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CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
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Filed: 5/10/96
49th Day: 6/28/96
180th Day: 11/6/96
Staff: CP-LB
Staff Report: 6/17/96
Hearing Date: July 9-12, 1996
Commission Action:



CP

RECORD PACKET COPY

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-96-067

APPLICANTS: Jeanne & Marty Wertlieb

AGENT: Thomas Egidi, Architect

PROJECT LOCATION: 5505 Via Donte (Lot 2, Block 17 of Del Rey Beach Tract), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Construction of a three-story, 30 foot high, 3,630 square foot single family residence with an attached three-car garage on a vacant lot adjacent to Ballona Lagoon.

Lot Area	4,750 sq. ft.
Building Coverage	1,530 sq. ft.
Pavement Coverage	1,858 sq. ft.
Landscape Coverage	450 sq. ft.
Parking Spaces	3
Zoning	[Q]RD1.5-1
Plan Designation	Single Family Residential
Ht abv fin grade	30 feet

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission grant a permit for the proposed development with conditions relating to maintenance of public areas, lagoon buffer protection, drainage, building height, parking and future improvements. The applicants agree with the conditions.

LOCAL APPROVAL RECEIVED:

1. City of Los Angeles Approval in Concept #96-016, 4/2/96.

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permit Appeal A-266-77 (ILA) & amendment.
2. Coastal Development Permit 5-86-641 (Lee) & amendments.
3. Coastal Development Permit 5-90-958 (Lee).
4. Coastal Development Permit 5-92-210 (Lee).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. 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.
7. 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. Maintenance of Public Areas

Prior to issuance of the permit, the applicants shall record a deed restriction, in a form and content acceptable to the Executive Director, and free of all prior liens and encumbrances which the Executive Director determines may affect the interest conveyed, binding the applicants and their successors in interest to: (1) participate with the other lot owners subject to Coastal Development Permits A-266-77, 5-86-641 and 5-87-112 on a fair and equitable basis in the responsibility for the maintenance of the public areas, lagoon buffers, and drainage devices prescribed by Coastal Development Permits A-266-77, 5-86-641 and 5-87-112; (2) allow the State Coastal Conservancy, and its successors in lagoon buffer maintenance, the right to enter, restore and maintain the lagoon buffer; and (3) maintain all yard areas and height limits within sixty feet of the lagoon bank as specified in the special conditions this permit, 5-96-067. The public areas shall be identified in the deed restriction. The deed restriction shall run with the land, binding on all heirs and assigns of the applicants.

2. Easement for Public Access and Habitat Protection

Development, except that specifically approved under Coastal Development Permit 5-86-641 and amendments, is prohibited in the buffer area identified in recorded easement No. 88-1912729 which covers that portion of the applicants' lot which occupies the lagoon buffer area. Prohibited development includes planting of non-native vegetation. The applicants shall not interfere with the use of the lagoon buffer public access path across the easement, restoration of the lagoon buffer as strand habitat, and such fencing that is necessary to preserve the habitat.

3. Setback from Lagoon Buffer

All portions of the dwelling (including stairways, decks, and bay windows), except for ground level decks, shall be set back from the easterly edge of the buffer strip at least ten feet, or fifteen percent of the buildable area of the lot, whichever is greater. In this instance, the required setback is 13 feet, 8 inches. Fences to protect ground level decks shall not exceed six feet in height above natural grade. No fence, wall or other accessory structure shall encroach into the buffer area.

4. Lagoon Buffer Protection

Prior to the commencement of construction, the applicants shall erect and maintain for the period of construction a six-foot high fence between the buffer area and the building site. No site preparation or construction shall occur until the fence is constructed. No stock piling, grading, or trash disposal shall occur in the buffer area at any time.

5. Drainage

Prior to issuance of the permit, the applicants shall submit drainage plans, subject to the review and approval of the Executive Director, which provide that all drainage on the site is directed away from Ballona Lagoon. The applicants and all successors in interest shall maintain the approved development consistent with the drainage plans approved by the Executive Director.

6. Building Height

The height of the proposed structure within sixty horizontal feet of the inland edge of the Esplanade of Ballona Lagoon at the adjacent shoreline shall not exceed 29 feet above the 17.30' elevation. For every two feet further away from the lagoon, the structure may be one foot higher in height to a maximum height of 45 feet above the 17.30' elevation.

7. Parking

Prior to issuance of the permit, the applicants shall record free of prior liens and encumbrances except for tax liens, a deed restriction in a form and content approved by the Executive Director, assuring the provision of three off-street parking spaces on the project site. These parking spaces shall take access from Via Donte, not from the paved street ends designated for public parking. The deed restriction shall also note that the courts and street ends of the tract are designated for public parking and shall not be used for preferential parking. This deed restriction shall run with the land, binding on all successors in interest, for the life of the improvement approved in this action.

8. Future Improvements

Prior to issuance of the permit, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that Coastal Development Permit 5-96-067 is only for the proposed development and that any future additions or improvements to the property will require a permit or amendment from the Coastal Commission, its successor agency, or a local government pursuant to a certified Local Coastal Program. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances except for tax liens.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicants propose to construct a three-story, 30 foot high, 3,630 square foot single family residence with a three-car garage located on the ground floor (Exhibits #3-5). The proposed project is located on a vacant, 4,750 square foot lot situated on the east bank of Ballona Lagoon (Exhibit #2). The site is part of the Del Rey Beach Tract, which is physically contiguous to the Silver Strand subdivision. The Del Rey Beach Tract and the Silver Strand subdivision were subdivided at the same time and share the same natural conditions.

B. Project Background and Area History

The subject lot and the Silver Strand and Del Rey Beach Tract areas have a long and complicated history before the Coastal Commission. The previous Commission approvals in the area provide the basis for staff's recommendation on this application.

The first Commission approval in the Silver Strand area occurred in 1977 when the Commission approved the Silver Strand permit, A-266-77 (ILA), which was brought before the Commission on an appeal. In 1986, the Commission approved Coastal Development Permit 5-86-641 (Lee) for the grading and infrastructure improvements on ten lots, including the subject lot, in the Del Rey Beach Tract which were not subject to A-266-77 (ILA) (Exhibit #2). In 1987, the Commission approved Coastal Development Permit 5-87-112 (Del Rey Assoc.) for the development of 36 lots with single family residences on a portion of the Del Rey Beach Tract which also was not subject to A-266-77 (ILA) (Exhibit #2). In 1990, the Commission approved Coastal Development Permit 5-89-958 (Lee) for a single family residence on the subject lot. Coastal Development Permit 5-89-958 (Lee) was terminated before construction occurred. The Commission subsequently approved Coastal Development Permit 5-92-210 (Lee) for a single family residence on the subject lot. Coastal Development Permit 5-92-210 (Lee) expired in 1995 without construction occurring. Most recently, the Commission conditionally approved Coastal Development Permit 5-95-152 for the Ballona Lagoon Enhancement Plan which includes restoration work on and adjacent the subject lot.

