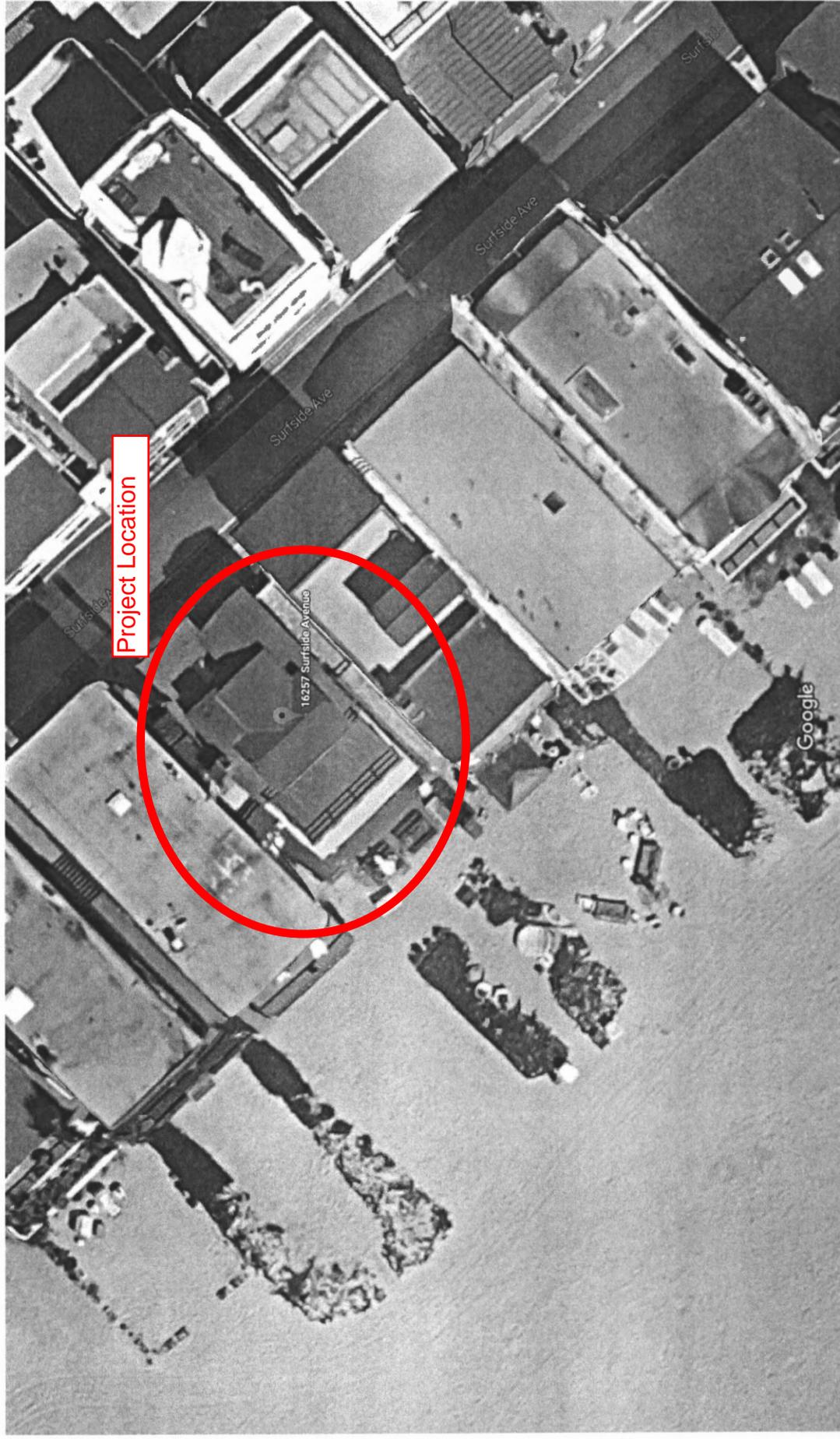
Google Maps 16257 Surfside Ave



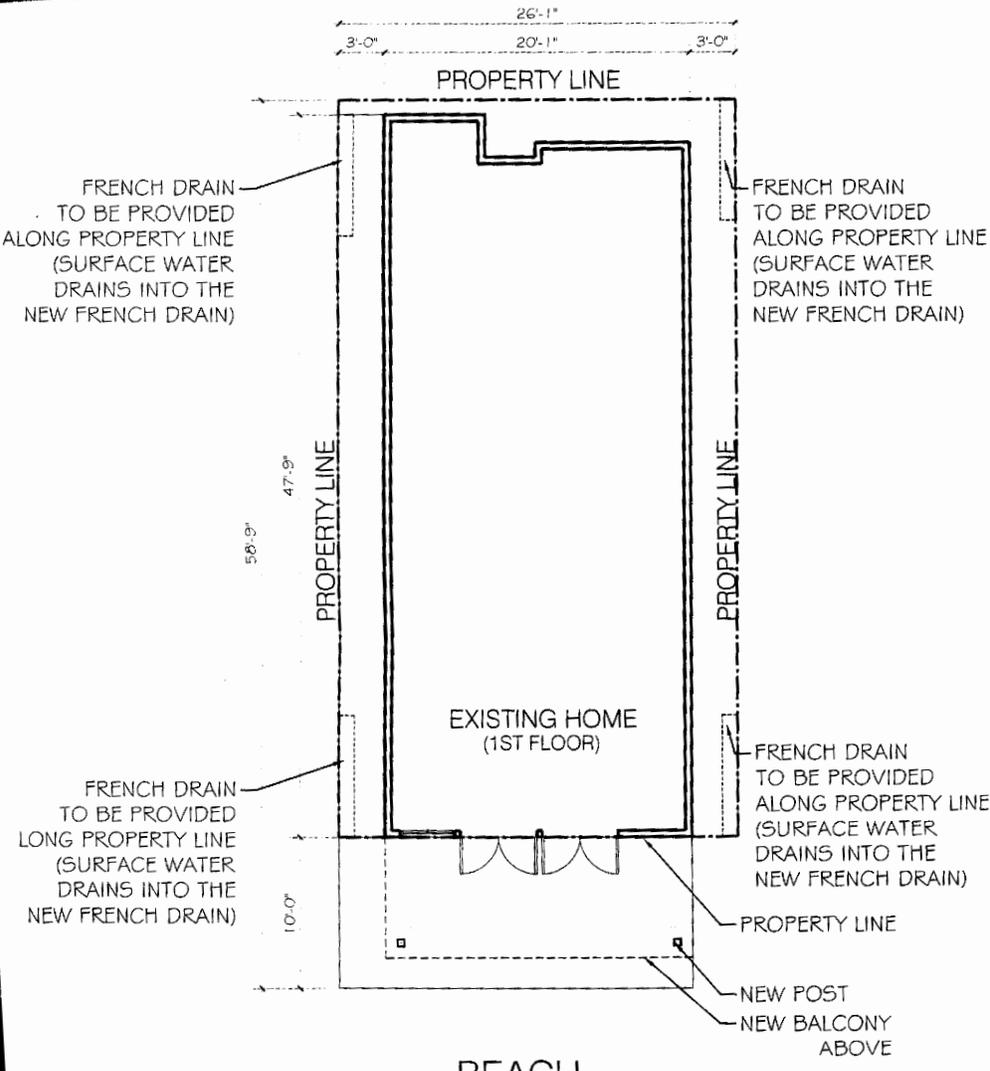
Imagery ©2016 Google, Map data ©2016 Google 100 ft