1. Silver Strand Permit A-266-77 (ILA)

The Silver Strand subdivision and the Del Rey Beach Tract are located along the east bank of Ballona Lagoon where the proposed project is located. Even though the actual tracts were subdivided in the early 1900's, they remained unimproved until the late 1970's.

This area has a long history before the Coastal Commission. The first Commission approval in the area occurred in 1977 when the Commission approved the Silver Strand permit, A-266-77 (ILA). Coastal Development Permit A-266-77

(ILA) was brought before the Statewide Coastal Commission on an appeal of a Regional Coastal Commission decision. Prior to the Commission's action on Coastal Development Permit A-266-77 (ILA) in 1977, the Statewide Coastal Commission and the Regional Coastal Commission had denied several applications to improve the streets and supply utilities within portions of the Silver Strand subdivision and the Del Rey Beach tract to make residential development possible. The previous projects were denied because of adverse impacts on traffic, recreation and wetland habitat.

The Commission's 1977 approval of Coastal Development Permit A-266-77 (ILA) permitted the applicants of that permit, the Isthmus Landowners Association (ILA), to develop the infrastructure necessary for the development of single family homes on approximately three hundred lots located on Blocks 7 through 18 of the Silver Strand subdivision and Blocks 13 through 15 of the Del Rey Beach Tract (Exhibit #2). Blocks 16 and 17 of the Del Rey Beach Tract, where the subject lot is located, were proposed to be reserved for recreational uses, but eventually were deleted from the project approved by Coastal Development Permit A-266-77 (ILA). The ILA was an association formed by the owners of individual lots within the undeveloped portions of the Silver Strand subdivision and the Del Rey Beach tract. Coastal Development Permit A-266-77 (ILA) was subject to conditions addressing lagoon protection, maintenance of public areas, public access, and public parking. The restoration of a lagoon buffer between the water and the residential development on the lagoon's east bank was originally required by Coastal Development Permit A-266-77 (ILA).

In its approval of Coastal Development Permit A-266-77 (ILA), the Commission found that Ballona Lagoon was an environmentally sensitive habitat area and an important coastal resource. In addition to being important wetland, the lagoon is a critical habitat area for the California least tern. The Commission further found that residential development of the Silver Strand and Del Rey Beach area would have major adverse cumulative impacts on the lagoon, and that several measures were necessary to mitigate the adverse impacts of development. One of the mitigation measures was the requirement for the lagoon fronting lot owners to dedicate an easement for a habitat protection and public access as part of a lagoon buffer to reduce the impacts of the residential development on the lagoon.

Another mitigation measure was a condition of Coastal Development Permit A-266-77 (ILA) which required the lot owners who benefited from Coastal Development Permit A-266-77 (ILA) to establish a private homeowners association sufficient to maintain all public areas and landscaping approved and required by the permit which have not been accepted by a public agency. As individual lots were developed in the area subject to permit A-266-77 (ILA), an obligation to contribute to the ILA as the maintenance agency was imposed by agreement on the individual lot owners.

Coastal Development Permit A-266-77 (ILA) was amended in 1979. As amended, Coastal Development Permit A-266-77 (ILA) required the permittee (ILA) to perform all grading in a single contract, to improve a public access path on the east bank of the lagoon, restore the lagoon buffer, to pave malls for public access and parking, and to establish a private homeowners association sufficient to maintain all public areas and landscaping including the lagoon buffer. In addition, Blocks 16 and 17 were deleted from the project site as part of the amendment.

The approved grading was completed, the public access path was improved, and the permittee (ILA) established the private homeowners association of the Isthmus Landowners Association (ILA) to maintain the buffer and other public areas. The amendment also required that the lot owners who benefited from Coastal Development Permit A-266-77 (ILA) contribute equally for the restoration and maintenance of the lagoon buffer on the east bank where the currently project is proposed. The lagoon buffer was landscaped in an effort to restore the habitat in the mid-1980's, but that effort was not successful.

In approving the amendment to Coastal Development Permit A-266-77 (ILA), the Commission found that individual applicants who apply to develop lagoon fronting lots in the subject area would be required to record an easement for habitat protection and public access on a portion of their property as a condition of approval. Therefore, pursuant to Coastal Development Permit A-266-77 (ILA) as amended, each lagoon fronting lot owner on the east bank, as a condition of developing their property, is required to offer to dedicate a 24 to 30 foot easement as part of the forty foot wide lagoon buffer along the east bank of the lagoon. No private development is permitted within the easement areas.

The protective lagoon buffer is comprised of the undeveloped City Esplanade (partly submerged), the lagoon fronting lot owners' easements, and the front yard setbacks on all lagoon fronting lots. The protective lagoon buffer on each privately owned lot extends from the inland side of the undeveloped City Esplanade into the front yard structural setback areas of the residences which are used as yard areas. The required front yard setback area is a minimum depth of ten feet or fifteen percent of the buildable depth of the lot, whichever is greater. The Commission has allowed the construction of garden walls between the easement areas and the front yards of the residences. Besides the garden walls, the front yard setback areas may contain ground level decks and landscaping, but no other structures. No development may occur in the easement areas except for the public access path and revegetation with native coastal strand plants.

The above stated conditions and findings of permit A-266-77 (ILA) have provided the basis the Commission's conditional approvals of all subsequent Coastal Development Permits issued in the Silver Strand and Del Rey Beach Tract area. A standard set of special conditions has been applied to all permits for single family residences approved by the Commission in order to ensure that the Chapter 3 policies of the Coastal Act and the intent of A-266-77 (ILA) is carried out as individual lots are developed. Those special conditions have been applied to this permit.

2. Coastal Development Permit 5-86-641 (Lee)

The Commission had originally required, as part of permit A-266-77 (ILA), that the southern six acres of the Del Rey Beach Tract be dedicated for public recreation and coastal access parking. The 1979 amendment of permit A-266-77 (ILA), however, deleted the required dedication of the six acre site to a public agency for public recreation. The six acre site, in which the currently proposed project is situated, was still excluded from residential development in order not to preclude the use of the property for commercial recreation and public parking. No development was permitted in this area until 1986.

In 1986, the owner of the ten lagoon fronting lots in the southern six acres of the Del Rey Beach Tract, Harlan Lee, applied for a permit to develop his ten lots subject to the same special conditions which were agreed to in Coastal Development Permit A-266-77 (ILA). The Commission agreed to the proposal, and in 1986 it approved Coastal Development Permit 5-86-641 (Lee) for grading, street improvements, drainage facilities, and utilities for the ten lagoon fronting residential lots located in the six acre area which was previously to be set aside for commercial recreation use and which includes the subject site.