Coastal Commission
5-16-0725
Exhibit 1
2 of 3

Google Maps 16257 Surfside Ave



Imagery ©2016 Google, Map data ©2016 Google 10 ft



BEACH



PROJ

ZONING:
R9 RESIDENTIAL LOW DENSIT

LEGAL DATA:

APN #:
TRACT: LOT:

OCCUPANCY:

R-3

TYPE OF CONSTRUCTION:

TYPE VB

SCOPE OF WORK:

EXTENSION OF EXISTING DECI

AREA TABULATION:

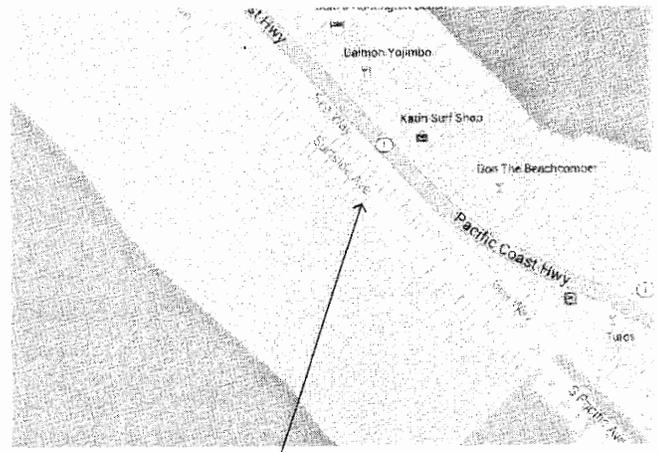
TOTAL HABITABLE AREA OF (E)
(708 SF ON FIRST FLOOR + 916
EXISTING GARAGE AREA:

EXISTING FIRST FLOOR DECK AF
NEW FIRST FLOOR DECK AREA:
EXISTING BALCONY AREA TO BI
NEW SECOND FLOOR BALCON

APPROVED IN CONCEPT
SEAL BEACH PLANNING DEPT
* Extension of 60' concrete deck
* New 2nd floor deck extension
SIGNATURE: *[Signature]*
* Senior Planner
DATE: 10/23/16

SITE PLAN

VICINITY MAP



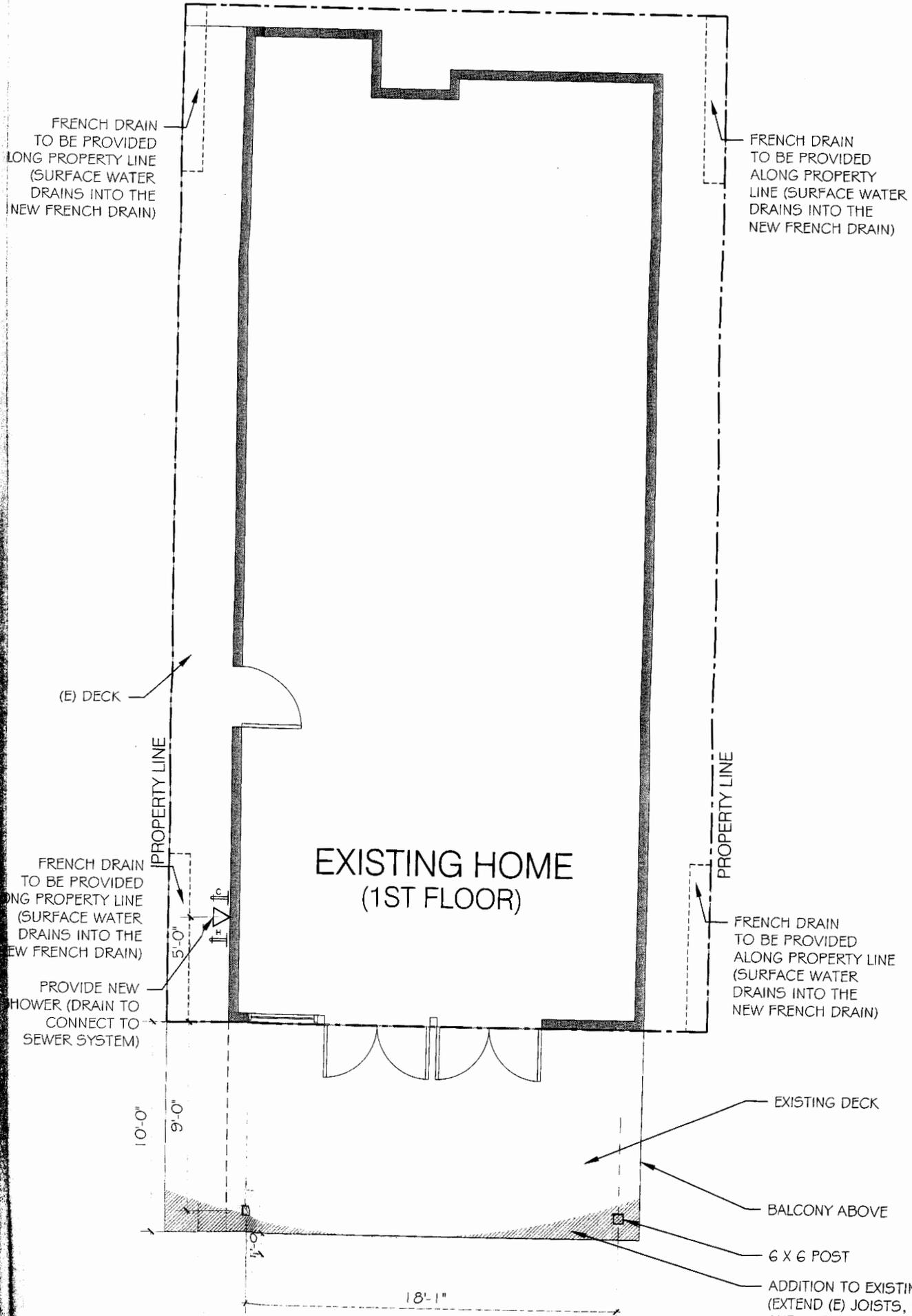
PROJECT SITE

SCALE: N.T.S.