Coastal Development Permit 5-86-641 (Lee) did not include the construction of residences on the ten lots. The proposed project is situated on one of those ten lagoon fronting lots which were the subject of Coastal Development Permit 5-86-641 (Lee) (Exhibit #2). The proposed project's building pad and utility hook-ups were constructed under that permit.

The conditions of approval applied to Coastal Development Permit 5-86-641 (Lee) were based on the conditions and findings of Coastal Development Permit A-266-77 (ILA). The ten Lee lots were originally part of the project ultimately approved by Coastal Development Permit A-266-77 (ILA) but were withdrawn prior to final approval of Coastal Development Permit A-266-77 (ILA). Coastal Development Permit 5-86-641 (Lee) was conditioned as proposed by the applicant to require the applicants to do the following: 1) join the homeowners association in order to maintain all public areas, 2) direct all drainage away from the lagoon, 3) to grade and construct the lagoon public access path, 4) to accomplish all grading in a single contract, 5) to dedicate an easement (buffer) for public access and habitat protection along the lagoon for a width of 24 feet across all lots, 6) set all future structures back from this buffer at least ten feet or fifteen percent of the depth of the lot, whichever is greater, 7) to show that all required public parking has been provided, 8) to provide three on-site parking spaces per future residence, 9) to limit future residences to the height limit, and 10) to fence the lagoon buffer during construction and ensure that no grading, stockpiling or trash disposal occurred in this buffer area. The special conditions were applied to ensure that the development of the ten lagoon fronting lots was consistent with the Chapter 3 policies of the Coastal Act and the Commission's previous actions. The proposed project is still subject to the above stated conditions of Coastal Permit 5-86-641 (Lee) and subsequent amendments.

Coastal Development Permit 5-86-641 (Lee) has been amended four times. The four amendments have involved the following issues: changes in the grading and elevations of the ten lagoon fronting lots, violations of the permit conditions regarding protection of the lagoon buffer, construction of the lagoon public access trail, and restoration of the lagoon buffer. Amendment numbers two through four of Coastal Development Permit 5-86-641 (Lee) involved the restoration of a portion of Ballona Lagoon and buffer and the improvement of the lagoon public access trail in order to resolve alleged violations of the permit which resulted in damage to the lagoon and buffer area.

Since the approval of amendment 5-86-641-A4 in 1992, the lagoon and buffer area adjoining the ten lots subject to Coastal Development Permit 5-86-641 (Lee) and amendments has been successfully improved with a continuation of the east bank public access path and restored with native coastal strand vegetation.

3. Coastal Development Permit 5-87-112 (Del Rey Assoc.)

In 1987, the Commission approved Coastal Development Permit 5-87-112 (Del Rey Assoc.) for the development of streets, utilities, and 36 lots with single family residences on a portion of the Del Rey Beach Tract located near the lagoon, but not adjoining it (Exhibit #2). Although the subject site was not subject to Coastal Development Permit 5-87-112 (Del Rey Assoc.), that permit continued the Commission's implementation of the conditions imposed on the Silver Strand and Del Rey Beach Tract areas since the approval of Coastal Development Permit A-266-77 (ILA).

In the Commission's approval of Coastal Development Permit 5-87-112 (Del Rey Assoc.) found that residential development of this portion of the Del Rey Beach Tract would have cumulative adverse impacts on the lagoon and mitigation measures were necessary to mitigate those cumulative adverse impacts of development. One of the mitigation measures was a condition which required the permittee (Del Rey Assoc.) and all members of the Del Rey Association to join with the private homeowners association established under Coastal Development Permit A-266-77 (ILA) to participate equally in the maintenance of the public areas and landscaping (including malls, parking nodes, lagoon buffer and path) approved and required by the Coastal Development Permits A-266-77 (ILA), 5-86-641 (Lee), and 5-87-112 (Del Rey Assoc.) (Exhibit #2).

4. Coastal Development Permit 5-89-958 (Lee)

In 1990 the Commission approved Coastal Development Permit 5-90-958 (Lee) for a 33 foot high, 5,963 square foot single family residence on the site of the currently proposed residence. The design of the previously approved residence was similar to, but much larger than, the currently proposed residence. Coastal Development Permit 5-90-958 (Lee) was terminated before construction occurred as a result of non-compliance with special condition number eight of the permit. Special condition number eight read as follows:

Prior to occupancy of the structure approved in this permit, and in no event later than January 1, 1992, the applicant shall show evidence that all violations occurring as a result of site preparation of this site have been cured. Such violations include siltation, placement of fill in the buffer, failure to construct the pathway in the buffer according to approved plans, and direction of drainage into the lagoon without filtration. If, on that date, such violations have not been cured, this permit shall terminate.

Because the alleged violations of Coastal Development Permit 5-86-641 (Lee) referred to in the above stated special condition were not cured by January 1, 1992, Coastal Development Permit 5-90-958 (Lee) was no longer valid after January 1, 1992.

5. Coastal Development Permit 5-92-210 (Lee)

On August 11, 1992, the Commission approved Coastal Development Permit 5-92-210 (Lee) for a four-story, 42 foot high, 6,336 square foot single family residence on the site of the currently proposed residence. Coastal Development Permit 5-92-210 (Lee) also had a special condition which addressed

the alleged violations of Coastal Development Permit 5-86-641 (Lee) which occurred as a result of site preparation. The alleged violations included siltation of Ballona Lagoon, placement of fill in the lagoon buffer, failure to construct the pathway in the buffer according to approved plans, and direction of drainage into the lagoon without filtration. Special condition number eight of Coastal Development Permit 5-92-210 (Lee) read as follows:

Prior to issuance of the permit, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which states that prior to issuance of the Certificate of Occupancy, the applicant shall provide evidence that shows that all alleged violations occurring as a result of site preparation of this site have been cured in accordance with the requirements of Coastal Permit 5-86-641 and subsequent amendments. Such alleged violations include siltation in the lagoon, placement of fill in the buffer, failure to construct the pathway in the buffer according to approved plans, failure to erect a "coastal access trail" sign, and direction of drainage into the lagoon without filtration. The Certificate of Occupancy shall not be issued until such time as the alleged violations are resolved.

The restoration work which was undertaken in Ballona Lagoon and buffer in 1992-93 pursuant to Coastal Development Permit amendment 5-86-641-A4 (Lee) has effectively corrected the damage which occurred as a result of site preparation of this site. The lagoon buffer has been successfully improved with a continuation of the east bank public access path and the buffer vegetation has been restored with native coastal strand vegetation. A "coastal access trail" sign has been erected at the southern end of the Ballona lagoon public access trail at Via Marina.

In any case, Coastal Development Permit 5-92-210 (Lee) expired on August 11, 1995 before it was vested by the commencement of construction of the previously approved residence. The lot was graded in 1988-89 pursuant to Coastal Development Permit 5-86-641 (Lee), but has remained vacant and undeveloped since then. Because there is currently no valid Coastal Development Permit for the development of the lot with a single family residence, the new owners of the lot have submitted the current Coastal Development Permit application. The currently proposed 30 foot high, 3,630 square foot residence complies with the design standards required by the previous permits and is much smaller than the residence which was previously approved by Coastal Development Permit 5-92-210 (Lee).

6. Coastal Development Permit 5-95-152

The most recent Commission action affecting the site was the conditional approval of Coastal Development Permit 5-95-152 on January 10, 1996. Coastal Development Permit 5-95-152 partially approved the Ballona Lagoon Enhancement Plan. The co-applicants of the permit include the Ballona Lagoon Marine Preserve (BLMP), California State Coastal Conservancy, and the City of Los Angeles. The Ballona Lagoon Enhancement Plan involves restoration work in Ballona Lagoon and the lagoon buffer including: excavation of a deep pool at the south end of the lagoon, improvements in the operation of the automatic tide gates, removal of non-native vegetation from the lagoon's east bank, revegetation of the east bank between the water and path (about half the buffer width) with native vegetation, and various public access improvements.

The site of the currently proposed project is affected by the enhancement plan, as are all of the lots located on the east bank of Ballona Lagoon, because it contains an easement for public access and habitat restoration on the east bank of Ballona Lagoon. Recorded easement No. 88-1912729 covers that portion of the applicants' lot which occupies the lagoon buffer area. The Coastal Conservancy has accepted this easement and many others in order to implement the Ballona Lagoon Enhancement Plan. As part of the plan, the Coastal Conservancy may soon transfer the east bank easements to the City of Los Angeles. These easements which cross the subject site and other lagoon fronting lots currently contain the Ballona Lagoon east bank public access trail and are included within the area of the Ballona Lagoon Enhancement Plan. The currently proposed project is consistent with, and will not interfere with, the successful implementation of the Ballona Lagoon Enhancement Plan.

C. Lagoon Buffer

As previously stated, the existing building pad on the subject site was graded under Coastal Development Permit 5-86-641 (Lee) and subsequent amendments. In its approval of Coastal Development Permit 5-86-641 (Lee), the Commission found that the development of the site would have cumulative and individual impacts on the habitat of Ballona Lagoon. The Commission also found that the shores and water area of the lagoon had a history of public use. The lagoon and buffer area had been historically used for camping, clamming, fishing, walking, and bird watching.

The approval as conditioned of Coastal Development Permit 5-86-641 (Lee) and amendments was found to be consistent with the Chapter 3 policies of the Coastal Act which address Environmentally Sensitive Habitat Areas, coastal access, and recreation. The proposed project must also be found consistent with the following Chapter 3 policies of the Coastal Act, taking into consideration the previous Commission actions in the area [Coastal Development Permits A-266-77 (ILA), 5-86-641 (Lee) & 5-87-112 (Del Rey Assoc.)].

Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Coastal 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 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Recreation

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In approving Coastal Development Permit 5-86-641 (Lee), the Commission found that the area could be developed residentially and still provide for protection of habitat and for passive recreational use if the applicants dedicated a buffer for habitat and a public access trail (path) along the east bank of the lagoon. The applicant (Lee) proposed a 24 foot wide lagoon buffer and path plan that extended the existing lagoon buffer path from the north through to Via Marina. The plan also included the appropriate structural setbacks to protect the environmentally sensitive lagoon habitat.

As a result of the Commission's approval of Coastal Development Permit 5-86-641 (Lee), the applicant (Lee) recorded and dedicated easement No. 88-1912729 for a 24 foot wide lagoon buffer with a public access path across the ten lagoon fronting lots, including the subject site, which were the subject of Coastal Development Permit 5-86-641 (Lee) (Exhibit #2).

In approving Coastal Development Permits 5-86-641 (Lee), 5-90-958 (Lee), and 5-92-210 (Lee), the Commission adopted a set of conditions for the site in order to protect and preserve the buffer and lagoon areas. This set of special conditions is also applied to the currently proposed project. The special conditions prohibit development in the recorded easement which covers that portion of the applicants' lot which occupies the buffer area (Exhibit #3). Prohibited development includes planting of non-native vegetation. The applicants shall allow a public access trail across the easement, restoration of the buffer as strand habitat, and such fencing that is necessary to preserve the habitat. The applicants are also prohibited from disturbing the fence and vegetation in the buffer area, and from interfering with public use of the trail. In addition, all drainage must be directed away from Ballona Lagoon.

Long term maintenance of the lagoon buffer, drainage devices, and public access path on the east bank of Ballona Lagoon is, and always has been a concern of the Commission. To address this issue, the Commission has consistently placed the burden of responsibility for the necessary maintenance of public areas which have not been accepted by a public agency on the lot owners in the area who have benefited from the improvement of the area. The approval of the proposed project requires the applicants to participate in the maintenance of the public areas.

In its approval of Coastal Development Permit A-266-77 (ILA), the Commission found that Ballona Lagoon was a critical habitat area and an important coastal resource. The Commission further found that residential development of the Silver Strand and Del Rey Beach area would cause major adverse cumulative impacts on the lagoon, and that several measures were necessary to mitigate the adverse impacts of development. One of the mitigation measures was a condition which required the lot owners who benefited from Coastal Development Permit A-266-77 (ILA) to establish a private homeowners association sufficient to maintain all public areas and landscaping approved and required by the permit which have not been accepted by a public agency. The Isthmus Landowners Association (ILA) was established to maintain all public areas and landscaping approved and required by Coastal Development Permit A-266-77 (ILA).

The Commission also required the lot owners benefiting from Coastal Development Permit A-266-77 (ILA) to participate on a fair and equitable basis with the other lot owners in the maintenance of the public areas, public access path, lagoon buffer, and drainage devices in the Silver Strand and Del Rey Beach Tract. The Commission placed similar requirements on the lot owners subject to Coastal Development Permits 5-86-641 (Lee) and 5-87-112 (Del Rey Assoc.) (Exhibit #2). This requirement is based on the concept that all property owners subject to the permit cumulatively created the negative impacts on the lagoon and have benefited most from the improvement of the public areas, and therefore should assume the responsibility to maintain the habitat mitigation and public areas.

This responsibility for the long-term and ongoing maintenance of the public areas, public access path, lagoon buffer, and drainage devices in the Silver Strand and Del Rey Beach tracts remains with the homeowners pursuant to Coastal Development Permits A-266-77 (ILA), 5-86-641 (Lee), and 5-87-112 (Del Rey Assoc.) until these public areas have been accepted by a public agency.