INDEX OF DRA

- A0.1 TITLE SHEET AND SITE PLAN
- A2.1 PROPOSED FIRST FLOOR PL
- A4.1 PROPOSED EXTERIOR ELEV,
PROPOSED REFLECTED CEIL
- S-1 PARTIAL FRAMING AND FOL



FRENCH DRAIN TO BE PROVIDED ALONG PROPERTY LINE (SURFACE WATER DRAINS INTO THE NEW FRENCH DRAIN)

FRENCH DRAIN TO BE PROVIDED ALONG PROPERTY LINE (SURFACE WATER DRAINS INTO THE NEW FRENCH DRAIN)

(E) DECK

EXISTING HOME (1ST FLOOR)

FRENCH DRAIN TO BE PROVIDED ALONG PROPERTY LINE (SURFACE WATER DRAINS INTO THE NEW FRENCH DRAIN)

FRENCH DRAIN TO BE PROVIDED ALONG PROPERTY LINE (SURFACE WATER DRAINS INTO THE NEW FRENCH DRAIN)

PROVIDE NEW SHOWER (DRAIN TO CONNECT TO SEWER SYSTEM)

10'-0"

9'-0"

18'-1"

EXISTING DECK

BALCONY ABOVE

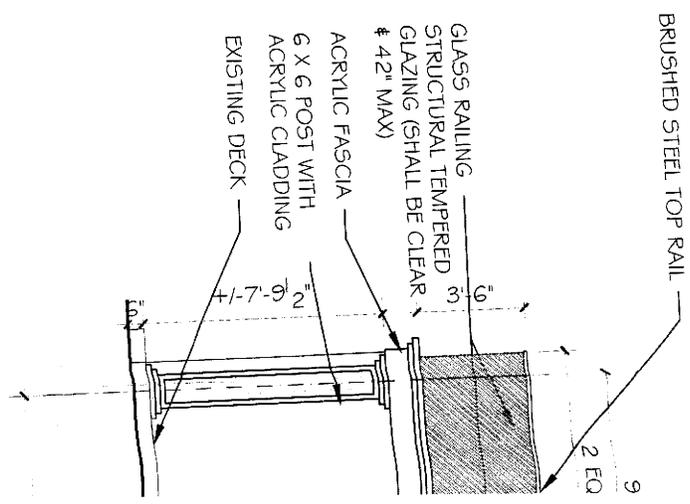
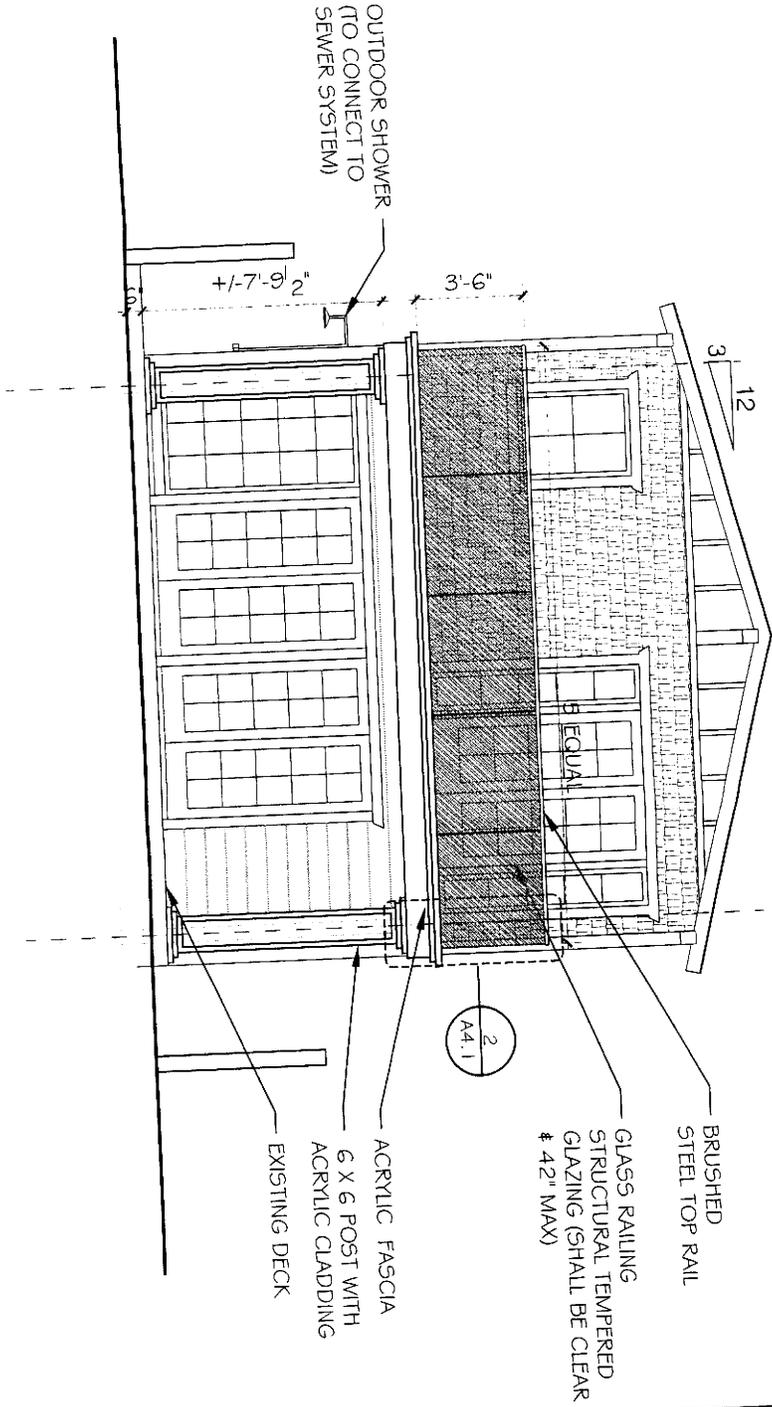
6 X 6 POST