Therefore, as a condition of approval, the applicants here are required to record a deed restriction binding the applicants and their successors in interest to: (1) participate with the other lot owners subject to Coastal Permits A-266-77, 5-86-641 and 5-87-112 on a fair and equitable basis in the responsibility for the maintenance of the public areas, lagoon buffers, and drainage devices prescribed by Coastal Development Permits A-266-77, 5-86-641 and 5-87-112; (2) allow the State Coastal Conservancy, and its successors in lagoon buffer maintenance, the right to enter, restore and maintain the lagoon buffer; and (3) maintain all yard areas and height limits within sixty feet of the lagoon bank as specified in the special conditions this permit, 5-96-067. The public areas shall be identified in the deed restriction. The deed restriction shall run with the land, binding on all heirs and assigns of the applicants.

In addition, in order to protect the buffer area and the lagoon from impacts caused by the construction of the proposed project, the applicants shall erect a six foot high fence, for the period of construction, between the buffer area and the building site. No site preparation or construction shall occur until the fence is constructed, and no stock piling, grading, or trash disposal shall occur in the buffer area at any time.

As conditioned, the proposed project is consistent with the habitat, access, and recreation policies of the Coastal Act, and with the Commission's prior actions.

D. Front Yard Setback

Based on the previous Commission actions the area, the proposed structure is required to be set back from the buffer, the Esplanade, and Ballona Lagoon in order to provide public access and to protect the resources of the lagoon environment habitat. A special condition of Coastal Development Permit 5-86-641 (Lee) requires the front yard setback to be a minimum of ten feet, or fifteen percent of the buildable portion of the lot, whichever is greater. The required front yard setback is measured from the inland edge of the dedicated 24 foot wide buffer adjacent to Ballona Lagoon (Exhibit #3).

In determining the required setback distance, fifteen percent of the length of the lot is calculated from the "net length" of the lot or the length of the "buildable" lot. In this case, the total lot length is 115 feet, but 24 feet is dedicated as the lagoon buffer. Therefore, the buildable lot is 91 feet long. Fifteen percent of 91 feet is thirteen feet and eight inches (13'8"). The proposed project provides both the 24 foot wide buffer area and the required thirteen foot and eight inch front yard setback (See Exhibit #3), consistent with the original conditions of Coastal Development Permits 5-86-641 (Lee), 5-90-958, and 5-92-210 (Lee).

No development or construction, except for fences and ground levels decks, are permitted within the front yard setback. Fences to protect ground level decks shall not exceed six feet in height above natural grade. No fence, wall or other accessory structure shall encroach into the buffer area in front of the setback area. In addition, in order to prevent further encroachments into the setback that may impact public access and the sensitive habitat areas, the

applicants are required to record a future improvements deed restriction on the property.

As conditioned to provide the required setback from the lagoon buffer and to record a future improvements deed restriction, the proposed project is consistent with the habitat, access, and recreation policies of the Coastal Act, and with the Commission's prior actions.

E. Building Height

A height limit for structures adjacent to Ballona Lagoon has been established in previous Commission actions to protect against a "canyon effect" which could negatively impact bird flight patterns. Ballona Lagoon is utilized by many bird species, including the federally and state listed endangered California least tern.

In order to regulate the height of structures adjacent to Ballona Lagoon so as to limit the impacts on birds, the following special condition was applied to the second amendment to Coastal Development Permit 5-86-641 [5-86-641-A2 (Lee)]:

- 1.A. For any future proposed structures on Lots 1-4 of Block 16 and Lots 2-5 of Block 17, the height of the proposed structure within sixty horizontal feet of the inland edge of the Esplanade of Ballona lagoon at the adjacent shoreline shall not exceed 29 feet above the existing grade as approved herein. For every two feet further away from the Lagoon, the structure may be one foot higher in height to a maximum height of 45 feet.

The same height limit condition has been applied to all of the previous Commission approvals for single family residences on the site. The height limit has also been applied to the subject permit.

The existing grade of the building pad on the subject lot approved by the Commission in permits 5-86-641-A2 (Lee), 5-90-958 (Lee), and 5-92-210 (Lee) is elevation 17.30'. The height of the proposed structure within sixty horizontal feet of the inland extent of the Esplanade of Ballona Lagoon as indicated on the submitted elevations for the proposed project is under 29 feet (as measured from elevation 17.30') (Exhibit #4). The height of the proposed structure does not exceed thirty feet in the area where the Commission's height limit allows up to 45 feet. Therefore, the proposed project conforms to the Commission's height limit.

In order to prevent further increases in structural height that may impact bird flight patterns, the applicants are required to record a future improvements deed restriction on the property.

Only as conditioned to limit the height of the structure and to record a future improvements deed restriction is the proposed project consistent with the habitat protection policies of the Coastal Act and the Commission's prior actions.

F. Parking

In order to protect coastal access, the project is required to provide adequate on-site parking. Previously approved Coastal Development Permits 5-86-641 (Lee), 5-90-958 (Lee), and 5-92-210 (Lee) required the provision of three on-site parking spaces for the subject property. The proposed project provides the required three on-site parking spaces in the ground floor garage (Exhibit #3).

For previous projects in the area, applicants have been required to record a deed restriction which assures the provision of the three on-site parking spaces. The same requirement applies to the subject permit.

A deed restriction for three on-site parking spaces has already been recorded on the property as a requirement of the previous Coastal Development Permit on the site, 5-92-210 (Lee). However, the previous deed restriction is no longer valid because Coastal Development Permit 5-90-210 (Lee) expired before it was vested. Therefore, as a condition of this permit, the applicants are required to record a new deed restriction for parking. The deed restriction requirement for parking includes a statement acknowledging that the courts and street ends in the tract are designated for public parking and shall not be used for preferential parking (i.e., permitted or restricted parking).

Therefore, approval of the Coastal Permit is conditioned to record the deed restriction for parking currently required by the Commission for projects in the Silver Strand and Del Rey Beach Tracts. The required deed restriction states that three on-site parking spaces will be provided, and that they shall take access from Via Donte, not from the paved street ends designated for public parking. The deed restriction shall also note that the courts and street ends of the tract are designated for public parking and shall not be used for preferential parking.

Only as conditioned to provide three on-site parking spaces and to record the deed restriction addressing parking, is the proposed project consistent with the coastal access policies of the Coastal Act and the Commission's prior actions.

G. 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 which conforms with Chapter 3 policies of the Coastal Act:

- (a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter

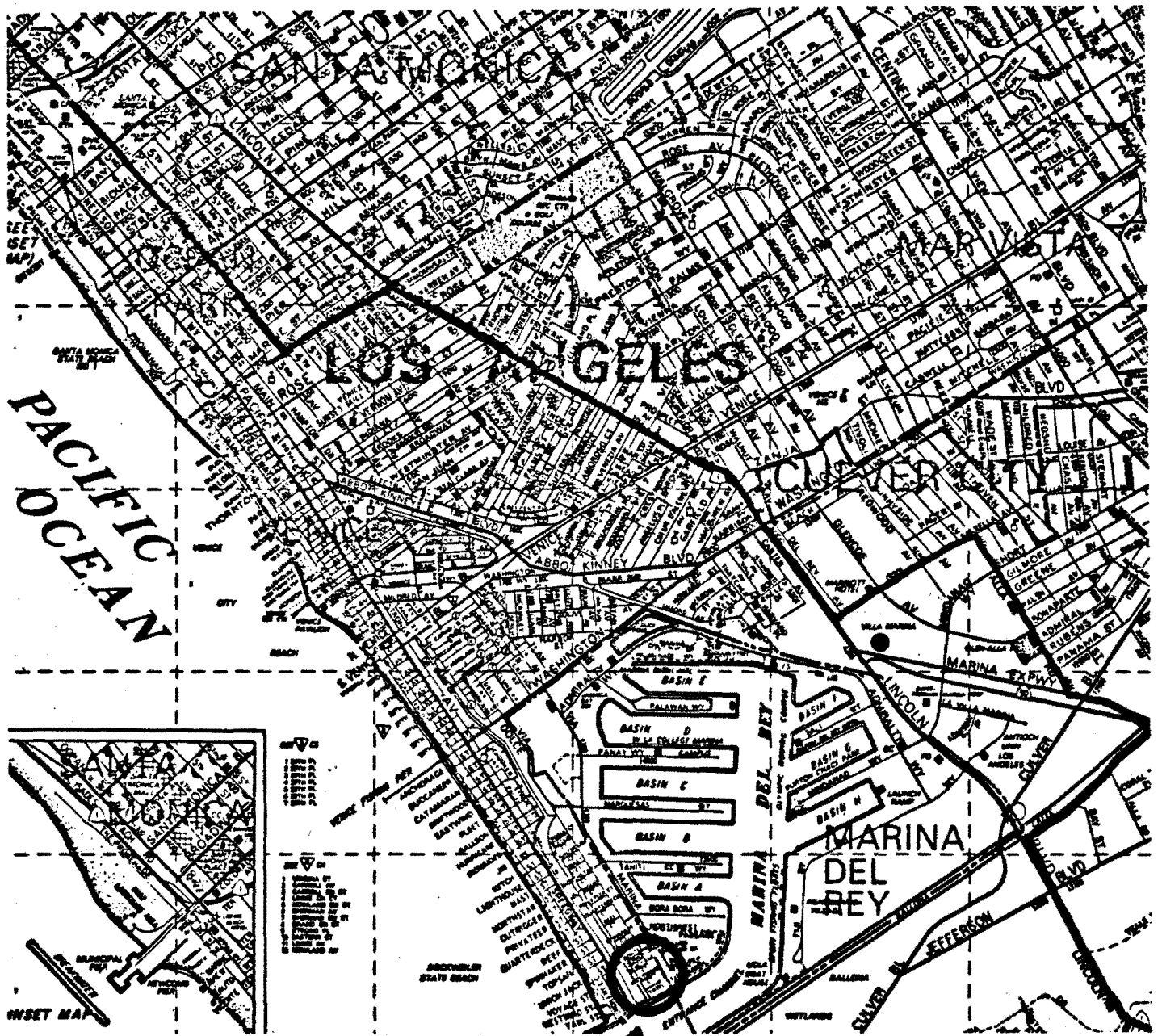
3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The Venice area of the City of Los Angeles does not have a certified Local Coastal Program. The proposed project, as conditioned, is consistent with the habitat, coastal access, and recreation policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

H. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The Commission's conditions of approval adequately address and mitigate any potential adverse impacts to the environment caused by the proposed project. All adverse impacts have been minimized and there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with the requirements of the Coastal Act to conform to CEQA.