ADDITION TO EXISTING DECK (EXTEND (E) JOISTS, AND ADD NEW STONE MATCH EXISTING DEC

PROPOSED SOUTH ELEVATION

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

2

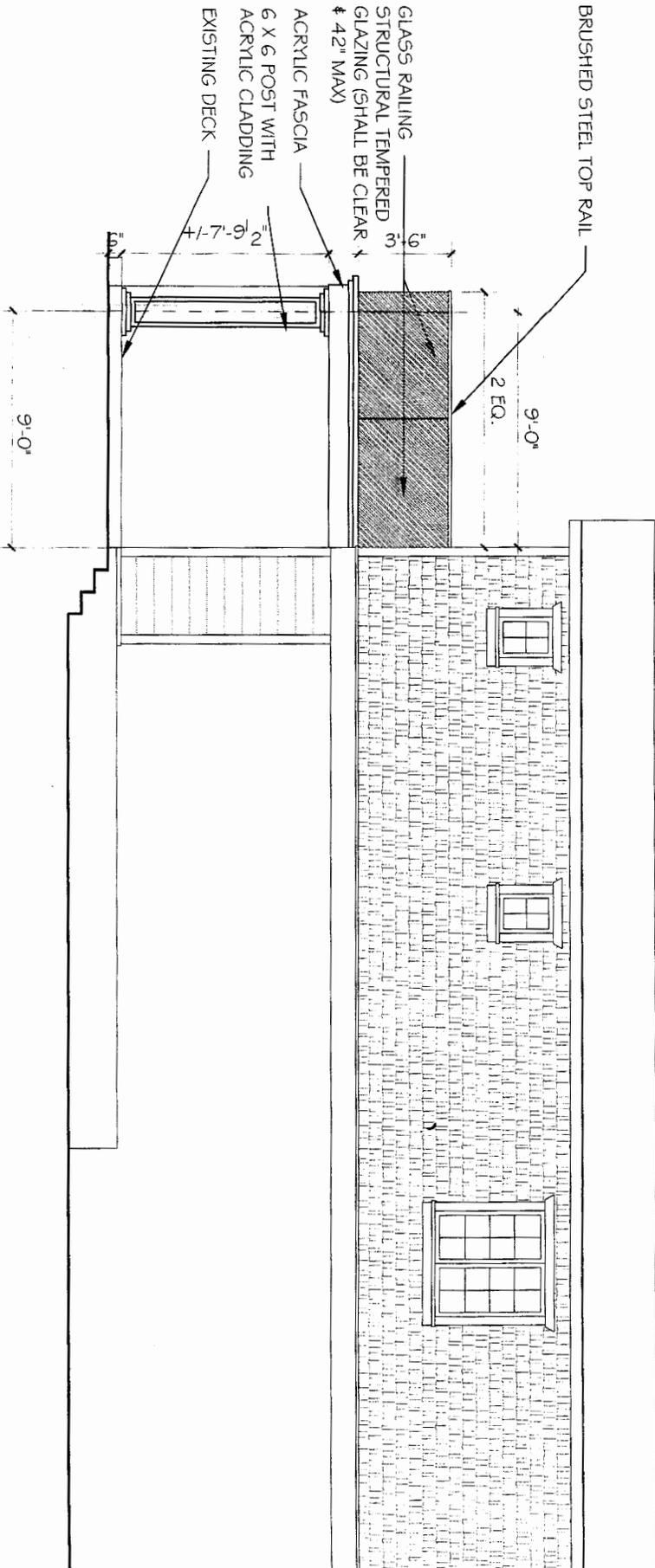


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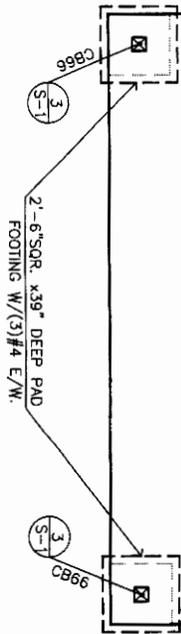
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ADDING
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EXISTING HOME
(1ST FLOOR)



PATIO FOUNDATION PLAN

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

AUG 12 2016

APPENDIX B

LOCAL AGENCY REVIEW FORM

CALIFORNIA
COASTAL COMMISSION

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant Jose Ochoa on behalf of Jason Smallwood

Project Description Extension of an existing concrete slab open deck and construction of a new second floor deck on a single family residence

Location 25 A Surfside Avenue, Seal Beach, CA 90740

Assessor's Parcel Number 178-491-28

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation RLD-9 (Residential Low Density) 9 du/ac

General or Community Plan Designation Residential 9 du/ac

Local Discretionary Approvals

Proposed development meets all zoning requirements and needs no local permits other than building permits.

Proposed development needs local discretionary approvals noted below.

Needed Received

- Design/Architectural review
- Variance for _____
- Rezone from _____
- Tentative Subdivision/Parcel Map No. _____
- Grading/Land Development Permit No. _____
- Planned Residential/Commercial Development Approval
- Site Plan Review
- Condominium Conversion Permit
- Conditional, Special, or Major Use Permit No. _____
- Other Minor Use Permit (MUP 16-4) approved 6/20/16

CEQA Status

- Categorically Exempt Class 1 (existing facilities) Item _____
- Negative Declaration Granted (Date) _____
- Environmental Impact Report Required, Final Report Certified (Date) _____
- Other _____

Prepared for the City/County of Seal Beach/Orange County by Crystal Landavazo 

Date June 23, 2016 Title Senior Planner

8.24.16

Birdsafe Glass

To Whom It May Concern,

I, Breana Pennington, ensure that the glass that will be used as part of the balcony additional for coastal development permit application No. 5-16-0725 will be bird safe.

If you have any questions or need further clarification please contact me any time at 714-270-6885 or breanapen@gmail.com

Sincerely,



Breana Pennington

RECEIVED
South Coast Region

AUG 24 2016

**CALIFORNIA
COASTAL COMMISSION**

A-ROW FRONTAGE LEASE

AUG 24 2016

THIS LEASE made and entered into this 6th day of August 2016 CALIFORNIA COASTAL COMMISSION
of Orange, State of California, by and between SURFSIDE COLONY, LTD. ("Surfside")
a California Corporation and Breana Pennington ("Lessee").

1. **PREMISES.** Surfside does hereby lease to Lessee and Lessee leases from Surfside that certain real property (the "Premises") adjacent to that real property known as 25A (the "Adjacent Property"), which Adjacent Property has been improved with an existing single-family residence (the "Residence"). The Premises consists of a strip of land extending ten feet (10') westerly from the westerly lot line of the Adjacent Property between the westerly extensions of the northerly and southerly lot lines of the Adjacent Property.
2. **USE.** During the term of this lease, Lessee may improve the Premises solely as expressly permitted in this paragraph. Lessee may construct and/or maintain only the following structures on or over the Premises:
 - A. One unroofed deck extending westerly from the Residence, but in no event past the westerly boundary of the Premises. The term "unroofed deck" includes both unenclosed decks and decks enclosed by windscreens. A deck extending more than five (5) feet westerly from the Residence shall be called the "Principal Deck." Where there is more than one deck, only the deck at the Premises' grade elevation or the first elevated deck may be a Principal Deck.
 - B. One or two unroofed decks extending westerly from the Residence not more than five (5) feet, but in no event more than five (5) feet into the Premises, which shall be called "Secondary Deck(s)." However, if the Principal Deck is at the second-floor elevation, Surfside may, in its absolute discretion, permit the homeowner to install, on-grade, an unenclosed slab extending westerly from the Residence, but in no event past the westerly boundary of the premises. Any on-grade slab so permitted shall be considered a Secondary Deck and conform to all requirements for Secondary Decks except for its westerly dimension.
 - C. A "Roof Overhang" extending westerly from the Residence not more than five (5) feet, but in no event more than five (5) feet into the Premises. Occupancy on the top of Roof Overhangs is not permitted.
 - D. The following items are specifically permitted to be placed within the Premises: movable patio furniture & umbrellas, portable gas barbeques, movable planters and potted plants, plastic kiddy wading pools no larger than 48" diameter by 12" high all of which shall be of proper weight as to not exceed the design limits of the structure. The following are items specifically **not** permitted to be placed within the Premises: any fixed walls or structures not associated with the safety rail system; charcoal or wood barbeques; fire pits or chimneys of any kind (gas, wood or charcoal); fixed or portable spas; fixed or built-in furniture, benches, shade structures, planters or awnings" All decks must be kept in an orderly, clean and maintained condition and not used for storage. The determination as to what

The initial amount set for the annual rent for the subject property is ~~\$ 300.00~~ for the period July 1, 2015 thru June 30, 2016.

Surfside Colony, Ltd reserves the right to re-set annual rental rates by written notice to the Lessee on or before the 30th day before the end of the annual term listed in Section 3 - Term.

7. **RESTORATION OF PREMISES.** Upon termination of this lease (including any termination by reason of the default of Lessee), Lessee shall remove any structures, Decks (Primary and Secondary), Roof Overhangs, on-grade cement slabs, and foundations upon the Premises and restore the premises to a clean sand beach without abrupt change in grade elevation from the surrounding beach, unless, not more than ten (10) days after termination of the Lease, Surfside notifies Lessee in writing that one or more structures are not to be removed. All removal and restoration shall commence not sooner than twenty (20) days after termination of the Lease and must be completed within sixty (60) days after the termination of this Lease.
8. **CONDEMNATION.** In the event the Premises are condemned, Lessor shall be entitled and shall receive the total amount of any award(s) made with respect to the Premises, including Lessee's leasehold interest therein, the right of occupancy and use of the Primary Deck and Secondary Deck(s), and any so-called "bonus" or "excess value" of this Lease by reason of the relationship between the rental payable under this Lease and the fair market rent for the Premises. Neither Lessee nor any person claiming through or under Lessee shall receive or retain any portion of such award(s) and shall promptly pay to Surfside any sums received in respect thereof. However, Lessee shall be entitled to any award, or portion of the award, allocable to Lessee's improvements on the Premises, including the Primary Deck, Secondary Deck(s) and Roof Overhang. The word "condemnation" or "condemned" as used in this paragraph or elsewhere in this Lease shall mean the exercise of, or intent to exercise, the power of eminent domain in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the "condemning authority" herein), and shall include a voluntary sale by Surfside to any such condemning authority, either under the threat of condemnation or while condemnation proceedings are pending, and the condemnation shall be deemed to occur upon the actual physical taking of possession pursuant to the exercise of said power of eminent domain. This lease shall be terminated as of that date.
9. **CONDITION OF PREMISES.** Lessee acknowledges that is has inspected the Premises and accepts the Premises "as is," with all faults, patent and latent, known and unknown, suspected and unsuspected. Lessee acknowledges that no statement or representation as to the past, present or future condition or suitability for building, occupancy or other use thereof has been made for or on behalf of Surfside. Lessee agrees to accept the Premises in the condition in which they may be upon the commencement of the term hereof.
10. **INDEMNITY AND HOLD HARMLESS.** Lessee agrees to defend, indemnify and hold harmless Surfside and its officers, directors, employees, agents and representatives from and against any and all claims, expenses, liabilities, actions and causes of action arising out of the use or occupancy of the Premises or the construction or maintenance of any structure upon the Premises, whether the claimant on such claim, expense, liability, action or cause of action is the Lessee, a member of

25

- 15. **ENTIRE AGREEMENT.** This Lease and the exhibit attached hereto and forming a part hereof set forth the covenants, promises, agreements, conditions and understandings between Surfside and Lessee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Surfside or Lessee unless reduced to writing and signed by them.

- 16. **ARBITRATION AND ATTORNEYS' FEES.** Any dispute between Lessor and Lessee arising in any way under this Lease shall be resolved solely by arbitration before the American Arbitration Association under the Commercial Rules thereof then in effect. No court shall have jurisdiction of any such dispute except to compel arbitration upon the application of either party and for purposes of entering judgment in accordance with an award rendered by the Arbitrator(s) and or the execution and/or of the judgment entered upon the Award. The Arbitrator(s) shall award reasonable attorney's fees and costs in an amount they deem appropriate to the party who they deem to have prevailed, in their absolute discretion.