Site

COASTAL COMMISSION

5-96-067

EXHIBIT # 1

PAGE 1 OF 1

Site

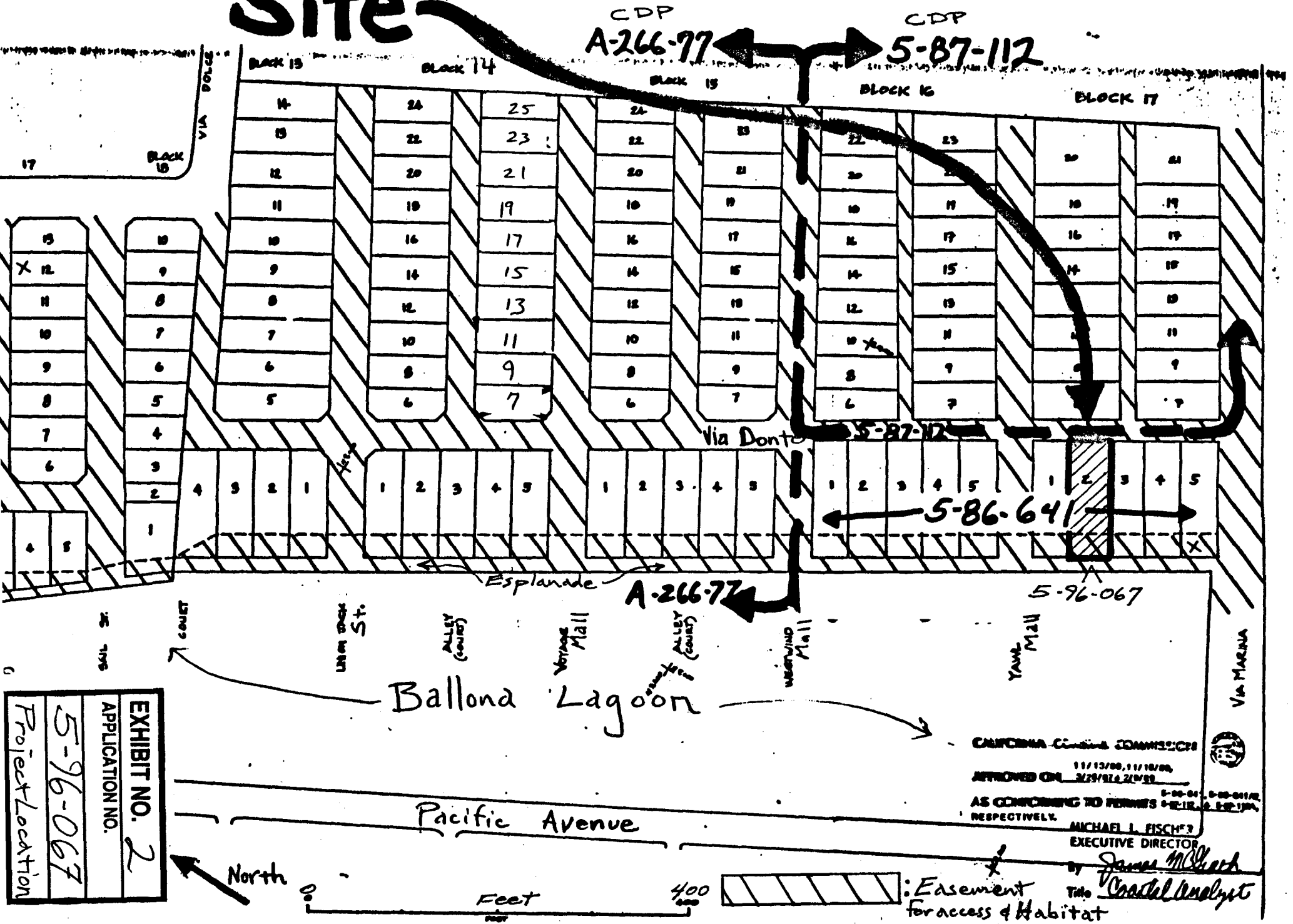
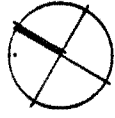
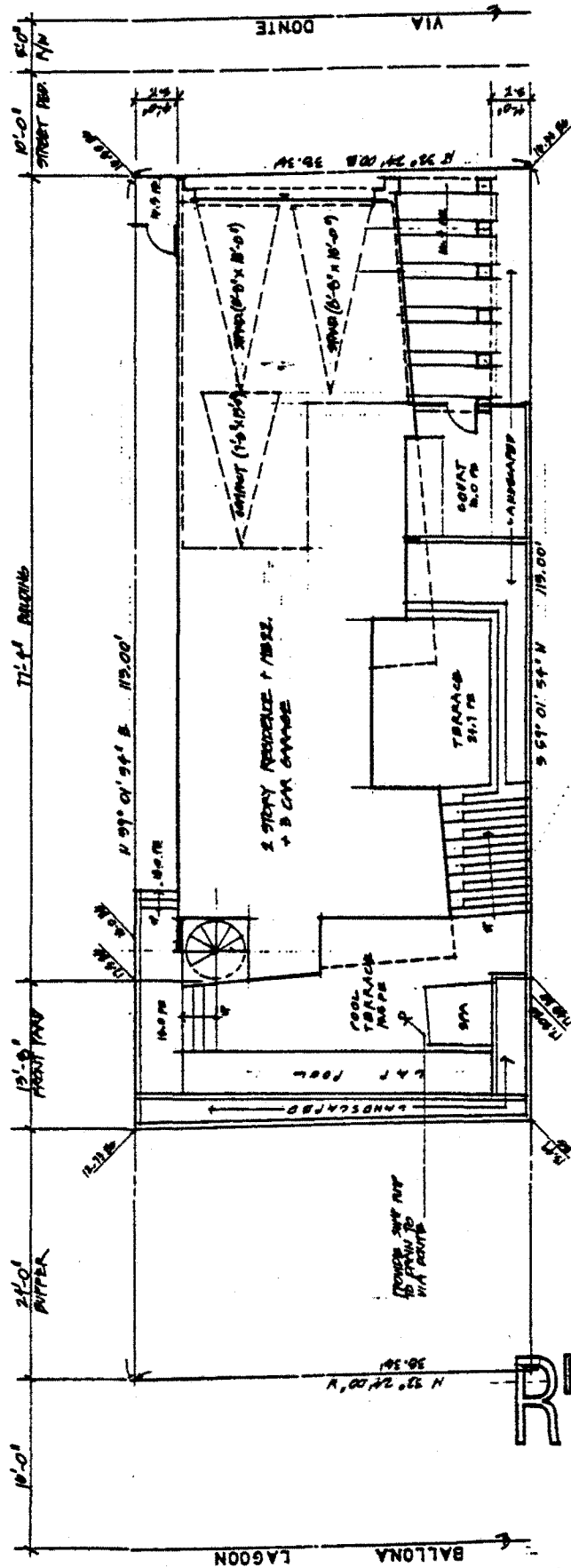


EXHIBIT NO. 2
 APPLICATION NO. 5-96-067
 Project Location

CALIFORNIA Coastal COMMISSION
 11/13/08, 11/18/08
 APPROVED ON 3/29/09 & 2/18/09
 AS CONCERNING TO PERMITS 0-00-041, 0-00-042,
 RESPECTIVELY.
 MICHAEL L. FISCHER
 EXECUTIVE DIRECTOR

by James McQuinn
 Title Coastal Analyst





1/16" = 1'-0"

DATE PLAN

5505 VIA DONTÉ · MARINA DEL REY · CALIFORNIA

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CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