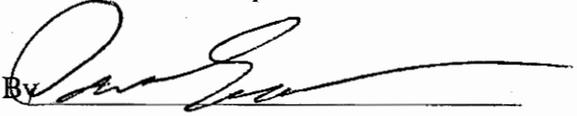
- 17. **ASSIGNMENT.** This Lease shall not be assigned, subleased or transferred by operation of law, or otherwise, without the prior written consent of Surfside.

- 18. **REMEDIES ON DEFAULT.** In the event Lessee shall default under or otherwise breach any of the terms or conditions of this Lease, Surfside shall have the right to terminate this Lease forthwith and to retake possession of the Premises. Waiver of any default or breach shall not be construed as a waiver of a subsequent or continuing default. Termination of this Lease shall not affect any liability by reason of any act, default or breach or occurrence prior to such termination.

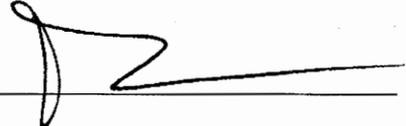
IN WITNESS THEREOF, the parties hereto have executed this Lease the day and year first above written.

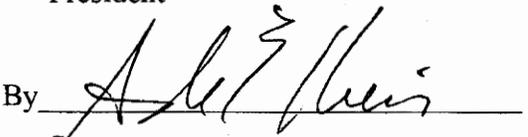
SURFSIDE COLONY, LTD.,
a California Corporation

LESSEE

By 

President

By 

By 

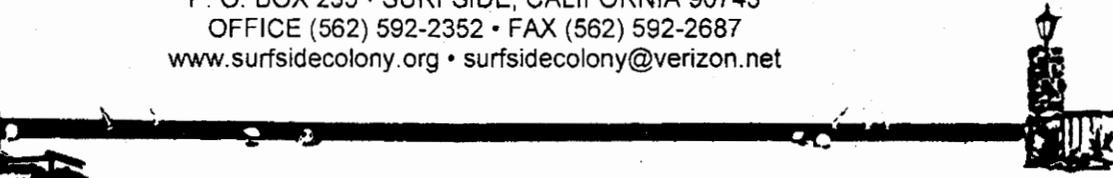
Secretary

By _____



Surfside Colony, Ltd.

P. O. BOX 235 • SURFSIDE, CALIFORNIA 90743
OFFICE (562) 592-2352 • FAX (562) 592-2687
www.surfsidecolony.org • surfsidecolony@verizon.net



February 18, 2016

Planning Department
City of Seal Beach
City Hall
211 Eighth Street
Seal Beach, CA 90740

Re: 25 A

To Whom It May Concern:

The Architectural Review Board of Surfside Colony, Ltd. has reviewed the attached set of plans (4 sheets) and has issued their conditional approval.

Please be advised that applicant needs to submit a construction application and deposit.

Thank you,

Architectural Review Board

RECEIVED
South Coast Region

AUG 24 2016

CALIFORNIA
COASTAL COMMISSION

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG*
REBECCA A. THOMPSON*
NANCI SESSIONS-STACEY
KIMBERLY A. RIBLE
ALICIA B. BARTLEY

* a professional corporation

LAW OFFICES OF
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16633 VENTURA BOULEVARD, SUITE 1220
ENCINO, CA 91436-1872

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FACSIMILE (818) 933-0222
INTERNET: WWW.GAINESLAW.COM

August 16, 2016

ORIGINAL SENT BY U.S. MAIL

VIA FACSIMILE (562) 590-5084

Jack Ainsworth
Acting Executive Director
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

Re: Application No. 5-16-0725
25 A Surfside Avenue, Surfside Colony, Seal Beach
Opposition to Proposed Deck Extension and Second Floor Balcony

Dear Mr. Ainsworth:

This office represents Mr. and Mrs. Arthur Gallucci, the owners of the property located at 24 A Surfside Avenue, with regard to their opposition to a request to allow the extension of an existing deck and the construction of a second floor balcony on a single family residence located at 25 A Surfside Avenue (the "Project"). The Project was approved by the City of Seal Beach after an appeal heard at the City Council meeting on July 25, 2016, and a Coastal Development Permit was submitted to the South Coast District Office on or about August 12, 2016.

The Coastal Commission should not approve the Project. The deck extension and second floor balcony are located on the sandy beach located between Anaheim Bay and Sunset Beach. The existing structure is already legal non-conforming as to required parking and setbacks. Further expansion of this legal non-conforming use should not be allowed. The Project adversely affects coastal resources for properties in the immediate surrounding neighborhood, and the City abused its discretion in approving the project. (A copy of our clients' July 19, 2016 correspondence to the Seal Beach City Council is enclosed herewith.)

Pursuant to 14 Cal. Code Regs. § 13250(b), improvements to an existing single family structure require a Coastal Development Permit where, as here, the structure or improvement is located on a beach. Pursuant to 14 Cal. Code Regs. § 13238.1, we request to be notified of any proposed action to waive Coastal Development Permit requirements for this project.

G&S/2173-001

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South Coast Region

AUG 18 2016

CALIFORNIA
COASTAL COMMISSION

Jack Ainsworth
August 16, 2016
Page 2

Thank you for your attention to this matter. As always, please do not hesitate to contact me at any time with any comments or questions that you may have.

Sincerely,

GAINES & STACEY LLP

By 
FRED GAINES

Enclosure

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG*
REBECCA A. THOMPSON*
NANCI SESSIONS-STACEY
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August 4, 2016

ORIGINAL SENT BY U.S. MAIL

VIA FACSIMILE (562) 590-5084

Jack Ainsworth
Acting Executive Director
California Coastal Commission
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802

RECEIVED
South Coast Region

AUG 08 2016

CALIFORNIA
COASTAL COMMISSION

Re: 25 A Surfside Avenue, Surfside Colony, Seal Beach
Opposition to Proposed Deck Extension and Second Floor Balcony

Dear Mr. Ainsworth:

This office represents Mr. and Mrs. Arthur Gallucci, the owners of the property located at 24 A Surfside Avenue, with regard to their opposition to a request to allow the extension of an existing deck and the construction of a second floor balcony on a single family residence located at 25 A Surfside Avenue (the "Project"). The Project was approved by the City of Seal Beach after an appeal heard at the City Council meeting on July 25, 2016.

The Coastal Commission should not approve the Project. The deck extension and second floor balcony are located on the sandy beach located between Anaheim Bay and Sunset Beach. The existing structure is already legal non-conforming as to required parking and setbacks. Further expansion of this legal non-conforming use should not be allowed. The Project adversely affects coastal resources for properties in the immediate surrounding neighborhood, and the City abused its discretion in approving the project. (A copy of our clients' July 19, 2016 correspondence to the Seal Beach City Council is enclosed herewith.)

Pursuant to 14 Cal. Code Regs. § 13250(b), improvements to an existing single family structure require a Coastal Development Permit where, as here, the structure or improvement is located on a beach. We understand from staff that to date, no Coastal Development Permit application has been made for the proposed project. On behalf of our clients, we request to be notified of any Coastal Development Permit application for 25 A Surfside Avenue. In addition, pursuant to 14 Cal. Code Regs. § 13238.1, we request to be notified of any proposed action to waive Coastal Development Permit requirements for this project.

G&S/2173-001

Coastal Commission
5-16-0725
Exhibit #4
Page 3 of 11

Jack Ainsworth
August 4, 2016
Page 2

Thank you for your attention to this matter. As always, please do not hesitate to contact me at any time with any comments or questions that you may have.

Sincerely,

GAINES & STACEY LLP

By


FRED GAINES

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SHERMAN L. STACEY
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July 19, 2016

ORIGINAL SENT BY U.S. MAIL

VIA EMAIL smassalavitt@sealbeachca.gov

Sandra Massa-Lavitt, Mayor
Seal Beach City Council
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

RECEIVED
South Coast Region

AUG 08 2016

CALIFORNIA
COASTAL COMMISSION

Re: July 25, 2016 Seal Beach City Council Meeting
Opposition to Minor Use Permit 16-4

Dear Mayor Massa-Lavitt and Honorable City Councilmembers,

This office represents Mr. And Mrs. Arthur Gallucci ("Appellant"), the owners of the property located at 24 A Surfside Avenue, with regard to the pending appeal of Minor Use Permit 16-4. Minor Use Permit 16-4, a request to allow the extension of an existing deck and the construction of a second floor balcony on a single family residence located at 25 A Surfside Avenue, was approved by the Planning Commission at its meeting on June 20, 2016. The second floor balcony adversely affects uses and properties in the immediate surrounding neighborhood, and the Planning Commission abused its discretion in approving the project. *On behalf of Appellant, we therefore respectfully urge the City Council to grant the pending appeal and overturn the Planning Commission's approval of Minor Use Permit 16-4.*

Findings for Approval of the Use Permit Cannot Be Made.

Seal Beach Municipal Code ("SBMC") § 11.5.20.005 A provides that the Planning Commission may issue minor use permits for certain uses that require special consideration "to ensure that they can be designed, located, and operated in a manner that will be compatible with surrounding uses and not interfere with the use and enjoyment of surrounding properties." In furtherance of that objective, SBMC § 11.5.20.020 A provides that a use permit "*shall only be granted*" if the Planning Commission makes certain findings, based upon evidence presented at the hearing, including that the "location, size, design, and operating characteristics of the proposed use will be compatible with and *will not adversely affect* uses and properties in the surrounding neighborhood." SBMC § 11.5.20.020 A.4 (emphasis added).

Sandra Massa-Lavitt, Mayor
Seal Beach City Council
July 19, 2016
Page 2

Here, substantial evidence was submitted to the Planning Commission at the public hearing that supports that the proposed balcony, and the two large pilasters that are required to support it, will adversely affect both uses and properties in the immediately surrounding neighborhood. Appellant's home is located immediately adjacent to the subject property, and Appellant presented evidence to the Planning Commission that the large balcony and pilasters and the proposed development will adversely impact Appellant's views toward the west-setting sun, adversely affecting the value of his property and his use of his own home and deck. (See enclosed photo exhibit.) In addition, Appellant presented evidence that the proposed balcony is inconsistent and incompatible with the adjacent properties, the vast majority of which have a five-foot deck on the second floor.

Resolution No. 16-10, which reflects the Planning Commission's approval of the Minor Use Permit fails to cite any evidence to refute the points raised by Appellant, and instead relies on the general statement that "Balconies and decks are common non-habitable architectural features associated in this zoning district." The Planning Commission's reliance on this general finding ignores the objective of SBMC § 11.5.20.005 A, to ensure that generally non-controversial uses "can be designed, located, and operated in a manner that will be compatible with surrounding uses and not interfere with the use and enjoyment of surrounding properties."

Based upon the foregoing, the Planning Commission clearly erred in approving Minor Use Permit 16-4, and its decision must be overturned.

Project Approval Based Upon a CEQA Exemption Was Improper.

The City determined that the project qualified for a Class 1 (existing facilities) Categorical Exemption pursuant to CEQA Guidelines § 15301. "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." 14 Cal. Code Regs. § 15301. However, it is basic CEQA law that categorical exemptions are subject to exceptions that defeat the use of the exemption. Great Oaks Water Co. v. Santa Clara Valley Water Dist. (2009) 170 Cal.App.4th 956, 966 n.8. Although a project might otherwise be eligible for a categorical exemption, an exemption must be denied if, for example, there is a reasonable possibility of a significant effect on the environment due to unusual circumstances. 14 Cal. Code Regs. § 15300.2(c).

Application of this test involves two distinct inquiries: (1) whether the project presents unusual circumstances, and (2) whether there is a reasonable possibility that a significant environmental impact will result from those unusual circumstances. Voices for Rural Living v. El Dorado Irrig. Dist. (2012) 209 Cal.App.4th 1096. *Here, the project does in fact present unusual*

Sandra Massa-Lavitt, Mayor
Seal Beach City Council
July 19, 2016
Page 3

circumstances. While balconies and decks are common architectural features, here, the proposed balcony is twice as large as the majority of the second floor balconies in the area. And, it is precisely because of that large size that the project will have a significant impact on coastal views and sun exposure by adjacent homeowners.

The Planning Commission erred in finding the project categorically exempt under CEQA, and its approval of Minor Use Permit 16-4 must be overturned.

The Planning Commission Approval Violates Surfside Colony Rules and Regulations.

The Planning Commission failed to consider the Rules and Regulations of Surfside Colony in approving the project, the Architectural Guidelines for which specifically state that, "***Decks shall not obstruct the view of adjoining neighbors.***" This restriction reveals the unique nature of Surfside Colony, where coastal views are critical to the community as a whole.