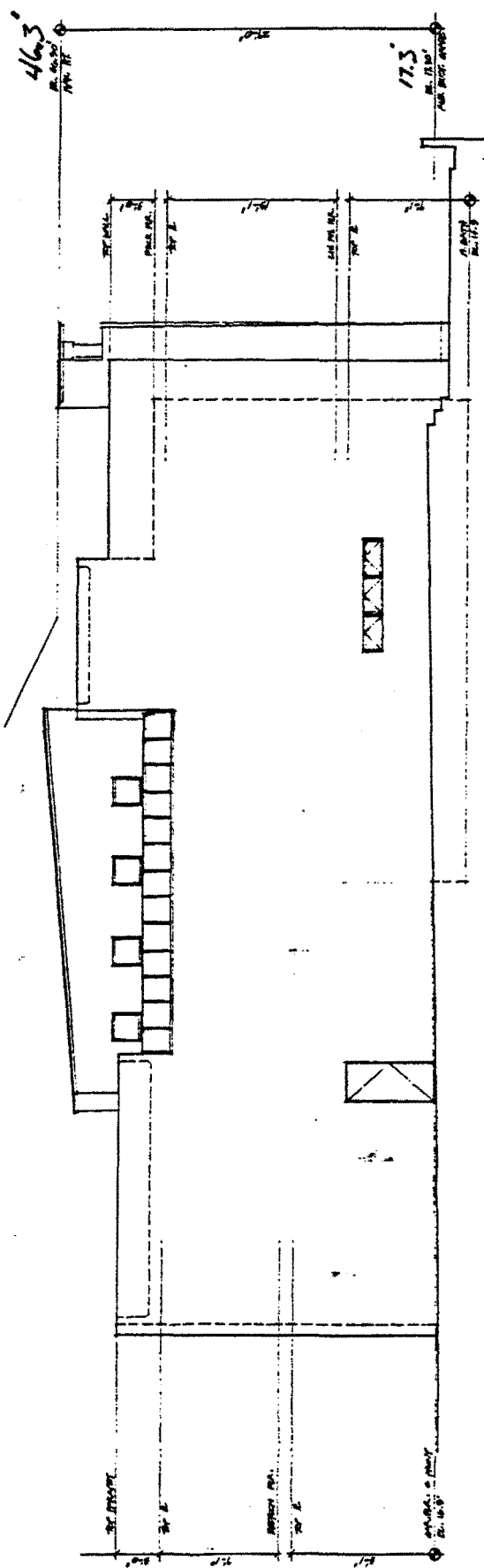
COASTAL COMMISSION
S-96-067

EXHIBIT # 3
PAGE 1 OF 1

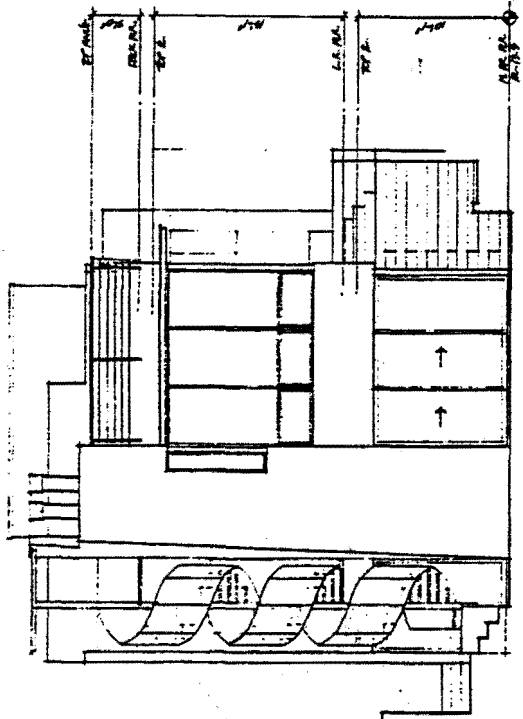
WERTLIEB RESIDENCE
 DRAWN & MARKED BY
 BLINDO VIA SHIP
 800 CALIFORNIA 3008
 MARINA DEL REY, CALIFORNIA 90291

TANK STUDIO
 5-96-067
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5-96-067



② NORTH ELEVATION



① WEST ELEVATION

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 SOUTH COAST DISTRICT

COASTAL COMMISSION

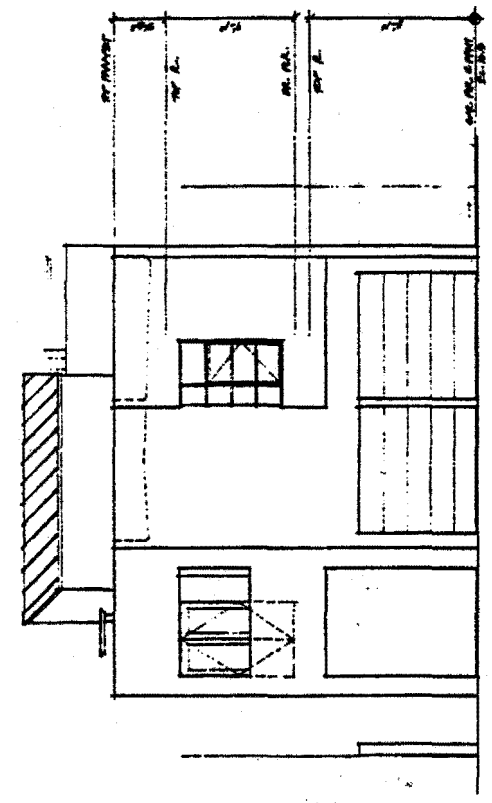
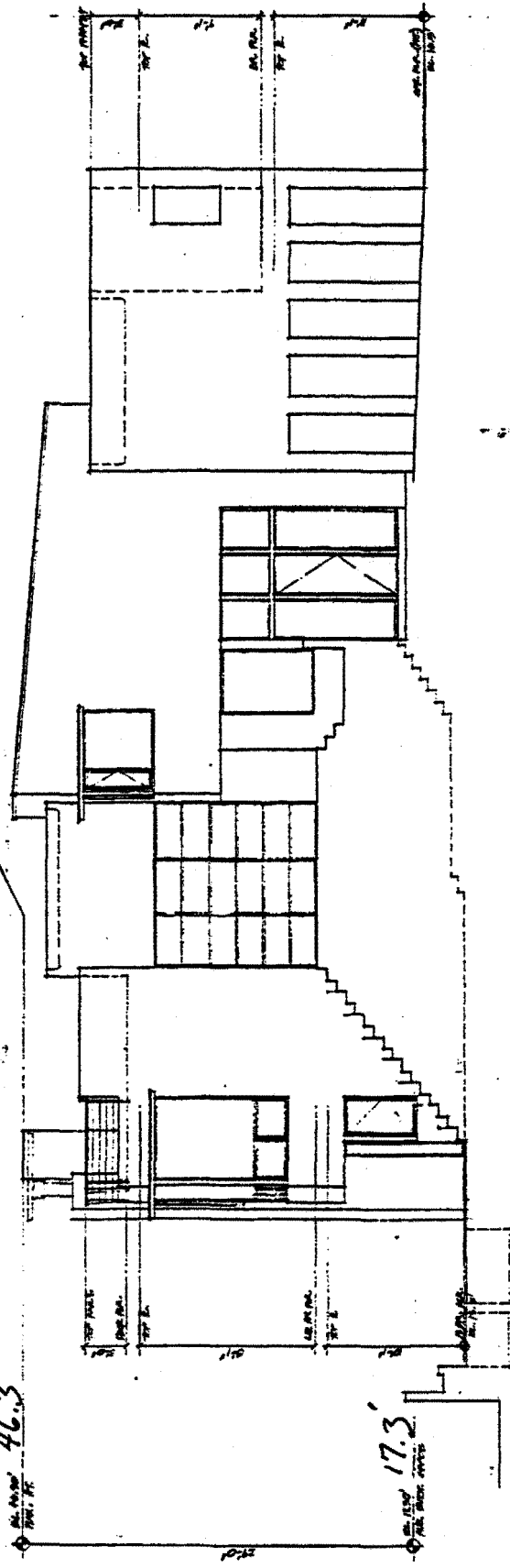
5-96-067

EXHIBIT # 4

PAGE 1 OF 1

WERTLIEB RESIDENCE
 WASHINGTON, D.C. 20001
 JAMES S. WERTLIEB
 2222 VIA OCEANO
 MALIBU, CALIFORNIA 90265

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EXHIBIT # 5

PAGE 1 OF 1