In addition to violating the Rules and Regulations, the proposed second floor balcony violates the A-Row Frontage Lease ("Lease") that the Applicant has entered into with Surfside Colony. Such Leases are required for all A-Row homeowners within the community that desire to improve their homes with a deck or decks that extend out onto the beach. The Lease provides that a homeowner may construct and/or maintain only specified structures on the leased premises. Relevant here, Section 2.A of the Lease permits the Lessee to construct and maintain one unroofed deck that extends up to ten (10) feet westerly of the residence. "A deck extending more than five (5) feet westerly from the Residence shall be called the 'Principle Deck.'"

The Lease permits one or more "Secondary Decks" to be constructed and/or maintained in addition to the "Principle Deck," but pursuant to Section 2.B, the Secondary Deck may extend no more than five (5) feet westerly of the residence.

Here, Minor Use Permit 16-4 purports to approve a 14 square foot extension to the existing first floor deck of the property, which is shown on the project plans to extend ten (10) feet westerly of the residence. According to the terms of the Lease, the existing first floor deck must then be considered the "Principle Deck." Lease, § 2.A. As such, the proposed second story deck is a "Secondary Deck" under the lease, and it is limited to extending no more than five (5) feet westerly of the residence. **The proposed second floor deck, which extends ten (10) feet westerly of the home, is in express violation of Section 2.B of the Lease.**

By failing to take into account the Rules and Regulations and the unique nature of the Surfside Colony community, the Planning Commission has effectively overtaken and ignored private landowner interests that control development on the property in question. The City is

Sandra Massa-Lavitt, Mayor
Seal Beach City Council
July 19, 2016
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establishing a dangerous precedent that risks a loss of certainty for property owners, as well as a loss of value, desirability, and general consistency of the neighborhood community.

Based upon the foregoing, we respectfully request that the City Council overturn the Planning Commission's approval of Minor Use Permit 16-4.

Thank you for your consideration of this matter. As always, please do not hesitate to contact me at any time with any comments or questions that you may have,

Sincerely,

GAINES & STACEY LLP

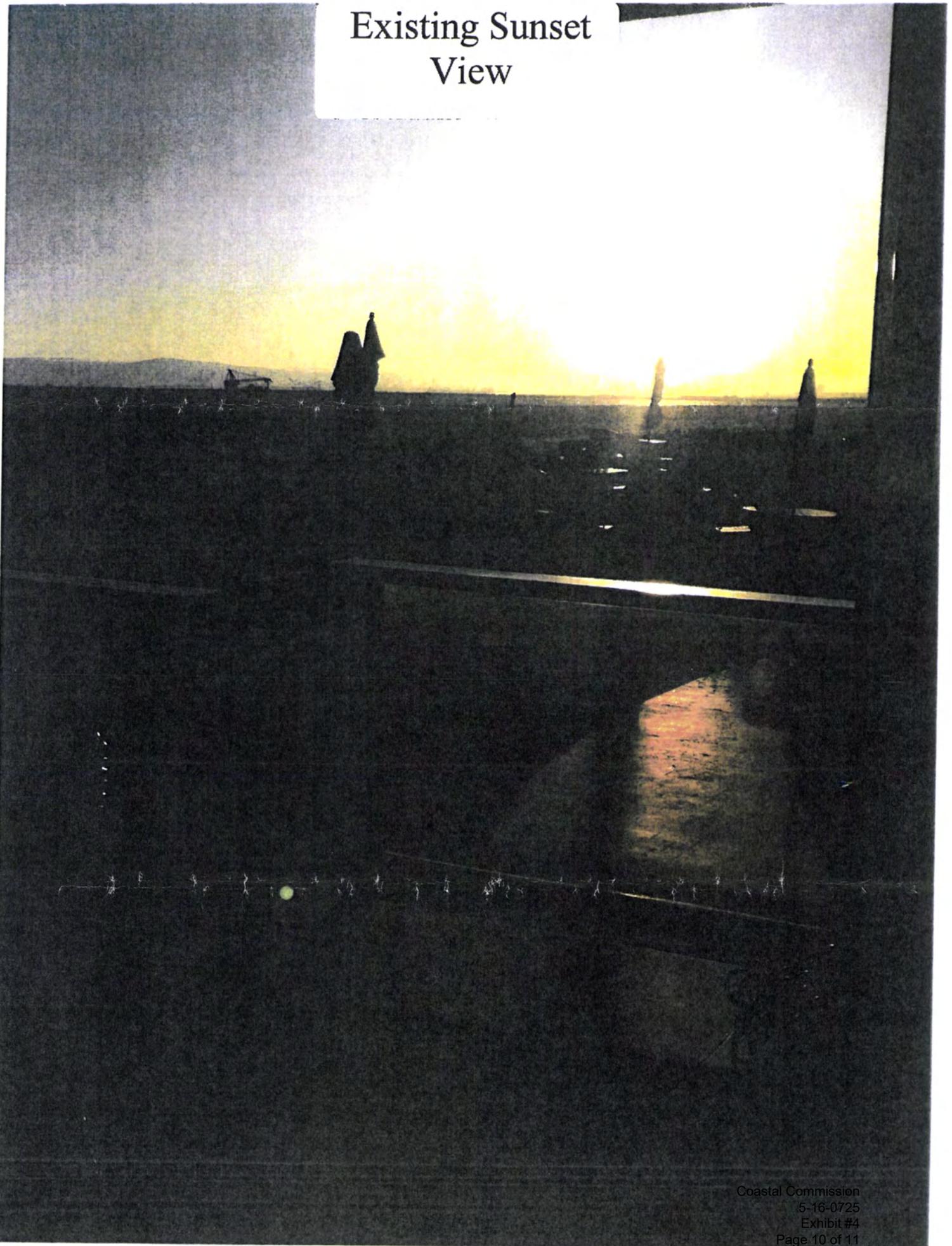
By 
FRED GAINES

cc: Mike Varipapa, Mayor Pro Tem (Via Email: mvaripapa@sealbeachca.gov)
Ellery A. Deaton, Councilmember (Via Email: edeaton@sealbeachca.gov)
David W. Sloan, Councilmember (Via Email: sloandistrict2@verizon.net)
Gary A. Miller, Councilmember (Via Email: [gmiller@sealbeachca.gov](mailto:gmillier@sealbeachca.gov))
Robin Roberts, City Clerk (Via Email: rroberts@sealbeachca.gov)

Existing View



Existing Sunset View



View Blockage

